

1 **ORDINANCE NO. 20080724-____**

2 **AN ORDINANCE AUTHORIZING THE ISSUANCE OF**
3 **“CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX**
4 **SUBORDINATE LIEN VARIABLE RATE REVENUE**
5 **REFUNDING BONDS, SERIES 2008” AND RELATED**
6 **DOCUMENTS.**

7 **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF**
8 **AUSTIN:**

9 **ARTICLE 1. FINDINGS**

10 **PART 1.01. Findings.** The Council finds that:

11 A. The City (the “City”) has issued, sold, and delivered, and there is
12 currently outstanding, obligations totaling in principal amount \$119,290,000 of the
13 following series: City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien
14 Variable Rate Revenue Refunding Bonds, Series 2005, dated August 17, 2005, and
15 scheduled to mature on November 15, 2029 (the “Refunded Bonds”);

16 B. The City is authorized under the provisions of V.T.C.A., Government
17 Code, Chapter 1207 to issue refunding bonds and deposit the proceeds of sale
18 directly with the place of payment for the Refunded Bonds, or other authorized
19 depository, and such deposit, when made in accordance with the statute, and
20 ordinance authorizing the issuance of the Refunded Bonds, shall constitute the
21 making of firm banking and financial arrangements for their discharge and final
22 payment;

23 C. The City is authorized under V.T.C.A., Government Code, Chapter
24 1371, to enter into credit agreements, including, but not limited to, interest rate
25 management agreements;

26 D. The City shall by this Ordinance, in accordance with the provisions of
27 Section 1207.007, Texas Government Code and Section 1371.056, Texas
28 Government Code delegate to a Pricing Officer (hereinafter designated) the
29 authority to negotiate and approve certain matters in relation to the issuance of the
30 Bonds, including, but not limited, to (i) the approval and execution of an interest
31 rate management agreement in connection with the Bonds, (ii) the approval and
32 execution of necessary documentation in relation to the termination of the interest
33 rate management agreement currently in effect for the Refunded Bonds, (iii)
34 determine the principal amount, terms and initial interest rate for the Bonds, (iv)

1 the approval and execution of an escrow agreement, if any, in connection with the
2 Refunded Bonds and (v) the forms of the Bonds.

3 E. It is a public purpose and in the best interests of the City to refund the
4 Refunded Bonds in order to achieve a present value debt service savings of not less
5 than _____%, with such savings, among other information and terms to be
6 included in a pricing certificate (the "Pricing Certificate") to be executed by the
7 Pricing Officer (hereafter designated), all in accordance with the provisions of
8 Section 1207.007, Texas Government Code; and

9 F. The Bonds should be issued as two subseries in substantially equal
10 principal amounts to accommodate two underwriters and two remarketing agents
11 for the Bonds.

12 **ARTICLE 2. DEFINITIONS**

13 **PART 2.01. Definitions.** Capitalized terms used but not otherwise defined
14 in this Ordinance shall mean the meanings set forth in this Part or set forth in
15 Appendix A to this Ordinance. Unless otherwise expressly provided or unless the
16 context otherwise requires, the terms defined in this Part for all purposes of this
17 Ordinance, and any ordinance amendatory or supplemental hereto shall have the
18 respective meanings specified:

19 "Additional Bond" means a bond issued by the City pursuant to Part
20 6.02 or Part 6.03.

21 "Amortization End Date" shall mean with respect to any Liquidity
22 Provider Bonds held by the Initial Liquidity Facility Provider the
23 earliest to occur of (i) the fifth anniversary of the date the related
24 Advance (as defined in the Series 2008 Liquidity Agreement) was
25 made, (ii) the Mode Change Date and (iii) the Substitution Date with
26 respect to such Liquidity Provider Bonds.

27 "Amortization Payment Date" shall mean, with respect to any
28 Liquidity Provider Bonds held by the Initial Liquidity Facility
29 Provider, (i) the first Business Day of the sixth calendar month
30 immediately succeeding the Amortization Start Date and the first
31 Business Day of each sixth calendar month occurring thereafter prior
32 to the Amortization End Date and (ii) the Amortization End Date.

33 "Amortization Start Date" shall mean, with respect to any Liquidity
34 Provider Bonds held by the Initial Liquidity Facility Provider, the

1 earlier to occur of (i) one hundred eighty (180) days from the related
2 Purchase Date for such Liquidity Provider Bonds, and (ii) the
3 Termination Date (as defined in the Series 2008 Liquidity
4 Agreement); provided, however, that an Amortization Start Date shall
5 occur only if (x) no Default or Event of Default (as defined in the
6 Series 2008 Liquidity Agreement) shall have occurred and be
7 continuing on any Amortization Start Date and (y) all representations
8 of warranties contained in Article IV of the Series 2008 Liquidity
9 Agreement are true and correct on any Amortization Start Date.

10 “Auction Period” has the meaning set forth in Appendix A.

11 “Auction Rate Mode” has the meaning set forth in Appendix A.

12 “Authorized Official” means, individually and collectively, each of
13 the Mayor, the City Manager, the Treasurer and the Chief Financial
14 Officer of the City.

15 “Bond Act” means, collectively, Vernon’s Texas Code Annotated,
16 Government Code, Chapters 1207 and 1371, and Vernon’s Texas
17 Code Annotated, Local Government Code, Chapter 334.

18 “Bond Fund” means the Fund created and established in Part 5.05 of
19 this Ordinance for the payment of the Parity Bonds.

20 “Bond Purchase Agreement” means the Bond Purchase Agreements
21 approved in Part 10.01 of this Ordinance.

22 “Bond Year” means the period of time that begins on the day
23 following the interest payment date on the Bonds occurring in
24 November of any year and ending on the interest payment date on the
25 Bonds occurring in November of the following year.

26 “Bonds” mean, the “City of Austin, Texas, Hotel Occupancy Tax
27 Subordinate Lien Variable Rate Revenue Refunding Bonds, Series
28 2008” authorized by this Ordinance.

29 “Broker-Dealer” has the meaning set forth in Appendix A.

30 “Broker-Dealer Agreement” has the meaning set forth in Appendix A.

31 “Business Day” has the meaning set forth in Appendix A.

1 “City” means the City of Austin, Texas, and, where appropriate, the
2 City Council thereof, or any successor thereto.

3 “Clearing Bids” has the meaning set forth in Appendix A.

4 “Closing Date” has the meaning set forth in Appendix A.

5 “Commercial Paper Mode” has the meaning set forth in Appendix A.

6 “Convention Center/Waller Creek Venue Project” means the capital
7 improvement project described generally as consisting of the
8 expansion of the City’s Convention Center, including the construction
9 of tunnel improvements along Waller Creek in the vicinity of and
10 functionally related to the convention center and related infrastructure
11 and being a venue project within the meaning of Chapter 334 of the
12 Local Government Code approved at an election held in the City on
13 May 2, 1998, and designated by Resolution No. 980205-61.

14 “Credit Agreement” has the meaning set forth in Chapter 1371, Texas
15 Government Code, as the same may be amended from time to time.

16 “Credit Facility” has the meaning set forth in Appendix A.

17 “Credit Facility Provider” has the meaning set forth in Appendix A.

18 “Daily Mode” has the meaning set forth in Appendix A.

19 “Debt Service Requirements” of any series of bonds for any particular
20 Bond Year, means an amount equal to the sum of the principal of and
21 interest and any redemption premium on such bonds then Outstanding
22 which will become due and owing during such Bond Year; subject,
23 however, to adjustment as provided in Part 6.03.

24 “Designated Payment/Transfer Office” means the office of the Paying
25 Agent/Registrar so designated by it from time to time.

26 “Favorable Opinion of Bond Counsel” has the meaning set forth in
27 Appendix A.

28 “Fiscal Year” means the City’s fiscal year as from time to time
29 designated by the City, which is currently October 1 to September 30.

1 “Fitch” means Fitch, Inc., a corporation duly organized and existing
2 under and by virtue of the laws of the State of New York, and its
3 successors and assigns, except that if such corporation shall be
4 dissolved or liquidated or shall no longer perform the functions of a
5 securities rating agency, then the term “Fitch” shall be deemed to refer
6 to any other nationally recognized securities rating agency selected by
7 the City after consultation with the Remarketing Agent, if any, and the
8 Broker-Dealer, if any.

9 “Fixed Rate Mode” has the meaning set forth in Appendix A.

10 “Government Obligations” mean (i) direct noncallable obligations of
11 the United States of America, including obligations the principal of
12 and interest on which are unconditionally guaranteed by the United
13 States of America, (ii) noncallable obligations of an agency or
14 instrumentality of the United States, including obligations
15 unconditionally guaranteed or insured by the agency or
16 instrumentality and on the date of their acquisition or purchase by the
17 City are rated as to investment quality by a nationally recognized
18 investment rating firm not less than AAA or its equivalent and (iii)
19 noncallable obligations of a state or an agency or a county,
20 municipality, or other political subdivision of a state that have been
21 refunded and on the date of their acquisition or purchase by the City,
22 are rated as to investment quality by a nationally recognized
23 investment rating firm not less than AAA or its equivalent.

24 “Guaranty Agreement” has the meaning set forth in Part 5.06.

25 “Holder” or “Owner” when used with respect to any Bond (or Parity
26 Bond) means the person or entity in whose name such Bond (or Parity
27 Bond) is registered in the Security Register. Any reference to a
28 particular percentage or proportion of the Holders or Owners shall
29 mean the Holders or Owners at a particular time of the specified
30 percentage or proportion in aggregate principal amount of all Bonds
31 (or Parity Bonds) then Outstanding under this Ordinance.

32 “Hotel Occupancy Tax” means the tax, levied by the City pursuant to
33 the Tax Act, on the cost of occupancy of any sleeping room furnished
34 by any hotel located within the corporate limits of the City, in which
35 the cost of occupancy is \$2.00 or more a day, which tax is currently

1 levied at a rate of 7% of the consideration paid by the occupant of the
2 sleeping room to the hotel.

3 “Interest Payment Date” has the meaning set forth in Appendix A.

4 “Interest Rate Management Agreement” means the Series 2008
5 Interest Rate Management Agreement and any other Credit
6 Agreement between the City and another party entered into in
7 connection with or related to the City’s Variable Rate Obligations,
8 which Credit Agreement is in the form of an interest rate exchange
9 agreement, pursuant to which the City pays a fixed percentage rate of
10 a notional amount and the other party pays a variable percentage rate
11 of the same notional amount, of which the notional amount is equal to
12 the principal amount of such Variable Rate Obligations of the City,
13 and of which the notional amount is reduced as the principal of such
14 Variable Rate Obligation is paid.

15 “Interest Rate Management Agreement Counterparty” means the
16 Series 2008 Interest Rate Management Agreement Counterparty and
17 any other counterparty under any Interest Rate Management
18 Agreement.

19 “Initial Liquidity Facility Provider” shall mean Dexia Credit Local,
20 acting through its New York Branch.

21 “Issue Date” means the date the Bonds are issued and delivered to the
22 initial purchasers thereof.

23 “Junior Subordinate Lien Bond” means an Additional Bond issued by
24 the City pursuant to Part 6.03 of this Ordinance secured wholly or
25 partly by liens on the Pledged Revenues that are junior and
26 subordinate to the lien on Pledged Revenues securing payment of the
27 Parity Bonds.

28 “Liquidity Facility” has the meaning set forth in Appendix A.

29 “Liquidity Facility Provider” has the meaning set forth in
30 Appendix A.

31 “Liquidity Provider Bonds” means any Bonds purchased by the
32 Liquidity Facility Provider with funds drawn on or advanced under
33 the Liquidity Facility.

1 “Long-Term Mode” means a Term Rate Mode or a Fixed Rate Mode.

2 “Mode” has the meaning set forth in Appendix A.

3 “Mode Change Date” has the meaning set forth in Appendix A.

4 “Moody’s” shall mean Moody’s Investors Service, Inc., a corporation
5 duly organized and existing under and by virtue of the laws of the
6 State of Delaware, and its successors and assigns, except that if such
7 corporation shall be dissolved or liquidated or shall no longer perform
8 the functions of a securities rating agency, then the term “Moody’s”
9 shall be deemed to refer to any other nationally recognized securities
10 rating agency selected by the City after consultation with the
11 Remarketing Agent, if any, and the Broker-Dealer, if any.

12 “Ordinance” means this Ordinance No. 20080724-_____ and all
13 exhibits, appendices, amendments and supplements hereto and the
14 Pricing Certificate.

15 “Outstanding” when used with reference to any Prior Lien Bonds,
16 Parity Bonds or Junior Subordinate Lien Bonds means, as of a
17 particular date, all Prior Lien Bonds, Parity Bonds or Junior
18 Subordinate Lien Bonds, any or all, theretofore and thereupon
19 delivered except: (a) any such Prior Lien Bond, Parity Bond or Junior
20 Subordinate Lien Bond paid, discharged or canceled by or on behalf
21 of the City at or before said date; (b) any such Prior Lien Bond, Parity
22 Bond and Junior Subordinate Lien Bond defeased pursuant to the
23 defeasance provisions of the ordinance authorizing its issuance, or
24 otherwise defeased as permitted by applicable law; and (c) any such
25 Prior Lien Bond, Parity Bond or Junior Subordinate Lien Bonds in
26 lieu of or in substitution for which another obligation shall have been
27 delivered pursuant to the ordinances authorizing the issuance of such
28 Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds.

29 “Parity Bonds” mean the Bonds and Additional Bonds secured by a
30 lien on Pledged Hotel Occupancy Tax Revenues on a parity with the
31 Bonds.

32 “Parity Obligations” mean at any time all (i) Parity Bonds, (ii) all
33 Reimbursement Obligations, (iii) obligations of the City to make
34 scheduled payments under an Interest Rate Management Agreement,
35 and (iv) any future obligation of the City under Credit Agreements or

1 other agreements to the extent such obligations are secured by a lien
2 on Pledged Hotel Occupancy Tax Revenues on an equal and ratable
3 basis with the lien securing the Parity Bonds.

4 “Paying Agent/Registrar” means with respect to the Bonds, the Paying
5 Agent/Registrar to be appointed as provided in Part 8.01 of this
6 Ordinance, and its successors in that capacity.

7 “Pledged Hotel Occupancy Tax Revenues” mean that portion of the
8 revenues derived by the City from the Hotel Occupancy Tax which is
9 equal to at least 4.5% of the consideration paid by occupants of
10 sleeping rooms furnished by hotels located within the corporate limits
11 of the City, in which the cost of occupancy is \$2.00 or more a day.

12 “Pledged Revenues” mean collectively, (i) the Pledged Hotel
13 Occupancy Tax Revenues, (ii) the Special Hotel Occupancy Tax
14 deposited to the credit of the Venue Project Fund (iii) interest and
15 other income realized from the investment of amounts on deposit in
16 the funds and accounts to be maintained pursuant to Article 5 of this
17 Ordinance to the extent such interest and other income are required to
18 be transferred or credited to the Tax Fund, and (iv) any additional
19 revenue, receipts or income hereafter pledged to the Bonds in
20 accordance with Part 7.02 of this Ordinance.

21 “Pricing Certificate” means the pricing certificate to be executed by
22 an a Pricing Officer in accordance with the provisions of Section
23 1207.007 and Chapter 1371.056, Texas Government Code to evidence
24 certain approvals and determinations as authorized in this Ordinance.

25 “Pricing Officer” means either the City Manager or Chief Financial
26 Officer of the City.

27 “Prior Lien Bonds” mean (a) with respect to the Pledged Hotel
28 Occupancy Tax Revenues, the outstanding (i) “City of Austin, Texas
29 Hotel Occupancy Tax Revenue Taxable Refunding Bonds, Series
30 1999,” dated June 15, 1999, and originally issued in the aggregate
31 principal amount of \$6,445,000, and (iii) “City of Austin, Texas,
32 Hotel Occupancy Tax Revenue Refunding Bonds, Series 2004,” dated
33 February 1, 2004, originally issued in the aggregate principal amount
34 of \$52,715,000, and (b) with respect to the Special Hotel Occupancy

1 Tax deposited to the credit of the Venue Project Fund, the Special
2 Venue Project Bonds.

3 “Purchase Date” has the meaning set forth in Appendix A.

4 “Purchase Price” means an amount equal to the principal amount of
5 any Bonds purchased on any Purchase Date, plus accrued interest to
6 the Purchase Date (unless the Purchase Date is an Interest Payment
7 Date, in which case the Purchase Price shall not include accrued
8 interest, which shall be paid in the normal course).

9 “Rating Agency” means any nationally recognized rating agency that
10 maintains a rating on the Bonds at the request of the City. Initially,
11 the Rating Agencies are Moody’s and Standard & Poor’s.

12 “Rating Category” means one of the general rating categories of any
13 Rating Agency, without regard to any refinement or gradation of such
14 rating category by a numerical modifier or otherwise.

15 “Rating Confirmation Notice” means, with respect to an action that
16 affects the Bonds, a writing from each Rating Agency confirming that
17 the rating(s) issued by such Rating Agency on such series of Bonds
18 will not be lowered or withdrawn (other than a withdrawal of a short-
19 term rating upon a change to a Long-Term Mode) as a result of the
20 action proposed to be taken.

21 “Redemption Date” has the meaning set forth in Appendix A.

22 “Redemption Price” means an amount equal to the principal of and
23 premium, if any, and accrued interest, if any, on the Bonds to be paid
24 on the Redemption Date.

25 “Refunded Bonds” has the meaning set forth in Part 1.01 hereof.

26 “Reimbursement Obligation” mean any obligation entered into by the
27 City in connection with any Parity Bond pursuant to which the City
28 obligates itself to reimburse a bank, insurer, surety or other entity for
29 amounts paid or advanced by such party pursuant to a letter of credit,
30 line of credit, standby bond purchase agreement, credit facility,
31 liquidity facility, insurance policy, surety bond or other similar credit
32 agreement, guaranty or liquidity agreement to secure any portion of
33 principal of, interest on or purchase price of any Parity Bond or

1 reserves in connection therewith or otherwise relating to any Parity
2 Bond. The City's obligations under a Guaranty Agreement, its
3 obligations under a Liquidity Facility, and its obligations to reimburse
4 a Credit Facility Provider for amounts paid under a Credit Facility
5 constitute Reimbursement Obligations.

6 "Remarketing Agent" means, with respect to the Subseries 2008A
7 Bonds, Morgan Keegan & Company, Inc. and, with respect to the
8 Subseries 2008B Bonds, Banc of America Securities LLC.

9 "Reserve Fund" mean the Fund created and established in
10 Part 5.03(c)(ii) of this Ordinance to provide a reserve amount for the
11 payment of Parity Bonds.

12 "Reserve Fund Requirement" means the least of (i) 10% of the
13 Outstanding principal amount of the Parity Bonds or (ii) the maximum
14 annual Debt Service Requirements scheduled to occur in the then
15 current and each future Fiscal Year for all Parity Bonds at any time
16 Outstanding, or (iii) the maximum amount in a reasonably required
17 reserve fund that can be invested without restriction as to yield
18 pursuant to Subsection (d) of Section 148 of the Internal Revenue
19 Code of 1986, as amended, and regulations promulgated thereunder.

20 "Reserve Fund Surety Bond" mean any surety bond, insurance policy,
21 letter of credit or other guaranty issued to the City for the benefit of
22 the Holders of the Parity Bonds to satisfy any part of the Reserve
23 Fund Requirement as provided in Part 5.06 of this Ordinance.

24 "Security Register" mean the books of registration maintained by the
25 Paying Agent/Registrar for recording the names and addresses of and
26 the principal amounts registered to each Holder.

27 "Series 2008 Interest Rate Management Agreement" means
28 collectively, an ISDA Master Agreement (Local Currency – Single
29 Jurisdiction) together with the Schedule, and Confirmation thereto,
30 between the City and Morgan Keegan Financial Products, Inc.,
31 together with the Replacement Transaction Agreement, between the
32 City, and the Series 2008 Interest Rate Management Agreement
33 Counterparty and the ISDA Master Agreement and Schedule deemed
34 entered into pursuant to the Replacement Transaction Agreement and
35 the Credit Support Annex thereto, between the City and Deutsche

1 Bank AG, New York Branch, substantially in the form of Exhibit B
2 hereto.

3 “Series 2008 Interest Rate Management Counterparty” means Morgan
4 Keegan Financial Products, Inc.

5 “Series 2008 Liquidity Agreement” means that certain
6 Reimbursement Agreement, between the City and the Liquidity
7 Facility Provider attached to and approved in this Ordinance.

8 “Special Hotel Occupancy Tax” means the 2% hotel occupancy tax
9 approved at the election held May 2, 1998 to finance the Convention
10 Center/Waller Creek Venue Project and levied by the City pursuant to
11 Ordinance No. 980709-G, adopted by the City Council of the City on
12 July 9, 1998, on the cost of occupancy of any sleeping room furnished
13 by any hotel located within the corporate limits of the City, in which
14 the cost of occupancy is \$2.00 or more a day.

15 “Special Venue Project Bonds” mean City of Austin, Texas,
16 Convention Center/Waller Creek Venue Project Bonds, Series 1999A,
17 dated June 15, 1999, and originally issued in the aggregate principal
18 amount of \$25,000,000.

19 “Standard & Poor’s” shall mean Standard & Poor’s Ratings Services,
20 Inc., a division of The McGraw-Hill Companies, Inc., duly organized
21 and existing under and by virtue of the laws of the State of New York,
22 and its successors and assigns, except that if such corporation shall be
23 dissolved or liquidated or shall no longer perform the functions of a
24 securities rating agency, then the term “Standard & Poor’s” shall be
25 deemed to refer to any other nationally recognized securities rating
26 agency selected by the City after consultation with the Remarketing
27 Agent, if any, and the Broker-Dealer, if any.

28 “Substitution Date” has the meaning set forth in Appendix A.

29 “Tax Act” mean Chapter 351 of the Texas Tax Code, Vernon’s Texas
30 Codes Annotated.

31 “Tender Agent” means with respect to the Bonds, the Paying
32 Agent/Registrar to be appointed as provided in Part 8.06 of this
33 Ordinance, and its successors in that capacity.

1 “Term Rate Mode” has the meaning set forth in Appendix A.

2 “Transfer Date” mean each February 14, May 14, August 14, and
3 November 14, beginning August 14, 2008.

4 “Transfer Period” mean the period of time beginning on any Transfer
5 Date and ending on the day immediately preceding the next
6 succeeding Transfer Date.

7 “Variable Rate Obligations” mean any obligation pursuant to which
8 the City is to pay interest at an interest rate that is not fixed for the life
9 of the obligation and any obligation, such as an interest rate exchange
10 agreement or other Credit Agreement, pursuant to which the City is to
11 make payments the amounts of which are not known at the time the
12 obligation is issued or incurred.

13 “Venue Project Fund” mean the Fund so designated created and
14 established pursuant to Ordinance No. 980709-G, adopted by the City
15 Council on July 9, 1998, providing for the levy, assessment and
16 collection of the Special Hotel Occupancy Tax.

17 “Weekly Mode” has the meaning set forth in Appendix A.

18 “Winning Bid Rate” has the meaning set forth in Appendix A.

19 **PART 2.02. Interpretations.** All terms defined and all pronouns used in
20 this Ordinance applies equally to singular and plural and to all genders. The titles
21 and headings of the articles and Parts of this Ordinance have been inserted for
22 convenience of reference only and are not to be considered a part hereof and shall
23 not in any way modify or restrict any of the terms or provisions hereof. Unless
24 otherwise specified references to Parts, Exhibits and Appendix A are to Parts,
25 Exhibits and Appendix A of this Ordinance. Terms “herein”, “hereof” and the like
26 refer to this Ordinance as a whole and not just to a particular portion of it. This
27 Ordinance and all of its terms and provisions shall be liberally construed to
28 effectuate the purposes set forth herein and to sustain the validity of the Bonds and
29 the validity of the lien on and pledge of the Pledged Revenues to secure the
30 payment of the Bonds and other Parity Obligations.

1 **PART 2.03. Exhibits; Appendix A**

2 The Exhibits and Appendix A, as and when approved by an Authorized
3 Official, as provided herein shall be considered fully incorporated in this
4 Ordinance by reference as if fully set forth in this Ordinance.

5 **ARTICLE 3. BONDS AND OTHER PARITY OBLIGATIONS**

6 **PART 3.01. Authorization-Designation-Principal Amount-Purpose.** Bonds
7 are hereby authorized to be issued in the aggregate principal amount determined by
8 the Pricing Officer and specified in the Pricing Certificate and to be designated and
9 bear the title “CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX
10 SUBORDINATE LIEN VARIABLE RATE REVENUE REFUNDING BONDS,
11 SERIES 2008” (the “Bonds”) for the purpose of providing funds for the discharge,
12 defeasance and final payment of certain outstanding obligations of the City
13 (identified in Part 1.01 of this Ordinance and referred to as the “Refunded Bonds”),
14 in accordance with authority conferred by the Bond Act. The Bonds shall be
15 issued in two subseries as follows: (a) Subseries 2008A in the aggregate principal
16 amount determined by the Pricing Officer and specified in the Pricing Certificate
17 (“Subseries 2008A Bonds”) and (b) Subseries 2008B in the aggregate principal
18 amount determined by the Pricing Officer and specified in the Pricing Certificate
19 (“Subseries 2008B Bonds”). The principal amount of the Bonds shall not exceed
20 \$130,000,000 and the principal amount of each subseries shall not exceed
21 \$65,000,000.

22 **PART 3.02. Full Registration-Date - Denomination - Maturities - Interest**
23 **Rates.** The Bonds shall be issued as fully registered obligations, without coupons,
24 shall be dated August 14, 2008, or such other date specified in the Pricing
25 Certificate and shall be in Authorized Denominations (as defined in Appendix A
26 hereto), and shall be numbered consecutively from One (1) upward and shall
27 become due and payable on November 15, 2029 (the “Stated Maturity”). Unpaid
28 principal of the Bonds shall bear interest from the Issue Date until paid at the
29 applicable per annum rates established, calculated and payable in accordance with
30 Appendix A. Any Authorized Official may approve the initial interest rate for the
31 Bonds and all other matters relating to the aggregate principal amount, terms,
32 issuance, sale, and delivery of the Bonds all of which shall, to the extent not
33 otherwise specified in this Ordinance, be specified in a Pricing Certificate;
34 provided, that the initial interest rate shall be provided for in the Bond Purchase
35 Agreement and shall not exceed 5.00%.

1 **PART 3.03. Terms of Payment - Paying Agent/Registrar.** The principal of,
2 premium, if any, and the interest on the Bonds, due and payable by reason of
3 maturity, redemption or otherwise, shall be payable only to the Holders of the
4 Bonds appearing on the respective Security Register maintained by the Paying
5 Agent/Registrar for each subseries of the Bonds and the payment thereof shall be
6 in any coin or currency of the United States of America, which at the time of
7 payment is legal tender for the payment of public and private debts, and shall be
8 without exchange or collection charges to the Holders.

9 Separate books and records relating to the registration, payment, transfer and
10 exchange of the Subseries 2008A Bonds and Subseries 2008B Bonds (the
11 “Security Register”) shall at all times be kept and maintained on behalf of the City
12 by the Paying Agent/Registrar, as provided in this Ordinance and in accordance
13 with the terms and provisions of the Paying Agent/Registrar Agreement authorized
14 by Part 8.01 of this Ordinance.

15 Principal of and premium, if any, on the Bonds shall be payable at their
16 Stated Maturities or redemption, only upon presentation and surrender of the
17 Bonds to the Paying Agent/Registrar at its Designated Payment/Transfer Office.
18 Accrued and unpaid interest on the Bonds of a subseries is due on the Interest
19 Payment Date and is payable to the Holders whose names appear in the Security
20 Register at the close of business on the Record Date (as provided in Appendix A)
21 and shall be paid by the Paying Agent/Registrar (i) by check sent United States
22 Mail, first class postage prepaid, to the address of the Holder recorded in the
23 Security Register or (ii) by such other method, acceptable to the Paying
24 Agent/Registrar, requested by, and at the risk and expense of, the Holder.

25 In the event of a non-payment of interest on one or more maturities on a
26 scheduled payment date, and for thirty (30) days thereafter, a new record date for
27 such interest payment for such maturity or maturities (a “Special Record Date”)
28 will be established by the Paying Agent/Registrar, if and when funds for the
29 payment of such interest have been received from the City. Notice of the Special
30 Record Date and of the scheduled payment date of the past due interest (which
31 shall be 15 days after the Special Record Date) shall be sent at least five (5)
32 business days before the Special Record Date by United States Mail, first class
33 postage prepaid, to the address of each Holder of such maturity or maturities
34 appearing on the Security Register at the close of business on the last business day
35 next preceding the date of mailing of such notice.

36 **PART 3.04. Redemptions and Tenders.** The Bonds shall be subject to
37 optional and mandatory redemption prior to maturity as provided in this Part 3.04.

1 The Bonds shall be subject to optional and mandatory tender for purchase as set
2 forth in Appendix A.

3 (a) Optional Redemption of Bonds in the Commercial Paper
4 Mode. The City may at its option redeem Bonds of a subseries in the
5 Commercial Paper Mode, in whole or in part, on their respective
6 Purchase Dates at the redemption price of the principal amount
7 thereof, plus accrued interest from the most recent Interest Payment
8 Date to the Redemption Date.

9 (b) Optional Redemption of Bonds in the Auction Rate
10 Mode. The City may at its option redeem Bonds of a subseries in the
11 Auction Rate Mode, in whole or in part, on any Interest Payment Date
12 immediately following an Auction Period, at the redemption price
13 equal to the principal amount thereof, plus accrued interest from the
14 Closing Date or the most recent interest payment date to the
15 Redemption Date; provided, however, that for a partial redemption of
16 Bonds of a subseries in an Auction Rate Mode, the aggregate principal
17 amount of Bonds of a subseries in an Auction Rate Mode which will
18 remain outstanding shall be equal to or more than \$10,000,000 unless
19 otherwise consented to by each Broker-Dealer.

20 (c) Optional Redemption of Bonds in the Daily Mode or
21 Weekly Mode. The City may at its option redeem Bonds of a
22 subseries in the Daily Mode or Weekly Mode, in whole or in part, on
23 any Business Day, at the redemption price equal to the principal
24 amount thereof, plus accrued interest from the Closing Date or the
25 most recent interest payment date to the Redemption Date.

26 (d) Optional Redemption of Bonds in Term Rate Mode and
27 Fixed Rate Mode.

28 (i) The City may at its option redeem Bonds of
29 a subseries in the Term Rate Mode during an Interest
30 Period that is less than four years, in whole or in part on
31 their individual Purchase Dates, at the redemption price
32 equal to the principal amount thereof, plus interest from
33 the most recent interest payment date to the Redemption
34 Date.

(ii) The City may at its option redeem Bonds of a subseries in the Term Rate Mode during an Interest Period that is equal to or greater than four years or Bonds of a subseries in the Fixed Rate Mode, in whole or in part, on any date at a redemption price equal to the principal amount thereof plus interest from the most recent interest payment date to the Redemption Date following the “No Call Period” set forth below:

OPTIONAL REDEMPTION DURING TERM RATE MODE AND FIXED RATED MODE	
Duration of Interest Period in Term Rate Mode or Fixed Rate Mode	No Call Period (commencing on the date of commencement of the Term Rate or Fixed Rate Mode Interest Period)
Greater than or equal to 11 years.	8 years
Greater than or equal to 8 years and less than 11 years.	6 years
Greater than or equal to 4 years and less than 8 years.	3 years
Duration of Interest Period in Fixed Rate Mode is less than 4 years.	Bonds are subject to optional redemption at any time.

(e) The City may, in connection with a change to a Term Rate Mode or Fixed Rate Mode, or on any Purchase Date for Bonds of a subseries bearing interest at a Term Rate, alter its rights as described above in Part 3.4(d) to redeem any Bonds of such subseries on and after the Mode Change Date or Purchase Date, as the case may be, without the consent of Holders of the Bonds of such subseries; provided, that notice describing the alteration must be submitted to the Tender Agent, the Paying Agent/Registrar and the Remarketing Agent, together with a Favorable Opinion of Bond Counsel, addressed to them and to the City.

1 (f) Mandatory Sinking Fund Redemption.

2 (i) The Subseries 2008A Bonds shall be subject
3 to mandatory redemption in part prior to maturity at the
4 redemption price of par and unpaid, accrued interest to
5 the date of redemption on the respective dates and in
6 principal amounts set forth in the Pricing Certificate.

7 (ii) The Subseries 2008B Bonds shall be subject
8 to mandatory redemption in part prior to maturity at the
9 redemption price of par and unpaid, accrued interest to
10 the date of redemption on the respective dates and in
11 principal amounts as set forth in the Pricing Certificate.

12 Approximately forty-five (45) days before each such mandatory
13 redemption date specified above, the Paying Agent/Registrar shall
14 select by lot the numbers of the Bonds of a subseries to be redeemed
15 on the next following November 15 from money set aside for that
16 purpose in the Bond Fund. Any Bonds not selected for prior
17 redemption shall be paid on the date of their Stated Maturity.

18 The principal amount of the Bonds of a subseries required to be
19 redeemed pursuant to the operation of such mandatory redemption
20 provisions may be reduced, at the option of the City, by the principal
21 amount of Bonds of like subseries which, at least 50 days before a
22 mandatory redemption date, (1) shall have been acquired by the City
23 at a price not exceeding the principal amount of such Bonds plus
24 accrued interest to the date of purchase thereof, and delivered to the
25 Paying Agent/Registrar for cancellation or (2) shall have been
26 redeemed pursuant to the optional redemption provisions set forth in
27 this Part and not theretofore credited against a mandatory redemption
28 requirement.

29 (g) Special Mandatory Redemption Provisions. Liquidity
30 Provider Bonds held by the Initial Liquidity Facility Provider shall be
31 subject to special mandatory redemption after an Amortization Start
32 Date. Such Liquidity Provider Bonds shall be redeemed in
33 substantially equal installments of principal due and payable on each
34 Amortization Payment Date together with the interest then accrued.
35 Interest on such Liquidity Provider Bonds shall accrue at the rate
36 calculated in accordance with the Series 2008 Liquidity Agreement

1 and shall be payable on each Interest Payment Date and upon
2 remarketing and redemption thereof.

3 (h) Selection of Bonds for Redemption. If less than all the
4 Bonds of a subseries having the same maturity date and bearing the
5 same interest rate are to be redeemed, then, unless the Liquidity
6 Facility Provider has failed to honor a properly presented and
7 conforming drawing under the Letter of Credit, the Paying
8 Agent/Registrar shall (unless otherwise provided in the Liquidity
9 Facility applicable thereto) first select for redemption all then
10 Outstanding Liquidity Provider Bonds prior to selecting for
11 redemption any Bonds of such subseries which are not Liquidity
12 Provider Bonds. If the Liquidity Facility Provider has failed to honor a
13 properly presented and conforming drawing under the Liquidity
14 Facility, then the Paying Agent/Registrar shall at the written direction
15 of the City, select for redemption all then Outstanding Bonds of the
16 subseries in accordance with the City's written direction. The Paying
17 Agent/Registrar shall promptly give the Liquidity Facility Provider,
18 Tender Agent, and the Remarketing Agent notice by telephone
19 (subsequently confirmed in writing) of the selection of any Liquidity
20 Provider Bonds for redemption pursuant to the foregoing provision. If
21 fewer than all Outstanding Bonds of the same Stated Maturity of the
22 same subseries are to be redeemed on a redemption date, the Paying
23 Agent/Registrar shall treat such Bonds as representing the number of
24 Bonds Outstanding which is obtained by dividing the principal
25 amount of such Bonds by the lowest Authorized Denomination
26 therefor and shall select the Bonds to be redeemed within such Stated
27 Maturity by such method as the Paying Agent/Registrar may select.

28 (i) Notice of Redemption. Not fewer than thirty (30) days
29 before a redemption date for the Bonds, a notice of redemption shall
30 be sent by United States Mail, first class postage prepaid, in the name
31 of the City and at the City's expense, to each Holder of a Bond to be
32 redeemed wholly or partly at the address of the Holder appearing on
33 the Security Register at the close of business on the business day next
34 preceding the date of mailing such notice, and any notice of
35 redemption so mailed shall be conclusively presumed to have been
36 given irrespective of whether received by the Holder.

37 All notices of redemption shall (i) specify the date of
38 redemption for the Bonds, (ii) identify the Bonds of a subseries to be

1 redeemed and, in the case of a portion of the principal amount to be
2 redeemed, the principal amount thereof to be redeemed, (iii) state the
3 redemption price, (iv) state that the Bonds, or the portion of the
4 principal amount thereof to be redeemed, shall become due and
5 payable on the redemption date specified, and the interest thereon, or
6 on the portion of the principal amount thereof to be redeemed, shall
7 cease to accrue from and after the redemption date, and (v) specify
8 that payment of the redemption price for the Bonds, or the principal
9 amount thereof to be redeemed, shall be made at the Designated
10 Payment/Transfer Office of the Paying Agent/Registrar only upon
11 presentation and surrender thereof by the Holder. If a Bond is subject
12 by its terms to prior redemption and has been called for redemption
13 and notice of redemption thereof has been given as provided above,
14 such Bond (or the principal amount thereof to be redeemed) shall
15 become due and payable and interest thereon shall cease to accrue
16 from and after the redemption date therefor; provided money
17 sufficient for the payment of such Bond (or of the principal amount
18 thereof to be redeemed) at the then applicable redemption price are
19 held for the purpose of such payment by the Paying Agent/Registrar.

20 Notwithstanding anything herein to the contrary, no notice of
21 redemption is required to be given for a redemption occurring on a
22 Mandatory Purchase Date.

23 **PART 3.05. Registration - Transfer - Exchange of Bonds - Predecessor**
24 **Bonds.** The Paying Agent/Registrar shall obtain, record, and maintain in the
25 Security Register the name and address of each registered owner of each subseries
26 of the Bonds issued under and pursuant to the provisions of this Ordinance. Any
27 Bond may, in accordance with its terms and the terms hereof, be transferred or
28 exchanged for Bonds of other Authorized Denominations upon the Security
29 Register by the Holder, in person or by his authorized agent, upon surrender of
30 such Bond to the Paying Agent/Registrar for cancellation, accompanied by a
31 written instrument of transfer or request for exchange executed by the Holder or by
32 his authorized agent, in form satisfactory to the Paying Agent/Registrar.

33 Upon surrender for transfer of any Bond at the Designated Payment/Transfer
34 Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and
35 deliver, in the name of the designated transferee or transferees, one or more new
36 Bonds, executed on behalf of, and furnished by, the City of Authorized
37 Denominations, of like subseries, and having the same Stated Maturity and of a
38 like aggregate principal amount as the Bond or Bonds surrendered for transfer.

1 At the option of the Holder, Bonds may be exchanged for other Bonds of
2 like subseries, of Authorized Denominations and having the same Stated Maturity,
3 bearing the same rate of interest and of like aggregate principal amount as the
4 Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at
5 the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever
6 any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register
7 and deliver new Bonds, executed on behalf of, and furnished by, the City, to the
8 Holder requesting the exchange.

9 All Bonds issued upon any transfer or exchange of Bonds shall be delivered
10 at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent
11 by United States Mail, first class postage prepaid, to the Holder and, upon the
12 delivery thereof, the same shall be valid obligations of the City, evidencing the
13 same obligation to pay, and entitled to the same benefits under this Ordinance, as
14 the Bonds surrendered in such transfer or exchange.

15 All transfers or exchanges of Bonds pursuant to this Part shall be made
16 without expense or service charge to the Holder, except as otherwise provided in
17 this Ordinance, and except that the Paying Agent/Registrar shall require payment
18 by the Holder requesting such transfer or exchange of any tax or other
19 governmental charges required to be paid with respect to such transfer or
20 exchange.

21 Bonds cancelled by reason of an exchange or transfer pursuant to the
22 provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or
23 a portion, as the case may be, of the same obligation to pay evidenced by the Bond
24 or Bonds registered and delivered in the exchange or transfer therefor.
25 Additionally, the term "Predecessor Bonds" shall include any mutilated, lost,
26 destroyed, or stolen Bond for which a replacement Bond has been issued,
27 registered and delivered in lieu thereof pursuant to Part 3.09 hereof and such new
28 replacement Bond shall be considered to evidence the same obligation as the
29 mutilated, lost, destroyed, or stolen Bond.

30 Neither the City nor the Paying Agent/ Registrar shall be required to issue or
31 transfer to an assignee of a Holder any Bond called for redemption, wholly or
32 partly, within 45 days of the date fixed for the redemption of such Bond; provided,
33 however, such limitation on transferability shall not be applicable to an exchange
34 by the Holder of the unredeemed balance of a Bond called for redemption in part.

35 **PART 3.06. Book-Entry-Only Transfers and Transactions.** Notwith-
36 standing the provisions contained in Parts 3.03, 3.04 and 3.05 hereof relating to the

1 payment, redemption and transfer/exchange of the Bonds, the City hereby
2 approves and authorizes the use of “Book-Entry-Only” securities clearance,
3 settlement and transfer system provided by The Depository Trust Company
4 (“DTC”), a limited purpose trust company organized under the laws of the State of
5 New York, in accordance with the operational arrangements referenced in the
6 Blanket Issuer Letter of Representation by and between the City and DTC (the
7 “Depository Agreement”).

8 Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall
9 be deposited with DTC who shall hold the Bonds for its participants (the “DTC
10 Participants”) and, while the Bonds are held by DTC under the Depository
11 Agreement, the Holder of the Bonds on the Security Register for all purposes,
12 including payment and notices, shall be Cede & Co., as nominee of DTC,
13 notwithstanding the fact that beneficial ownership of the Bonds is recorded in the
14 records of DTC and DTC Participants.

15 In the event DTC determines to discontinue serving as securities depository
16 for the Bonds or otherwise ceases to provide book-entry clearance and settlement
17 of securities transactions in general or the City determines that DTC is incapable of
18 properly discharging its duties as securities depository for the Bonds, the City
19 covenants and agrees with the Holders to cause Bonds to be printed in definitive
20 form and provide for the Bond certificates to be issued and delivered to the Persons
21 identified by DTC as those entitled to receive the same and to become the Holders
22 of the Bonds. Thereafter, the Bonds in definitive form shall be assigned,
23 transferred and exchanged on the Security Register maintained by the Paying
24 Agent/Registrar and payment of such Bonds shall be made in accordance with the
25 provisions of Parts 3.03, 3.04 and 3.05 of this Ordinance.

26 **PART 3.07. Execution - Registration.** The Bonds shall be executed on
27 behalf of the City by the Mayor under its seal reproduced or impressed thereon and
28 countersigned by the City Clerk. The signature of said officers on the Bonds may
29 be manual or facsimile. Bonds bearing the manual or facsimile signatures of
30 individuals who are or were the proper officers of the City on the date of the
31 adoption of this Ordinance shall be considered to be executed on behalf of the
32 City, notwithstanding that such individuals or either of them shall cease to hold
33 such offices at the time of delivery of the Bonds to the initial purchaser(s) and with
34 respect to Bonds delivered in subsequent exchanges and transfers, all as authorized
35 and provided in V.T.C.A., Government Code, Chapter 1201.

36 No Bond shall be entitled to any right or benefit under this Ordinance, or be
37 valid or obligatory for any purpose, unless there appears on such Bond either a

1 certificate of registration substantially in the form provided in Part 4.03, manually
2 executed by the Comptroller of Public Accounts of the State of Texas or his
3 authorized agent, or a certificate of registration substantially in the form provided
4 in Part 4.04, manually executed by an authorized officer, employee or
5 representative of the Paying Agent/Registrar, and either such certificate upon any
6 Bond signed shall be conclusive evidence, and the only evidence, that such Bond
7 has been certified, registered and delivered.

8 **PART 3.08. Initial Bond(s).** The Subseries 2008A Bonds shall be initially
9 issued as a single fully registered bond in the total principal amount specified in
10 the Pricing Certificate and numbered T-1 (the “Subseries 2008A Initial Bond”),
11 which shall be registered in the name of the initial purchaser(s) or the designee
12 thereof. The Subseries 2008B Bonds shall be initially issued as a single fully
13 registered bond in the total principal amount specified in the Pricing Certificate
14 and numbered T-1 (the “Subseries 2008B Initial Bond,” together with the
15 Subseries 2008A Initial Bond, the “Initial Bonds”), which shall be registered in the
16 name of the initial purchaser(s) or the designee thereof. The Initial Bonds shall be
17 submitted to the Office of the Attorney General of the State of Texas for approval,
18 certified and registered by the Office of the Comptroller of Public Accounts of the
19 State of Texas and delivered to the respective initial purchaser(s). Any time after
20 the delivery of the Subseries 2008A Initial Bond and the Subseries 2008B Initial
21 Bond, the Paying Agent/Registrar, pursuant to written instructions from the
22 respective initial purchaser(s), or the designee thereof, shall cancel the Initial
23 Bonds delivered hereunder and exchange therefor definitive Bonds of the same
24 subseries, of Authorized Denominations, principal amounts and bearing applicable
25 interest rates for transfer and delivery to the Holders named at the addresses
26 identified therefor; all pursuant to and in accordance with such written instructions
27 from the initial purchaser(s), or the designee thereof, and such other information
28 and documentation as the Paying Agent/Registrar may reasonably require.

29 **PART 3.09. Mutilated-Destroyed - Lost and Stolen Bonds.** If any Bond
30 shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may
31 execute and deliver a replacement Bond of like subseries, form and tenor, and in
32 the same denomination and bearing a number not contemporaneously outstanding,
33 in exchange and substitution for such mutilated Bond, or in lieu of and in
34 substitution for such destroyed, lost or stolen Bond, only upon the approval of the
35 City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar
36 of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or
37 theft of such Bond, and of the authenticity of the ownership thereof and (ii) the
38 furnishing to the Paying Agent/Registrar of indemnification in an amount

1 satisfactory to hold the City and the Paying Agent/Registrar harmless. All
2 expenses and charges associated with such indemnity and with the preparation,
3 execution and delivery of a replacement Bond shall be borne by the Holder of the
4 Bond mutilated, or destroyed, lost or stolen.

5 Every replacement Bond issued pursuant to this Part shall be a valid and
6 binding obligation, and shall be entitled to all the benefits of this Ordinance
7 equally and ratably with all other Outstanding Bonds; notwithstanding the
8 enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

9 The provisions of this Part are exclusive and shall preclude (to the extent
10 lawful) all other rights and remedies with respect to the replacement and payment
11 of mutilated, destroyed, lost or stolen Bonds.

12 **PART 3.10. Interest Rate Management Agreement.** The Series 2008
13 Interest Rate Management Agreement, substantially in the form attached hereto as
14 Exhibit B, with such changes as the Pricing Officer executing the same may
15 approve and such approval to be conclusively evidenced by the Pricing Officer's
16 execution thereof, is hereby approved and confirmed. In accordance with the
17 provisions of Section 1371.056, Texas Government Code, the Pricing Officer is
18 hereby authorized to execute and deliver, and the City Clerk may attest to, for and
19 on behalf of and in the name of the City, and as the act and deed of the City
20 Council of the City, prior to, at, or after the delivery of the Bonds, but in no case
21 later than January 24, 2009, the Series 2008 Interest Rate Management Agreement,
22 and including such amendments to such Series 2008 Interest Rate Management
23 Agreement after the execution and delivery thereof that are required in connection
24 with the issuance of the Bonds, as may be approved by the Pricing Officer, as
25 evidenced by his or her execution thereof; unless otherwise provided by ordinance
26 of the City Council; the Pricing Officer shall further determine, which shall be
27 determined in the Pricing Certificate; the term of such Series 2008 Interest Rate
28 Management Agreement; the fixed rates of interest at which the obligations of the
29 City under the Series 2008 Interest Rate Management Agreement shall be
30 calculated; provided, however, that the rate applicable to such fixed rates of
31 interest may not exceed ____% per annum; provided that:

32 (1) such Series 2008 Interest Rate Management
33 Agreement shall provide for the reduction in notional
34 amount equivalent to the reduction in outstanding
35 principal amount of the Bonds after the same have been
36 issued and once the outstanding principal amount of the
37 Bonds has been reduced to an amount, equal to or less

1 than the original notional amount and in all events in
2 accordance with the amortization schedule set forth as an
3 attachment to the Interest Rate Management Agreement;

4 (2) such Series 2008 Interest Rate Management
5 Agreement permits the City to terminate the same or
6 reduce the notional amount thereof at any time, which
7 right may be made conditional upon the payment by the
8 City of the amount due in respect of such partial or
9 complete termination or upon demonstration of the
10 capacity to do so;

11 (3) such Series 2008 Interest Rate Management
12 Agreement being entered into in connection with the
13 issuance of the Bonds shall result in present value debt
14 service savings of at least _____%, net of any
15 contribution by the City;

16 (4) such Series 2008 Interest Rate Management
17 Agreement or the proceedings of the City Council of the
18 City authorizing the same shall be approved by the
19 Attorney General of Texas and such proceedings shall be
20 registered by the Comptroller of Public Accounts of the
21 State of Texas prior to delivering such Credit
22 Agreements; and

23 (5) the cost of credit enhancement obtained in
24 relation to the Series 2008 Interest Rate Management
25 Agreement, if any, shall result in present value debt
26 service savings of at least _____%, net of any
27 contribution by the City.

28 The obligations of the Series 2008 Interest Rate Management Agreement
29 Counterparty to the City are hereby pledged as additional security for the Parity
30 Obligations of the City that are secured by the Pledged Revenues, and the
31 payments from the Series 2008 Interest Rate Management Agreement
32 Counterparty to the City are hereby declared to constitute Pledged Revenues.

33 The payment obligations of the City under an Interest Rate Management
34 Agreement, including but not limited to, the Series 2008 Interest Rate Management
35 Agreement, that are termination payments, settlement payments or other payments

1 (collectively, the “Junior Obligations”) that are not included in clause (iii) of the
2 definition of Parity Obligations are to be payable from and secured by a lien on the
3 Pledged Revenues that is junior and subordinate to the lien on Pledged Revenues
4 that secures the Parity Obligations.

5 **PART 3.11. Termination of Interest Rate Management Agreement; and**
6 **Prior Interest Rate Management Agreement.** The City currently intends to issue
7 the Bonds in a variable rate interest mode and to maintain in effect the Series 2008
8 Interest Rate Management Agreement. If, however the City does not, prior to, on,
9 or within 120 days after the effective date of the Series 2008 Interest Rate
10 Management Agreement, issue the Bonds in one or more subseries in an aggregate
11 original principal amount equal to or greater than the notional amount of the Series
12 2008 Interest Rate Management Agreement and rated as required to be an
13 “obligation” as defined in Texas Government Code, 1371.001(5), then the City
14 shall promptly exercise its option reserved in the Series 2008 Interest Rate
15 Management Agreement to terminate or reduce the resulting notional amount of
16 the Series 2008 Interest Rate Management Agreement to achieve the result that the
17 notional amount, if any, of the Series 2008 Interest Rate Management Agreement
18 does not exceed the original principal amount of the Bonds that are issued. In
19 addition to such required full or partial termination of the Series 2008 Interest Rate
20 Management Agreement, to the extent the Chief Financial Officer may deem
21 advisable he or she may, and the City Council hereby delegates to such person the
22 authority to, at any time terminate in whole or in part the Series 2008 Interest Rate
23 Management Agreement as permitted thereby; provided appropriate documentation
24 is furnished the City Manager and City Attorney evidencing the amount or
25 payment owed by the City, if any, as a result of such termination and that such
26 amount can be paid from available funds of the City (including, without limitation,
27 proceeds of bonds issued for such purpose) without a budget amendment, or should
28 such termination payment require City Council action by a budget amendment or
29 otherwise, obtaining City Council approval prior to its termination.

30 In accordance with the provisions of Section 1371.056, Texas Government
31 Code, the Pricing Officer is hereby authorized to terminate the Interest Rate
32 Management Agreements, both dated as of July 19, 2005, between the City and
33 Lehman Brothers Derivative Products Inc., and Lehman Brothers Special
34 Financing Inc., respectively, and may execute and deliver, if necessary, any
35 interest rate management termination agreements, and the City Clerk may attest to,
36 for and on behalf of and in the name of the City, and as the act and deed of the City
37 Council of the City, prior to, at or after the delivery of the Bonds, but in no case

1 later than January 24, 2009; provided that such termination fees owed by the City
2 upon such terminations shall not exceed in the aggregate \$10,000,000.

3 **PART 3.12. Credit Facility.** The Series 2008 Liquidity Agreement in
4 substantially the form attached hereto as Exhibit C with such changes as may be
5 approved by an Authorized Official, is hereby approved and confirmed. Any
6 Authorized Officials are hereby authorized and directed to executed the Series
7 2008 Liquidity Agreement as the City Council's act and deed.

8 **ARTICLE 4. FORM OF BONDS AND CERTIFICATES**

9 **PART 4.01. Forms Generally.** The Bonds of each subseries, the
10 Registration Certificate of the Comptroller of Public Accounts of the State of
11 Texas, the Certificate of Registration of Paying Agent/Registrar, and the form of
12 Assignment to be printed on each of the Bonds, shall be substantially in the forms
13 provided for in this Part with such appropriate insertions, omissions, substitutions,
14 and other variations as are permitted or required by this Ordinance and may have
15 such letters, numbers, or other marks of identification (including identifying
16 numbers and letters of the Committee on Uniform Securities Identification
17 Procedures of the American Bankers Association) and such legends and
18 endorsements (including legends reflecting the purchase of insurance for payment
19 of the Bonds and any reproduction of an opinion of counsel) thereon as may,
20 consistently herewith, be established by the City or determined by the officers
21 executing such Bonds as evidenced by their execution. Any portion of the text of
22 any Bonds may be set forth on the reverse thereof, with an appropriate reference
23 thereto on the face of the Bond.

24 The definitive Bonds and the Initial Bonds shall be printed, lithographed,
25 engraved, typewritten, photocopied or otherwise reproduced in any other similar
26 manner, all as determined by the officers executing such Bonds as evidenced by
27 their execution.

28 **PART 4.02. Form of Bond.** The form of definitive Bond of each subseries
29 shall be as set forth in Exhibit H hereto with respect to Bonds in a Weekly Mode or
30 Daily Mode, Exhibit I hereto with respect to Bonds in a Auction Rate Mode, and
31 Exhibit J hereto with respect to Bonds in a Commercial Paper Mode, Term Rate
32 Mode or Fixed Rate Mode and final forms thereof may be approved by the Pricing
33 Officer and attached to the Pricing Certificate.

34 **PART 4.03. Form of Registration Certificate of Comptroller of Public**
35 **Accounts.** To appear on Initial Bonds only.

By: _____
Authorized Signature

PART 4.05. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number: _____)
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

Signature guaranteed: _____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

PART 4.06. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

ARTICLE 5. SECURITY AND SOURCE OF PAYMENT FOR PARITY OBLIGATIONS

PART 5.01. Pledge and Source of Payment. The Bonds and other Parity Obligations shall constitute special obligations of the City payable from and, subject and subordinate to the payment of the Prior Lien Bonds and priority of uses contained in the ordinances authorizing the issuance of the Prior Lien Bonds, equally and ratably secured by a lien on the Pledged Revenues. Such Pledged Revenues or other lawfully available funds of the City shall, in the manner

1 provided in this Ordinance, be set aside for and pledged to the payment of the
2 Parity Obligations and Junior Obligations (as defined herein), and all expenses of
3 providing for their full and timely payment in accordance with their terms, in the
4 Bond Fund and the Reserve Fund as provided in this Ordinance. The City hereby
5 grants a lien on the Pledged Revenues and Bond Fund to secure the payment of
6 principal of and premium, if any, and interest on the Parity Bonds and all other
7 payments due on the Parity Obligations and Junior Obligations; and the City
8 further grants a lien on the Reserve Fund to secure the payment of principal of and
9 premium, if any, and interest on the Parity Bonds. Except as otherwise expressly
10 provided by their terms, all Parity Obligations shall be in all respects on a parity
11 with and of equal dignity with one another. The liens granted under this Ordinance
12 shall be valid and binding and fully perfected after the date of adoption of this
13 Ordinance without physical delivery or transfer of control of the Pledged
14 Revenues, the filing of this Ordinance or any other act; all as provided in Chapter
15 1208 of the Texas Government Code. The Holders of the Parity Bonds and the
16 beneficiaries of the other Parity Obligations and Junior Obligations shall never
17 have the right to demand payment of the principal of, interest on or any redemption
18 premium on the Parity Bonds (or payment of other amounts owed by the City in
19 respect of other Parity Obligations or Junior Obligations) out of any funds raised or
20 to be raised by taxation, other than the Pledged Revenues.

21 If Texas law is amended at any time while the Bonds and Parity Obligations
22 or Junior Obligations related to the Bonds are Outstanding such that the pledge of
23 the Pledged Revenues granted by the City under this Part 5.01 is to be subject to
24 the filing requirements of Chapter 9, Business & Commerce Code, or other law,
25 then to preserve to the registered owners of the Bonds the perfection of the security
26 interest in said pledge, the City agrees to take such measures as it determines are
27 reasonable and necessary under Texas law to comply with the applicable filing
28 requirements to continue the perfection of such security interest.

29 **PART 5.02. Levy of Hotel Occupancy Tax.**

30 (a) The City has levied, and while any Bonds and Parity
31 Obligations or Junior Obligations related to the Bonds remain
32 Outstanding the City hereby levies and covenants that it shall continue
33 to levy, a Hotel Occupancy Tax on the cost of occupancy of any
34 sleeping room furnished by any hotel within the corporate limits of
35 the City, in which the cost of occupancy is \$2.00 or more a day, at a
36 rate of at least 7% of the consideration paid by the occupant of the
37 sleeping room to the hotel, all as authorized by the Tax Act. The City
38 further covenants that it shall enforce the provisions of this Ordinance,

1 or any other ordinance levying a hotel occupancy tax, concerning the
2 collection, remittance and payment of the Hotel Occupancy Tax.

3 (b) In addition to the Hotel Occupancy Tax levied and to be
4 collected pursuant to (a) above, the City has levied, and while any
5 Parity Obligations or Junior Obligations remain Outstanding the City
6 hereby levies and covenants that it shall continue to levy, a Special
7 Hotel Occupancy Tax on the cost of occupancy of any sleeping room
8 furnished by any hotel within the corporate limits of the City, in
9 which the cost of occupancy is \$2.00 or more a day, at a rate of at
10 least 2% of the consideration paid by the occupant of the sleeping
11 room to the hotel, to finance the costs of the Convention
12 Center/Waller Creek Venue Project, all to the extent authorized by
13 V.T.C.A. Local Government Code, Chapter 334, particularly
14 Subchapter H and an election held in the City on May 2, 1998. The
15 City further covenants that it shall enforce the provisions of this
16 Ordinance and Ordinance No. 980709-G, or any other ordinance
17 levying a hotel occupancy tax, concerning the collection, remittance
18 and payment of the Special Hotel Occupancy Tax.

19 **PART 5.03. Special Fund.**

20 (a) Hotel Occupancy Tax Special Funds. In accordance with
21 the ordinances authorizing the issuance of the Prior Lien Bonds
22 payable from and secured by a lien on and pledge of the Pledged
23 Hotel Occupancy Tax Revenues, the following special funds and
24 accounts have been created, established and shall be maintained while
25 any of the Prior Lien Bonds remain Outstanding:

26 (i) Convention Center Hotel Occupancy Tax
27 Fund ("Tax Fund");

28 (ii) Convention Center Hotel Occupancy Tax
29 Bond Debt Service Fund ("Senior Debt Service Fund");

30 (iii) Subordinate Lien Hotel Occupancy Tax
31 Debt Service Fund ("Original Subordinate Debt Service
32 Fund", and together with the Senior Debt Service Fund,
33 the "Debt Service Fund");

(iv) Convention Center Hotel Occupancy Tax Bond Debt Service Reserve Fund (“Senior Debt Service Reserve Fund”) and

(v) Subordinate Lien Hotel Occupancy Tax Debt Service Reserve Fund (“Original Subordinate Debt Service Reserve Fund”, and together with the Senior Debt Service Reserve Fund, the “Debt Service Reserve Fund”).

Such funds and accounts may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with the ordinances authorizing the issuance of the Prior Lien Bonds and this Ordinance.

(b) Special Hotel Occupancy Tax Special Funds. In accordance with the ordinance authorizing the issuance of the Special Venue Project Bonds, the City hereby confirms the establishment of the Venue Project Fund maintained at an official depository of the City for the Convention Center/Waller Creek Venue Project in accordance with Section 334.042 of the Venue Act and pursuant to Ordinance No. 980709-G and the establishment of the following subaccounts within such Venue Project Fund on the books of the City for the benefit of such Prior Lien Bonds, namely:

(i) Convention Center/Waller Creek Venue Project Special Hotel Occupancy Tax Account (“Tax Account”);

(ii) Convention Center/Waller Creek Venue Project Bond Debt Service Account (“Debt Service Account”); and

(iii) Convention Center/Waller Creek Venue Project Bond Debt Service Reserve Account (“Debt Service Reserve Account”).

Such funds and accounts may also include any additional accounts or subaccounts as may from time to time be designated by the City,

1 including specifically rebate accounts or subaccounts for
2 accumulating rebatable arbitrage payable to the federal government,
3 provided such accounts or subaccounts are not inconsistent with the
4 ordinance authorizing the issuance of the Special Venue Project
5 Bonds and this Ordinance.

6 (c) Special Funds for Parity Obligations. For the benefit of
7 the Holders of the Parity Bonds and the beneficiaries of the other
8 Parity Obligations, the City hereby agrees and covenants to establish
9 and maintain the following special funds or accounts:

10 (i) Subordinate Lien Hotel Occupancy Tax
11 Fund (the “Bond Fund”) for the payment of the Parity
12 Obligations when and as the same shall become due and
13 payable, and

14 (ii) Subordinate Lien Hotel Occupancy Tax
15 Reserve Fund (the “Reserve Fund”) to provide a reserve
16 to pay the principal of and interest on the Parity Bonds
17 when funds in the Bond Fund are insufficient.

18 The Bond Fund and Reserve Fund may also include any additional
19 accounts or subaccounts as may from time to time be designated by
20 the City, including specifically rebate accounts or subaccounts for
21 accumulating rebatable arbitrage payable to the federal government,
22 provided such accounts or subaccounts are not inconsistent with the
23 provisions of this Ordinance.

24 **PART 5.04. Flow of Funds.**

25 (a) Flow of Funds regarding Pledged Hotel Occupancy Tax
26 Revenues. The City covenants and agrees that all Pledged Hotel
27 Occupancy Tax Revenues shall be deposited as received into the Tax
28 Fund. Money from time to time credited to the Tax Fund shall be
29 applied as follows in the following order of priority:

30 First, to transfer all amounts to the Debt Service
31 Fund required by the ordinances authorizing the issuance
32 of the Prior Lien Bonds (in such relative order of priority
33 as is required by the related ordinances).

1 Second, to transfer all amounts to the Debt Service
2 Reserve Fund required by the ordinances authorizing the
3 issuance of the Prior Lien Bonds (in such relative order
4 of priority as is required by the related ordinances).

5 Third, to transfer to the Bond Fund all amounts
6 necessary to provide for the payment of Parity
7 Obligations.

8 Fourth, to transfer to the Reserve Fund the
9 amounts required pursuant to Part 5.06 of this Ordinance.

10 Fifth, to the payment of all Junior Obligations
11 secured hereunder on a pari passu basis.

12 Sixth, for any lawful purpose under the Tax Act.

13 (b) Flow of Funds regarding Special Hotel Occupancy Tax.
14 The City covenants and agrees that all receipts and revenues collected
15 and received by the City from the Special Hotel Occupancy Tax shall
16 be deposited to the credit of the Venue Project Fund and more
17 particularly to the credit of the Tax Account. Following the issuance
18 of the Bonds and while Parity Obligations and Junior Obligations
19 remain Outstanding, money from time to time credited to the Tax
20 Account shall be applied as follows in the following order of priority:

21 First, to transfer all amounts to the Debt Service
22 Account required by the ordinances authorizing the
23 issuance of the Prior Lien Bonds (in such relative order
24 of priority as is required by the related ordinances).

25 Second, to transfer all amounts to the Debt Service
26 Reserve Account required by the ordinances authorizing
27 the issuance of the Prior Lien Bonds (in such relative
28 order of priority as is required by the related ordinances).

29 Third, to transfer to the Bond Fund all amounts
30 necessary to provide for the payment of the Parity Bonds
31 and Parity Obligations related to the Parity Bonds.

32 Fourth, to transfer to the Reserve Fund the
33 amounts required pursuant to Part 5.06 of this Ordinance.

1 Fifth, to the payment of all Junior Obligations
2 secured hereunder on a *pari passu* basis.

3 Sixth, to pay the costs of operating or maintaining
4 the Convention Center/Waller Creek Venue Project

5 **PART 5.05. Bond Fund.** Subject to satisfying the required payments for
6 the benefit of the Prior Lien Bonds in accordance with the ordinances authorizing
7 their issuance, the City hereby covenants and agrees that before each Interest
8 Payment Date, stated maturity date and mandatory redemption date for the Parity
9 Bonds (and before the dates payments are due on other Parity Obligations) there
10 shall be deposited into the Bond Fund from the Pledged Revenues, an amount
11 equal to one hundred percent (100%) of the amount required to fully pay the
12 amount then due and payable on the Parity Obligations, and such deposits shall be
13 made in substantially equal quarterly installments (based on the total annual Debt
14 Service Requirements to be paid on the Parity Obligations divided by the number
15 of Transfer Dates to occur during the period covered by such calculation) on or
16 before each Transfer Date, beginning on the first Transfer Date to occur after the
17 delivery of the Bonds.

18 In addition, on each Transfer Date, the City covenants and agrees to cause to
19 be deposited into the Bond Fund from the Pledged Revenues an amount calculated
20 to pay all expenses of providing for the full and timely payment of the principal of,
21 premium, if any, and interest on the Parity Bonds in accordance with their terms,
22 including without limitation, all fees charged or incurred by the Paying
23 Agent/Registrar and any Remarketing Agent, Tender Agent, Auction Agent,
24 Broker-Dealer and Calculation Agent, and for paying agent/registrar services
25 rendered in connection with the Parity Bonds.

26 Money credited to the Bond Fund shall be used solely for the purpose of
27 paying on a *pari passu* basis (except as otherwise provided) principal (at maturity
28 or prior redemption or to purchase Parity Bonds issued as term bonds in the open
29 market to be credited against mandatory redemption requirements), interest and
30 redemption premiums on Parity Bonds and all other amounts due on other Parity
31 Obligations, plus all other charges, costs and expenses relating to such payment,
32 including those described in the preceding paragraph. On the Business Day
33 immediately preceding each payment due date for the Parity Obligations, the City
34 shall transfer from the Bond Fund and Reserve Fund, if necessary, to the
35 appropriate paying agent/registrar amounts equal to the amounts due on the Parity
36 Obligations on such date.

1 If a Liquidity Facility is in effect with respect to the Bonds, the City may
2 pay the fees and expenses of the Liquidity Facility Provider from the Bond Fund,
3 and shall disburse funds from the Bond Fund as needed to pay principal and
4 redemption price of and interest on Liquidity Provider Bonds and other amounts
5 owed to the Liquidity Facility Provider. Amounts in the Bond Fund shall not be
6 used to pay the Purchase Price of the Bonds.

7 Notwithstanding anything herein to the contrary, the City shall deposit to the
8 Bond Fund and credit against the City's monthly deposit obligations for the
9 payment of interest on the Bonds under this Part 5.05 all money received from the
10 Series 2008 Interest Rate Management Counterparty to the Series 2008 Interest
11 Rate Management Agreement, except for any moneys received due to early
12 termination thereof.

13 The City may establish and utilize such accounts within the Bond Fund as it
14 may, from time to time, deem appropriate.

15 **PART 5.06. Reserve Fund.**

16 (a) The Reserve Fund shall be established for the benefit of
17 the Parity Bonds. The City shall establish and maintain a balance in
18 the Reserve Fund equal to the Reserve Fund Requirement. The
19 Reserve Fund Requirement may be funded by a Reserve Fund Surety
20 Bond issued by an insurance company or other entity that maintains
21 ratings (either for the long term unsecured debt of the issuer of such
22 Reserve Fund Surety Bond or for obligations insured, secured or
23 guaranteed by such issuer) in the highest letter category by two major
24 municipal securities credit rating services.

25 (b) In any Transfer Period in which the Reserve Fund
26 contains less than the Reserve Fund Requirement or in which the City
27 is obligated to repay or reimburse any issuer of a Reserve Fund Surety
28 Bond (in the event such Reserve Fund Surety Bond is drawn upon),
29 then after making all required transfers to the Bond Fund, there shall
30 be transferred into the Reserve Fund from the available Pledged
31 Revenues on each Transfer Date such amounts as shall be necessary
32 to reestablish the Reserve Fund Requirement and satisfy any
33 repayment obligations to the issuer of any Reserve Fund Surety Bond.
34 After such amount has been accumulated in the Reserve Fund and
35 after satisfying any repayment obligation to any Reserve Fund Surety
36 Bond issuer and so long thereafter as such fund contains such amount

1 and all such repayment obligations have been satisfied, no further
2 transfers shall be required to be made, and any excess amounts in such
3 fund shall be transferred to the Bond Fund. But if and whenever the
4 balance in the Reserve Fund is reduced below the Reserve Fund
5 Requirement or any Reserve Fund Surety Bond repayment obligations
6 arise, transfers to the Reserve Fund shall be resumed and continued in
7 the manner stated above to restore the Reserve Fund Requirement and
8 to pay such reimbursement obligations.

9 (c) The Reserve Fund shall be used to pay the principal of
10 and interest on the Parity Bonds at any time when there is not
11 sufficient money available in the Bond Fund for such purpose and to
12 make any payments required to satisfy repayment obligations to
13 issuers of Reserve Fund Surety Bonds, and may also be used to make
14 the final payments for the retirement or defeasance of the Parity
15 Bonds.

16 (d) If an Authorized Official determines that doing so would
17 be in the best interest of the City, the Reserve Fund Requirement may
18 be funded wholly or partly by a Reserve Fund Surety Bond selected
19 by an Authorized Official (the "Surety Bond Issuer"). An Authorized
20 Official may approve the terms and form of the Reserve Fund Surety
21 Bond and of a guaranty or other agreement pursuant to which the City
22 is obligated to pay premiums, fees, and reimbursement obligations
23 owing to the Surety Bond Issuer (a "Guaranty Agreement"). In
24 connection with a Reserve Fund Surety Bond and any Additional
25 Bonds that are Parity Bonds, the City, the Paying Agent/Registrar and
26 the Surety Bond Issuer may approve procedures providing for a
27 reasonable allocation among Reserve Fund Surety Bonds and funds
28 held in the Reserve Fund to make payments on Parity Bonds and to
29 provide for repayments to Surety Bond Issuers.

30 **PART 5.07. Deficiencies in Funds or Accounts.** Subject to satisfying the
31 required payments for the benefit of the Prior Lien Bonds in accordance with the
32 ordinances authorizing their issuance, if on any Transfer Date there shall not be
33 transferred into any fund or account maintained pursuant to this Article the full
34 amounts required in this Ordinance, amounts equivalent to such deficiency shall be
35 set apart and transferred to such fund or account from the first available and
36 unallocated Pledged Revenues, and such transfer shall be in addition to the
37 amounts otherwise required to be transferred to such fund or account on any
38 succeeding Transfer Date or Transfer Dates.

1 **PART 5.08. Investment of Funds; Transfer of Investment Income.**

2 (a) Money in all funds shall, at the option of the City, be
3 invested in the manner provided by Texas law; except all such
4 deposits and investments shall be made in such manner that the
5 money required to be expended from any fund will be available at the
6 proper time or times. All such investments shall be valued no less
7 frequently than the last business day of the City's Fiscal Year at
8 market value, except that any direct obligations of the United States of
9 America - State and Local Government Series shall be continuously
10 valued at their par value or principal face amount. For purposes of
11 maximizing investment returns, money in such funds may be invested,
12 together with money in other funds or with other money of the City, in
13 common investments or in a common pool of such investments
14 maintained by the City at an official depository of the City or in any
15 fund or investment vehicle permitted by Texas law, which shall not be
16 considered to be a loss of the segregation of such money or funds if
17 safekeeping receipts, certificates of participation or other documents
18 clearly evidencing the investment or investment pool in which such
19 money is invested and the share thereof purchased with such money
20 or owned by such funds are held by or on behalf of each such fund. If
21 and to the extent necessary, such investments or participations therein
22 shall be promptly sold to prevent any default.

23 (b) All interest and income derived from deposits and
24 investments credited to the Bond Fund and Reserve Fund shall remain
25 a part of the fund from which such investment was made, and such
26 investment interest and income shall reduce by like amount any
27 required transfer to such funds from the Pledged Revenues, except at
28 any time when the Reserve Fund has on deposit an amount more than
29 the Reserve Fund Requirement, all investment interest and income
30 received on any investment of funds in such fund shall be deposited to
31 the credit of the Bond Fund.

32 (c) Notwithstanding anything to the contrary contained in
33 this Ordinance, any interest and income derived from deposits and
34 investments of any amounts credited to any fund or account may be (i)
35 transferred into any rebate account or subaccount and (ii) paid to the
36 federal government if in the opinion of nationally recognized bond
37 counsel such payment is required to comply with any covenant
38 contained in an order, resolution or ordinance to prevent interest on

1 any Parity Bonds from being includable within the gross income of
2 the owners thereof for federal income tax purposes.

3 **ARTICLE 6. ADDITIONAL BONDS**

4 **PART 6.01. No Prior Lien Bonds.** The City covenants that it will not issue
5 any additional bonds or other obligations payable from and secured by a lien on
6 and pledge of the Pledged Revenues that is senior to the lien securing the Parity
7 Obligations.

8 **PART 6.02. Refunding Bonds.** The City expressly reserves the right to
9 issue refunding bonds to refund all or a portion of the Parity Bonds or refunding
10 bonds previously issued to refund Parity Bonds. Such refunding bonds may be
11 secured by a lien on Pledged Revenues on a parity with or subordinate to the lien
12 securing the Parity Bonds.

13 **PART 6.03. Other Additional Bonds.**

14 (a) In regard to the Pledged Revenues, the City reserves and
15 retains the right to issue or incur additional obligations secured wholly
16 or partly by a parity lien on such Pledged Revenues or by a lien junior
17 and subordinate to the lien on such Pledged Revenues securing
18 payment of the Parity Bonds; provided, however, that no such Parity
19 Bonds or Junior Subordinate Lien Bonds shall be issued unless the
20 following conditions are satisfied:

21 (i) the City's Chief Financial Officer (or other
22 officer of the City having primary responsibility for the
23 financial affairs of the City) shall provide a certificate
24 showing that, for the City's most recent completed Fiscal
25 Year or for any consecutive 12-month period out of the
26 most recent 18 months preceding the month the
27 ordinance authorizing the issuance of the Parity Bonds or
28 Junior Subordinate Lien Bonds is adopted (the "Coverage
29 Period"), (A) the Pledged Hotel Occupancy Tax
30 Revenues for the Coverage Period are equal to at least
31 130% of the maximum annual Debt Service Requirement
32 of all Prior Lien Bonds and Parity Bonds then
33 Outstanding scheduled to occur in the then current or any
34 future Fiscal Year after taking into consideration the
35 issuance of the Parity Bonds, if any, proposed to be

1 issued, and deducting from the maximum annual Debt
2 Service Requirement for such Prior Lien Bonds and
3 Parity Bonds an amount equal to the revenues received
4 from the Special Hotel Occupancy Tax for the Coverage
5 Period and (B) the “Net Pledged Hotel Occupancy Tax
6 Revenues” for the Coverage Period (i.e., the Pledged
7 Hotel Occupancy Tax Revenues after deducting an
8 amount equal to the maximum annual Debt Service
9 Requirement applied in satisfying the coverage
10 requirement in clause (A) above), together with any other
11 revenues pledged wholly or partly to the payment of any
12 Junior Subordinate Lien Bonds, are equal to at least
13 130% of the maximum annual Debt Service Requirement
14 on all Junior Subordinate Lien Bonds then Outstanding
15 and scheduled to occur in the then current or any future
16 Fiscal Year after giving effect to the issuance of the
17 Junior Subordinate Lien Bonds then being issued, if any;
18 provided, however, at such time as the Prior Lien Bonds
19 are no longer Outstanding, the coverage requirement in
20 clause (A) above shall be reduced to 125% and the
21 coverage requirement of clause (B) shall be reduced to
22 100%; and

23 (ii) provision is made in the ordinance
24 authorizing issuance of the Parity Bonds or Junior
25 Subordinate Lien Bonds, as the case may be, for the
26 complete funding of any required reserves for payment of
27 principal of and interest on such Parity Bonds or Junior
28 Subordinate Lien Bonds as of the initial delivery thereof.

29 (b) Among the future obligations authorized to be issued or
30 incurred pursuant to Part 6.03(a) are Credit Agreements. The City
31 may enter into such a Credit Agreement payable from and secured
32 wholly or partly by a lien on Pledged Revenues if it obtains either
33 (i) the consent from any Credit Facility Provider issuing a Credit
34 Facility in support of the Bonds or (ii) written confirmation from each
35 Rating Agency then rating the Parity Bonds at the request of the City
36 that issuance of the Credit Agreement will not cause a withdrawal or
37 reduction in the rating assigned to the Bonds; provided, however, that
38 such consent in clause (i) and confirmation in clause (ii) above is not

1 required for Interest Rate Management Agreements. The City may
2 secure its obligations under a future Credit Agreement by a lien on
3 Pledged Revenues if such lien is on a parity with or subordinate to the
4 lien securing the Parity Bonds.

5 (c) If the City issues Variable Rate Obligations, it shall use
6 the following procedures for purposes of determining the maximum
7 and the average annual Debt Service Requirements of Variable Rate
8 Obligations:

9 (i) At the sole discretion of the City, such
10 Variable Rate Obligation shall be deemed to bear interest
11 at one of the following rates: (A) an interest rate equal to
12 the average rate borne by such obligations (or by
13 comparable debt if such obligations have not been
14 outstanding during the preceding 24 months) for any
15 24-month period ending within 30 days before the date of
16 calculation; (B) if the City has entered into a related
17 Credit Agreement in the nature of an Interest Rate
18 Management Agreement, the rate payable by the City
19 under such Credit Agreement; or (C) an interest rate
20 equal to the 30-Year Tax-Exempt Revenue Bond Index
21 rate as published in The Bond Buyer on any date selected
22 by the City within 30 days before the date of calculation.
23 If such index is no longer published in The Bond Buyer,
24 an index of tax-exempt revenue bonds with maturities of
25 20 years, or more, published in a financial newspaper or
26 journal with national circulation may be selected by the
27 City and used for this purpose.

28 (ii) If the City has entered into a Credit
29 Agreement in connection with an issue of obligations
30 payable from and secured by Pledged Revenues and if
31 Clause B of paragraph (c)(i) above does not apply,
32 (X) payments due under the Credit Agreement, from
33 either the City or the other party to the Credit Agreement,
34 shall be included in such calculation except to the extent
35 that the payments are already taken into account in the
36 debt service calculation, (Y) any payments that would
37 otherwise be included under the debt service calculation
38 which are to be replaced by payments under a Credit

1 Agreement from either the City or the other party to the
2 Credit Agreement shall be excluded from such
3 calculation, and (Z) payments due under a Credit
4 Agreement that are paid at a variable rate shall be
5 deemed to be made at a fixed rate determined in a
6 manner consistent with clause A of paragraph (c)(i)
7 above. For any calculation of historic data, only those
8 payments actually made in the subject period shall be
9 taken into account in making such calculation and for
10 prospective calculations, only those payments reasonably
11 expected to be made in the subject period shall be taken
12 into account in making the calculation.

13 (d) If the City has entered into a Credit Agreement to
14 discharge or purchase any of its obligations payable from or secured
15 by Pledged Revenues under arrangements whereby the City's
16 obligation to repay the amounts advanced under the Credit Agreement
17 for the discharge or purchase is payable over more than one year from
18 the advance under the Credit Agreement, then the portion of the
19 obligations committed to be discharged or purchased pursuant to the
20 Credit Agreement shall be excluded from any calculation of debt
21 service requirements, and the principal of and interest requirements
22 that constitute the City's reimbursement obligation shall be added.

23 (e) In determining the Pledged Hotel Occupancy Tax
24 Revenues available to satisfy the coverage requirements of condition
25 (a) above, the City may take into consideration an increase in the
26 portion of the Pledged Hotel Occupancy Tax Revenues that became
27 effective during the Coverage Period and, for purposes of satisfying
28 the above coverage tests, make a pro forma determination of the
29 Pledged Hotel Occupancy Tax Revenues for the Coverage Period
30 based on such increased portion of the Pledged Hotel Occupancy Tax
31 Revenues being in effect for the entire Coverage Period.

32 (f) Any Additional Bonds may bear any name or designation
33 provided by the ordinance authorizing their issuance and be issued in
34 such form and manner as may be authorized by law. Furthermore,
35 any such bonds may be secured by any other source of payment
36 lawfully available for such purposes, including a Credit Agreement,
37 financial guaranty insurance policy or similar credit or liquidity
38 support. Any Reimbursement Obligation or obligation under a Credit

1 Agreement may be secured by Pledged Revenues on a basis *pari*
2 *passu* with the Parity Bonds or Junior Subordinate Lien Bonds.

3 **ARTICLE 7. COVENANTS AND PROVISIONS RELATING TO ALL**
4 **PARITY OBLIGATIONS**

5 **PART 7.01. Punctual Payment of Parity Obligations.** The City covenants
6 it will punctually pay or cause to be paid the interest and any premium on and
7 principal of all Parity Obligations according to the terms thereof and will faithfully
8 do and perform, and at all times fully observe, any and all covenants, undertakings,
9 stipulations and provisions contained in this Ordinance and in any other ordinance
10 authorizing the issuance of such Parity Obligations.

11 **PART 7.02. Pledge and Encumbrance of Pledged Revenues.** The City
12 covenants and represents that it has the lawful power to create a lien on and to
13 pledge the Pledged Revenues to secure the payment of the Parity Obligations and
14 Junior Obligations and has lawfully exercised such power under the Constitution
15 and laws of the State of Texas. The City further covenants and represents that,
16 other than to the payment of the Prior Lien Bonds, the bonds and obligations
17 authorized and reserved to be issued in this Ordinance, the Pledged Revenues are
18 not and will not be made subject to any other lien, pledge or encumbrance to
19 secure the payment of any debt or obligation of the City unless such lien, pledge or
20 encumbrance is junior and subordinate to the lien and pledge securing payment of
21 the Parity Obligations.

22 **PART 7.03. Bondholders Remedies.** This Ordinance shall constitute a
23 contract between the City and the Holders of the Bonds from time to time
24 Outstanding and the beneficiaries of other Parity Obligations and Junior
25 Obligations and this Ordinance shall be and remain irrevocable until the Bonds
26 and the other Parity Obligations and Junior Obligations shall be fully paid or
27 discharged or provision therefor shall have been made as provided in this
28 Ordinance. In the event of a default in the payment of the principal of or interest
29 or any premium on any of the Bonds or a default in the performance of any duty or
30 covenant provided by law or in this Ordinance, each Holder of a Bond and each
31 beneficiary of any Parity Obligation or Junior Obligations may pursue all legal
32 remedies afforded by the Constitution and laws of the State of Texas to compel the
33 City to remedy such default and to prevent further default or defaults. Without in
34 any way limiting the generality of the preceding, it is expressly provided that each
35 Holder of a Bond and each beneficiary of any Parity Obligation or Junior
36 Obligations may at law or in equity, by suit, action, mandamus, or other
37 proceedings, enforce and compel performance of all duties required to be

1 performed by the City under this Ordinance, including the application of Pledged
2 Revenues in the manner required in this Ordinance; provided, however, that no
3 Holder of a Bond and no beneficiary of a Parity Obligation or a Junior Obligation
4 shall ever have the right to demand payment of the principal of, interest on or any
5 redemption premium on the Bonds or any payment on any Parity Obligation or
6 Junior Obligations out of any funds raised or to be raised by taxation, other than
7 the Pledged Hotel Occupancy Tax Revenues and the Special Hotel Occupancy
8 Tax.

9 **PART 7.04. Satisfaction of Obligation of City.** If the City shall pay or
10 cause to be paid, or there shall otherwise be paid to the Holders, the principal of,
11 premium, if any, and interest on the Bonds, at the times and in the manner
12 stipulated in this Ordinance, then the pledge of the Pledged Revenues under this
13 Ordinance and all other obligations of the City to the Holders shall thereupon
14 cease, terminate, and become void and be discharged and satisfied.

15 Bonds or any principal amount(s) thereof shall be considered to have been
16 paid within the meaning and with the effect expressed above in this Part when (i)
17 money sufficient to pay in full such Bonds or the principal amount(s) thereof at
18 maturity or to the redemption date therefor, together with all interest due thereon,
19 shall have been irrevocably deposited with and held in trust by the Paying
20 Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations
21 shall have been irrevocably deposited in trust with the Paying Agent/ Registrar, or
22 an authorized escrow agent, which Government Obligations have been certified by
23 an independent accounting firm to mature as to principal and interest in such
24 amounts and at such times as will insure the availability, without reinvestment, of
25 sufficient money, together with any money deposited therewith, if any, to pay
26 when due the principal of and interest on such Bonds, or the principal amount(s)
27 thereof, on and before the Stated Maturity thereof or (if notice of redemption has
28 been given or waived or if irrevocable arrangements therefor acceptable to the
29 Paying Agent/Registrar have been made) the redemption date thereof. The City
30 covenants that no deposit of money or Government Obligations will be made under
31 this Part and no use made of any such deposit which would cause the Bonds to be
32 treated as “arbitrage bonds” within the meaning of Section 148 of the Code, or
33 Regulations.

34 Any money so deposited with the Paying Agent/ Registrar, or an authorized
35 escrow agent, and all income from Government Obligations held in trust by the
36 Paying Agent/Registrar or an authorized escrow agent, pursuant to this Part which
37 is not required for the payment of the Bonds, or any principal amount(s) thereof, or
38 interest thereon with respect to which such money have been so deposited shall be

1 remitted to the City or deposited as directed by the City. Furthermore, any money
2 held by the Paying Agent/Registrar for the payment of the principal of and interest
3 on the Bonds and remaining unclaimed for a period of three (3) years after the
4 Stated Maturity, or applicable redemption date, of the Bonds such money was
5 deposited and are held in trust to pay shall, upon the request of the City, be
6 remitted to the City against a written receipt therefor. Notwithstanding the above
7 and preceding, any remittance of funds from the Paying Agent/Registrar to the City
8 shall be subject to any applicable unclaimed property laws of the State of Texas.

9 All money or Government Obligations set aside and held in trust pursuant to
10 the provisions of this Part 7.04 shall be used at the first practicable date to pay the
11 Purchase Price or Redemption Price, as applicable, of the Bonds being deemed
12 paid, retired and no longer outstanding as contemplated in the first paragraph of
13 this Part 7.04.

14 No Bonds of a subseries in the Daily Mode or Weekly Mode may be
15 defeased without prior written consent of the Credit Facility Provider and written
16 confirmation from each Rating Agency then rating such Bonds to the effect that the
17 deposit made pursuant to the Ordinance will not, by itself, result in a reduction or
18 withdrawal of the short-term or long-term rating of such Bonds below the rating
19 category of such Rating Agency then in effect with respect to such Bonds.

20 **PART 7.05. Non-Business Days.** In any case where the date of maturity of
21 interest on or principal of the Bonds or the date fixed for redemption of any Bonds
22 or the due date for the payment or performance of any obligation shall be other
23 than a Business Day, then such payment need not be made on such due date but
24 may be made on the next succeeding day which is a Business Day with the same
25 force and effect as if made on the date of maturity or the date fixed for redemption
26 or other due date, and no interest shall accrue for the period from the scheduled
27 due date to the date of actual payment. If any Transfer Date shall not be a
28 Business Day, then the transfer otherwise required to be made on such date
29 pursuant to Part 5.05 shall be made on the next succeeding Business Day.

30 **ARTICLE 8. CONCERNING CERTAIN AGENTS**

31 **PART 8.01. Paying Agent/Registrar Agreement.** The selection and
32 appointment of Deutsche Bank Trust Company Americas, New York, New York,
33 to serve as Paying Agent/Registrar for the Bonds is hereby approved and
34 confirmed. Books and records relating to the registration, payment, transfer and
35 exchange of the Bonds (the "Security Register") shall at all times be kept and
36 maintained on behalf of the City by the Paying Agent/Registrar, as provided in this

1 Ordinance and in accordance with the terms and provisions of a “Paying
2 Agent/Registrar Agreement”, substantially in the form attached hereto as
3 Exhibit A, and such reasonable rules and regulations as the Paying
4 Agent/Registrar and the City may prescribe. One or more Authorized Officials are
5 and shall be authorized to execute and deliver such Paying Agent/Registrar
6 Agreement with such changes as the Authorized Official executing such Paying
7 Agent/Registrar Agreement may approve.

8 **PART 8.02. Trust Funds.** All money transferred by the City to the Paying
9 Agent/Registrar under this Ordinance (except sums representing Registrar’s/Paying
10 Agent’s fees) shall be held in trust for the benefit of the City, shall be the property
11 of the City, and shall be disbursed in accordance with this Ordinance.

12 **PART 8.03. Bonds Presented.** Subject to the provisions of Part 8.04, all
13 matured Bonds presented to the Paying Agent/Registrar for payment shall be paid
14 without the necessity of further instructions from the City. Such Bonds shall be
15 canceled as provided in this Ordinance.

16 **PART 8.04. Successor Paying Agent/Registrars.** The City covenants to
17 maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid
18 and discharged, and any successor Paying Agent/Registrar shall be a bank, trust
19 company, financial institution or other entity qualified and authorized to serve in
20 such capacity and perform the duties and services of Paying Agent/Registrar. Such
21 successor Paying Agent/Registrar must execute a Paying Agent/Registrar
22 Agreement having substantially the same terms as the Paying Agent/Registrar
23 Agreement attached to this Ordinance as Exhibit A. The Paying Agent/Registrar’s
24 resignation and removal shall not be effective until a successor Paying
25 Agent/Registrar has been appointed by the City and such appointment accepted.
26 Concurrently with any such resignation or removal, the Paying Agent/Registrar
27 shall transfer any Liquidity Facility or Credit Facility to such successor Paying
28 Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds,
29 the City agrees to promptly cause a written notice thereof to be sent to each Holder
30 by United States Mail, first class postage prepaid, which notice shall also give the
31 address of the new Paying Agent/Registrar.

32 **PART 8.05. Remarketing Agent.** The selection and appointment of (i)
33 Morgan Keegan & Company, Inc. to serve as remarketing agent for the Subseries
34 2008A Bonds and (ii) Bank of America Securities LLC to serve as remarketing
35 agent for the Subseries 2008B Bonds is hereby approved and confirmed, and such
36 appointments shall be governed by Part 6.1 of the Appendix A hereto and the
37 Remarketing Agreements (each a “Remarketing Agreement,” and collectively, the

1 “Remarketing Agreements”) in substantially the forms attached hereto as Exhibit
2 D are hereby approved. One or more Authorized Officials are and shall be
3 authorized to execute and deliver such Remarketing Agreements with such
4 changes as the Authorized Official executing such Remarketing Agreements may
5 approve.

6 **PART 8.06. Tender Agent.** The selection and appointment of Deutsche
7 Bank Trust Company Americas, New York, New York, to serve as tender agent for
8 the Bonds is hereby approved and confirmed, and such appointment shall be
9 governed by Part 6.2 of Appendix A hereto, and a Tender Agent Agreement
10 between the City and the Tender Agent, substantially in the form attached hereto as
11 Exhibit E is hereby approved. One or more Authorized Officials are and shall be
12 authorized to execute and deliver such Tender Agent Agreement with such changes
13 as the Authorized Official executing the same may approve.

14 Any successor Tender Agent shall be a bank, trust company, financial
15 institution or other entity maintaining trust powers that is qualified and authorized
16 to serve in such capacity and perform the duties and services of Tender Agent.
17 Such successor Tender Agent must execute a Tender Agent Agreement having
18 substantially the same terms as the Tender Agent Agreement to be attached to this
19 Ordinance as Exhibit E. The Tender Agent’s resignation and removal shall not be
20 effective until a successor Tender Agent has been appointed by the City and such
21 appointment accepted.

22 **ARTICLE 9. ALTERATION OF RIGHTS AND DUTIES; AMENDMENT** 23 **OF ORDINANCE**

24 **PART 9.01. Alteration of Rights and Duties.** The rights, duties, and
25 obligations of the City and the Holders of the Bonds are subject in all respects to
26 all applicable federal and state laws including, without limitation, the provisions of
27 federal law regarding the composition of indebtedness of political subdivisions, as
28 the same now exist or may hereafter be amended.

29 **PART 9.02. Amendment of Ordinance Without Consent.** The City may,
30 without the consent of or notice to any of the Holders of the Bonds, amend this
31 Ordinance for any one or more of the following purposes:

- 32 (a) to cure any ambiguity, defect, omission or inconsistent
33 provision in this Ordinance or in the Bonds; or to comply with any
34 applicable provision of law or regulation of federal agencies;

1 provided, however, that such action shall not adversely affect the
2 interests of the Holders of the Bonds;

3 (b) to change the terms or provisions of this Ordinance to the
4 extent necessary to prevent the interest on the Bonds from being
5 includable within the gross income of the owners thereof for federal
6 income tax purposes;

7 (c) to grant to or confer upon the Holders of the Bonds any
8 additional rights, remedies, powers or authority that may lawfully be
9 granted to or conferred upon the Holders of the Bonds;

10 (d) to add to the covenants and agreements of the City
11 contained in this Ordinance other covenants and agreements of, or
12 conditions or restrictions upon, the City or to surrender or eliminate
13 any right or power reserved to or conferred upon the City in this
14 Ordinance;

15 (e) to amend any provisions hereof relating to the issuance of
16 Additional Bonds if the City first obtains a Rating Confirmation
17 Notice with respect to such amendment; and

18 (f) to subject to the lien and pledge of this Ordinance
19 additional Pledged Revenues, provided such amendment does not
20 cause any reduction in any rating assigned to the Bonds by any major
21 municipal securities evaluation service then rating the Bonds;

22 provided, however, that if and to the extent required by a Credit Facility, Liquidity
23 Facility, an Interest Rate Management Agreement, another Credit Agreement or
24 other provision of this Ordinance, the City shall first obtain the consent of the
25 Credit Facility Provider, any Liquidity Facility Provider and the Interest Rate
26 Management Agreement Counterparty to any such amendment pursuant to this
27 Part 9.02.

28 **PART 9.03. Amendments of Ordinance Requiring Consent.**

29 (a) The City may at any time adopt one or more ordinances
30 amending, modifying, adding to or eliminating any of the provisions
31 of this Ordinance but, if such amendment is not of the character
32 described in Part 9.02 hereof, only with the consent given in
33 accordance with Part 9.04 hereof of the Holders of not fewer than a
34 majority of the aggregate unpaid principal amount of the Parity Bonds

1 then Outstanding and affected by such amendment, modification,
2 addition, or elimination; provided, however, that nothing in this Part
3 shall permit (1) an extension of the maturity of the principal of or
4 interest on any Bond issued hereunder, or (2) a reduction in the
5 principal amount of any Bond or the rate of interest on any Bond or
6 redemption price therefor, or (3) a privilege or priority of any Bond or
7 Bonds over any other Bond or Bonds, or (4) a reduction in the
8 aggregate principal amount of the Bonds required for consent to such
9 amendment.

10 (b) If and to the extent required by a Credit Facility,
11 Liquidity Facility, an Interest Rate Management Agreement, another
12 Credit Agreement or other provision of this Ordinance, the City shall
13 first obtain the consent of the Credit Facility Provider, any Liquidity
14 Provider and the Interest Rate Management Agreement Counterparty
15 to any such amendment pursuant to this Part 9.03.

16 **PART 9.04. Consent of Holders.** Any consent required by Part 9.03 shall
17 be considered given

18 (a) By all Holders of Outstanding Bonds if a Credit Facility
19 is in effect, the Credit Facility Provider is not in default thereunder
20 and the Credit Facility Provider has given its written consent to the
21 amendments in writing,

22 (b) By all Holders of Outstanding Bonds if the Bonds are
23 remarketed following a mandatory tender of all Bonds and the
24 substance of such amendment has been disclosed to the market in
25 connection with such remarketing,

26 (c) By all Holders of Outstanding Bonds if the Bonds are in
27 a Auction Rate Mode and if written notice of the substance of the
28 proposed amendment has been furnished to the Holders and if
29 following such disclosure, there have occurred at least two
30 consecutive Auctions (as defined in Appendix A) and in each such
31 Auction either Sufficient Clearing Bids existed or the Auction Rate
32 determined was the Winning Bid Rate;

33 (d) By any Holder in any number of concurrent writings of
34 similar tenor, signed by such Holder or his authorized attorney. Proof
35 of the execution of any such consent or of the writing appointing any

1 such attorney and of the ownership of Parity Bonds, if made in the
2 following manner, shall be sufficient for any of the purposes of this
3 Ordinance, and shall be conclusive in favor of the City with regard to
4 any action taken, suffered or omitted to be taken by the City under
5 such instrument, namely:

6 (i) the fact and date of the execution by any
7 person of any such writing may be proved by the
8 certificate of any officer in any jurisdiction who by law
9 has power to take acknowledgments within such
10 jurisdiction that the person signing such writing
11 acknowledged before him the execution thereof, or by
12 affidavit of any witness to such execution; and

13 (ii) the fact of the ownership by any person of
14 any Bond and the date of the ownership of same may be
15 proved by a certificate executed by an appropriate officer
16 of the Paying Agent/Registrar, stating that at the date
17 thereof such Bond was registered in the name of such
18 party in the Security Register.

19 In lieu of the preceding the City may accept such other proofs of the
20 preceding as it shall consider appropriate.

21 Consents obtained pursuant to Part 9.04(d) shall be valid only if given
22 following the mailing of notice by or on behalf of the City requesting such consent
23 and setting forth the substance of the amendment of this Ordinance in respect of
24 which such consent is sought and stating that copies thereof are available at the
25 office of the City Clerk for inspection. Such notice shall be mailed by certified
26 mail to each Holder of the Parity Bonds affected at the address shown on the
27 Security Register.

28 **PART 9.05. Revocation of Consent.** Any consent by any Holder of a Bond
29 pursuant to the provisions of Part 9.04(d) shall be irrevocable for a period of six
30 months from the date of mailing of the notice provided for in this Article, and shall
31 be conclusive and binding upon all future Holders of the same Bond and any Bond
32 delivered on transfer thereof or in exchange for or replacement thereof during such
33 period. Such consent may be revoked at any time after six months from the date of
34 the first mailing of such notice by the owner who gave such consent or by a
35 successor in title, by filing notice thereof with the Paying Agent/Registrar, but such
36 revocation shall not be effective if the Holders of a majority in aggregate principal

1 amount of the Parity Bonds Outstanding as in this Ordinance defined have, before
2 the attempted revocation, consented to and approved the amendment.

3 **ARTICLE 10. PROVISIONS CONCERNING SALE AND APPLICATION**
4 **OF PROCEEDS OF BONDS**

5 **PART 10.01. Sale of Bonds.**

6 (a) The Bond Purchase Agreement between the City and Morgan Keegan
7 & Company, Inc. (the “Subseries 2008A Underwriter”) relating to the Subseries
8 2008A Bonds in substantially the form and content of Exhibit F attached to this
9 Ordinance, with such changes as the Pricing Officer executing the same may
10 approve, is hereby approved. A Pricing Officer may complete the Bond Purchase
11 Agreement with respect to the pricing information and execute such Bond
12 Purchase Agreement as the City Council’s act and deed.

13 (b) The Bond Purchase Agreement between the City and Banc of
14 America Securities LLC (the “Subseries 2008B Underwriter”) relating to the
15 Subseries 2008B Bonds in substantially the form and content of Exhibit F attached
16 to this Ordinance, with such changes as the Pricing Officer executing the same
17 may approve, is hereby approved. A Pricing Officer may complete the Bond
18 Purchase Agreement with respect to the pricing information and execute such
19 Bond Purchase Agreement as the City Council’s act and deed.

20 The Subseries 2008A Underwriter and the Subseries 2008B Underwriter are
21 referred to in this Ordinance collectively as the “Underwriters”.

22 **PART 10.02. Control and Custody of Bonds.** The Mayor of the City shall
23 be and is hereby authorized to take and have charge of all necessary orders and
24 records pending the delivery of the Bonds, and shall take and have charge and
25 control of the Initial Bonds pending the approval thereof by the Attorney General,
26 the registration thereof by the Comptroller of Public Accounts and the delivery
27 thereof to the Underwriters.

28 Furthermore, any Authorized Official is hereby authorized and directed to
29 furnish and execute such documents relating to the City and its financial affairs as
30 may be necessary for the issuance of the Bonds, the approval of the Attorney
31 General and registration by the Comptroller of Public Accounts and, together with
32 the City’s financial advisor, bond counsel and the Paying Agent/Registrar, make
33 the necessary arrangements for the delivery of the Initial Bonds to the initial
34 purchasers thereof and the exchange thereof for obligations described in this
35 Ordinance and in the Official Statement, described in Part 10.03 below.

1 **PART 10.03. Offering Documents.** An official statement relating to the
2 Bonds is hereby authorized and may be considered final by an Authorized Official,
3 except for such omissions as are permitted by Rule 15c2-12 of the Securities and
4 Exchange Commission (the “Rule”). An Authorized Official may approve the
5 form and terms of such document and authorize its use and distribution by the
6 Underwriters. Furthermore, if considered appropriate by an Authorized Official
7 the use of a preliminary official statement, to be dated on or about the date of sale
8 of the Bonds and the form of which is approved by an Authorized Official, in the
9 offering and sale of the Bonds is hereby authorized (but not required) and approved
10 in all respects.

11 **PART 10.04. Special Escrow Agreement.** A "Special Escrow Agreement"
12 (the "Escrow Agreement") by and between the City and an authorized escrow
13 agent (the "Escrow Agent"), if any such agreement is required in connection with
14 the issuance of the Bonds, shall be attached to the Pricing Certificate. Such
15 Escrow Agreement is hereby authorized to be finalized and executed by the Pricing
16 Officer for and on behalf of the City and as the act and deed of the City Council;
17 and such Escrow Agreement as executed by said Pricing Officer shall be deemed
18 approved by the City Council and constitute the Escrow Agreement herein
19 approved. With regard to the finalization of certain terms and provisions of any
20 Escrow Agreement, a Pricing Officer is hereby authorized to come to an agreement
21 with the Escrow Agent on the following details, among other matters:

- 22 1. The creation and funding of the Escrow Fund; and
- 23 2. The Escrow Agent’s compensation, administration of the Escrow
24 Fund, and the settlement of any paying agents’ charges relating to the
25 Refunded Bonds.

26 Furthermore, any Authorized Officials in cooperation with the Escrow
27 Agent are hereby authorized and directed to make the necessary arrangements for
28 the purchase of the escrowed securities referenced in the Escrow Agreement, if
29 any, and the delivery thereof to the Escrow Agent on the day of delivery of the
30 Bonds to the Underwriters for deposit to the credit of a “SPECIAL 2008 CITY OF
31 AUSTIN, TEXAS, HOTEL OCCUPANCY TAX REVENUE REFUNDING
32 BOND ESCROW FUND” (the “Escrow Fund”) or such other designation as
33 specified in the Pricing Certificate; all as contemplated and provided in Chapter
34 1207, V.T.C.A., Government Code, this Ordinance, the Pricing Certificate, and the
35 Escrow Agreement.

1 **PART 10.05. Proceeds of Sale.** Immediately following the delivery of the
2 Bonds, proceeds of sale thereof, less amounts to pay costs of issuance, purchase
3 prices and premiums of the Liquidity Facility, and related fees and expenses, and
4 to fund the Reserve Fund, shall be deposited to the credit of the Escrow Fund, if
5 any, or transmitted to the paying agent/registrar for the Refunded Bonds for the
6 payment of the redemption price thereof on the redemption date specified in the
7 Pricing Certificate. Any excess amount budgeted for such purposes shall be
8 deposited to the credit of the Bond Fund.

9 Additionally, on or immediately before the date of the delivery of the Bonds
10 to the Underwriters, an Authorized Official shall cause to be transferred in
11 immediately available funds to the Escrow Agent from money legally available for
12 purpose the sum specified in the Pricing Certificate to accomplish the refunding.

13 **PART 10.06. Redemption of Refunded Bonds.** (a) In order to provide for
14 the refunding, discharge, and retirement of the Refunded Bonds, the Refunded
15 Bonds will be called for redemption on the date specified by the Pricing Officer in
16 the Pricing Certificate at the price of par plus accrued interest to the redemption
17 date, and notice of such redemption shall be given in accordance with the
18 applicable provisions of the ordinance adopted by the City Council of the City,
19 which authorized the issuance of the Refunded Bonds. The Pricing Officer is
20 hereby authorized and directed to issue or cause to be issued a Notice of
21 Redemption for the Refunded Bonds in substantially the form set forth as an
22 Exhibit to the Pricing Certificate, to the paying agent/registrar for Refunded Bonds,
23 in accordance with the redemption provisions applicable to the Refunded Bonds.

24 (b) The paying agent/registrar for Refunded Bonds is hereby directed to
25 provide the appropriate notice of redemption as required by the ordinance
26 authorizing the Refunded Bonds and is hereby directed to make appropriate
27 arrangements so that the Refunded Bonds may be redeemed on the redemption
28 dates.

29 **ARTICLE 11. CONTINUING DISCLOSURE OF INFORMATION**

30 **PART 11.01. Definitions.** As used in this Part, the following terms have the
31 meanings ascribed to such terms below:

32 “MSRB” means the Municipal Securities Rulemaking Board.

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

1 “Rule” means SEC Rule 15c2-12, as amended from time to time.

2 “SEC” means the United States Securities and Exchange Commission.

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

7 **PART 11.02. Annual Reports.** The City shall provide annually to each
8 NRMSIR and any SID, within six months after the end of each Fiscal Year
9 (beginning with the Fiscal Year ending September 30, 2008) financial information
10 and operating data with respect to the City of the general type included in the final
11 Official Statement referenced by Part 10.01 of this Ordinance, being the
12 information described in Exhibit G hereto. Financial statements to be provided
13 shall be (1) prepared in accordance with the accounting principles described in
14 Exhibit G hereto 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 audited financial statements are not available at the time the financial
17 information and operating data must be provided, then the City shall provide
18 unaudited financial statements for the applicable fiscal year to each NRMSIR and
19 any SID with the financial information and operating data and will file the annual
20 audit report when and if the same becomes available.

21 If the City changes its Fiscal Year, it will notify each NRMSIR and any SID
22 of the change (and of the date of the new Fiscal Year end) before the next date by
23 which the City otherwise would be required to provide financial information and
24 operating data pursuant to this Part.

25 The financial information and operating data to be provided pursuant to this
26 Part may be set forth in full in one or more documents or may be included by
27 specific reference to any document (including an official statement or other
28 offering document, if it is available from the MSRB) that theretofore has been
29 provided to each NRMSIR and any SID or filed with the SEC.

30 **PART 11.03. Material Event Notices.** The City shall notify any SID and
31 either each NRMSIR or the MSRB, in a timely manner, of any of the following
32 events with respect to the Bonds, if such event is material within the meaning of
33 the federal securities laws:

- 34 1. Principal and interest payment delinquencies;
- 35 2. Non-payment related defaults;

3. Unscheduled draws on debt service reserves reflecting financial 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 Bonds;
7. Modifications to rights of holders of the Bonds;
8. Bond calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the 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 Part 10.02 hereof by the time required by such Part.

PART 11.04. Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Part while, but only while, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give the notice required by Part 11.03 hereof of any Bond calls and defeasance that cause the City to be no longer such an “obligated person.”

The provisions of this Part are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Part, 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 Part 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 hereby undertake to update any information provided in accordance with this Part or otherwise, except as expressly provided in this Ordinance. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

1 UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO
2 THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER
3 PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING
4 WHOLLY OR PARTLY FROM ANY BREACH BY THE CITY, WHETHER
5 NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT
6 SPECIFIED IN THIS PART, BUT EVERY RIGHT AND REMEDY OF ANY
7 SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY
8 SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS
9 OR SPECIFIC PERFORMANCE.

10 No default by the City in observing or performing its obligations under this
11 Part shall constitute a breach of or default under this Ordinance for purposes of any
12 other provision of this Ordinance.

13 Nothing in this Part is intended or shall act to disclaim, waive, or otherwise
14 limit the duties of the City under federal and state securities laws.

15 The provisions of this Part may be amended by the City from time to time to
16 adapt to changed circumstances resulting from a change in legal requirements, a
17 change in law, or a change in the identity, nature, status, or type of operations of
18 the City, but only if (1) the provisions of this Part, as so amended, would have
19 permitted an underwriter to purchase or sell Bonds in the primary offering of the
20 Bonds in compliance with the Rule, taking into account any amendments or
21 interpretations of the Rule to the date of such amendment, as well as such changed
22 circumstances, and (2) either (a) the Holders of a majority in aggregate principal
23 amount of the Outstanding Bonds consent to such amendment or (b) a Person that
24 is unaffiliated with the City (such as nationally recognized bond counsel)
25 determines that such amendment will not materially impair the interests of the
26 Holders and beneficial owners of the Bonds. If the City so amends the provisions
27 of this Part, it shall include with any amended financial information or operating
28 data next provided in accordance with Part 10.02 an explanation, in narrative form,
29 of the reasons for the amendment and of the impact of any change in the type of
30 financial information or operating data so provided.

31 **ARTICLE 12. TAX MATTERS**

32 **PART 12.01. Tax Exemption.**

33 (a) Definitions. When used in this Article 12, the following
34 terms shall have the following meanings:

1 “Closing Date” means the date on which the Bonds are first
2 authenticated and delivered to the initial purchasers against payment
3 therefor.

4 “Code” means the Internal Revenue Code of 1986, as amended by all
5 legislation, if any, effective on or before the Closing Date.

6 “Computation Date” has the meaning set forth in Section 1.148-1(b)
7 of the Regulations.

8 “Gross Proceeds” means any proceeds as defined in Section
9 1.148-1(b) of the Regulations, and any replacement proceeds as
10 defined in Section 1.148-1(c) of the Regulations, of the Bonds.

11 “Investment” has the meaning set forth in Section 1.148-1(b) of the
12 Regulations.

13 “Nonpurpose Investment” means any investment property, as defined
14 in section 148(b) of the Code, in which Gross Proceeds of the Bonds
15 are invested and which is not acquired to carry out the governmental
16 purposes of the Bonds.

17 “Rebate Amount” has the meaning set forth in Section 1.148-1(b) of
18 the Regulations.

19 “Regulations” means any proposed, temporary, or final Income Tax
20 Regulations issued pursuant to Sections 103 and 141 through 150 of
21 the Code, and 103 of the Internal Revenue Code of 1954, which are
22 applicable to the Bonds.

23 “Yield” of (1) any Investment has the meaning set forth in Section
24 1.148-5 of the Regulations and (2) the Bonds has the meaning set
25 forth in Section 1.148-4 of the Regulations.

26 Any reference to any specific Regulation shall also mean, as appropriate,
27 any proposed, temporary or final Income Tax Regulation designed to supplement,
28 amend or replace the specific Regulation referenced.

29 (b) Not to Cause Interest to Become Taxable. The City shall
30 not use, permit the use of, or omit to use Gross Proceeds or any other
31 amounts (or any property the acquisition, construction or
32 improvement of which is to be financed directly or indirectly with

1 Gross Proceeds) in a manner which if made or omitted, respectively,
2 would cause the interest on any Bond to become includable in the
3 gross income, as defined in section 61 of the Code, of the owner
4 thereof for federal income tax purposes. Without limiting the
5 generality of the preceding, unless and until the City receives a written
6 opinion of counsel nationally recognized in the field of municipal
7 bond law to the effect that failure to comply with such covenant will
8 not adversely affect the exemption from federal income tax of the
9 interest on any Bond, the City shall comply with each of the specific
10 covenants in this Part.

11 (c) No Private Use or Private Payments. Except as permitted
12 by section 141 of the Code and the Regulations and rulings
13 thereunder, the City shall at all times before the last Stated Maturity of
14 Bonds:

15 (i) exclusively own, operate and possess all
16 property the acquisition, construction or improvement of
17 which is to be financed or refinanced directly or
18 indirectly with Gross Proceeds of the Bonds (including
19 property financed with Gross Proceeds of the Refunded
20 Bonds), and not use or permit the use of such Gross
21 Proceeds (including all contractual arrangements with
22 terms different than those applicable to the general
23 public) or any property acquired, constructed or
24 improved with such Gross Proceeds in any activity
25 carried on by any person or entity (including the United
26 States or any agency, department and instrumentality
27 thereof) other than a state or local government, unless
28 such use is solely as a member of the general public; and

29 (ii) not directly or indirectly impose or accept
30 any charge or other payment by any person or entity who
31 is treated as using Gross Proceeds of the Bonds or any
32 property the acquisition, construction or improvement of
33 which is to be financed or refinanced directly or
34 indirectly with such Gross Proceeds (including property
35 financed with Gross Proceeds of the Refunded Bonds),
36 other than taxes of general application within the City or
37 interest earned on investments acquired with such Gross
38 Proceeds pending application for their intended purposes.

1 (d) No Private Loan. Except to the extent permitted by
2 section 141 of the Code and the Regulations and rulings thereunder,
3 the City shall not use Gross Proceeds of the Bonds to make or finance
4 loans to any person or entity other than a state or local government.
5 For purposes of the preceding covenant, such Gross Proceeds are
6 considered to be “loaned” to a person or entity if: (1) property
7 acquired, constructed or improved with such Gross Proceeds is sold or
8 leased to such person or entity in a transaction which creates a debt
9 for federal income tax purposes; (2) capacity in or service from such
10 property is committed to such person or entity under a take-or-pay,
11 output or similar contract or arrangement; or (3) indirect benefits, or
12 burdens and benefits of ownership, of such Gross Proceeds or any
13 property acquired, constructed or improved with such Gross Proceeds
14 are otherwise transferred in a transaction which is the economic
15 equivalent of a loan.

16 (e) Not to Invest at Higher Yield. Except to the extent
17 permitted by section 148 of the Code and the Regulations and rulings
18 thereunder, the City shall not at any time before the final Stated
19 Maturity of the Bonds directly or indirectly invest Gross Proceeds in
20 any Investment (or use Gross Proceeds to replace money so invested),
21 if as a result of such investment the Yield from the Closing Date of all
22 investments acquired with Gross Proceeds (or with money replaced
23 thereby), whether then held or previously disposed of, exceeds the
24 Yield of the Bonds.

25 (f) Not Federally Guaranteed. Except to the extent
26 permitted by section 149(b) of the Code and the Regulations and
27 rulings thereunder, the City shall not take or omit to take any action
28 which would cause the Bonds to be federally guaranteed within the
29 meaning of section 149(b) of the Code and the Regulations and
30 rulings thereunder.

31 (g) Information Report. The City shall timely file the
32 information required by section 149(e) of the Code with the Secretary
33 of the Treasury on Form 8038-G or such other form and in such place
34 as the Secretary may prescribe.

35 (h) Rebate of Arbitrage Profits. Except to the extent
36 otherwise provided in section 148(f) of the Code and the Regulations
37 and rulings thereunder:

1 (i) The City shall account for all Gross
2 Proceeds (including all receipts, expenditures and
3 investments thereof) on its books of account separately
4 and apart from all other funds (and receipts, expenditures
5 and investments thereof) and shall retain all records of
6 accounting for at least six years after the day on which
7 the last Outstanding Bond is discharged. However, to the
8 extent permitted by law, the City may commingle Gross
9 Proceeds of the Bonds with other money of the City,
10 provided that the City separately accounts for each
11 receipt and expenditure of Gross Proceeds and the
12 obligations acquired therewith.

13 (ii) Not less frequently than each Computation
14 Date, the City shall calculate the Rebate Amount in
15 accordance with rules set forth in section 148(f) of the
16 Code and the Regulations and rulings thereunder. The
17 City shall maintain such calculations with its official
18 transcript of proceedings relating to the issuance of the
19 Bonds until six years after the final Computation Date.

20 (iii) As additional consideration for the purchase
21 of the Bonds by the Underwriter and the loan of the
22 money represented thereby and to induce such purchase
23 by measures designed to insure the excludability of the
24 interest thereon from the gross income of the owners
25 thereof for federal income tax purposes, the City shall
26 pay to the United States out of the Debt Service Account
27 or its general fund, as permitted by applicable Texas
28 statute, regulation or opinion of the Attorney General of
29 the State of Texas, the amount that when added to the
30 future value of previous rebate payments made for the
31 Bonds equals (i) in the case of a Final Computation Date
32 as defined in Section 1.148-3(e)(2) of the Regulations,
33 one hundred percent (100%) of the Rebate Amount on
34 such date; and (ii) in the case of any other Computation
35 Date, ninety percent (90%) of the Rebate Amount on
36 such date. In all cases, the rebate payments shall be
37 made at the times, in the installments, to the place and in
38 the manner as is or may be required by section 148(f) of

1 the Code and the Regulations and rulings thereunder, and
2 shall be accompanied by Form 8038-T or such other
3 forms and information as is or may be required by
4 Section 148(f) of the Code and the Regulations and
5 rulings thereunder.

6 (iv) The City shall exercise reasonable diligence
7 to assure that no errors are made in the calculations and
8 payments required by paragraphs (ii) and (iii), and if an
9 error is made, to discover and promptly correct such error
10 within a reasonable amount of time thereafter (and in all
11 events within one hundred eighty (180) days after
12 discovery of the error), including payment to the United
13 States of any additional Rebate Amount owed to it,
14 interest thereon, and any penalty imposed under Section
15 1.148-3(h) of the Regulations.

16 (v) Not to Divert Arbitrage Profits. Except to
17 the extent permitted by section 148 of the Code and the
18 Regulations and rulings thereunder, the City shall not, at
19 any time before the earlier of the Stated Maturity or final
20 payment of the Bonds, enter into any transaction that
21 reduces the amount required to be paid to the United
22 States pursuant to Subsection (h) of this Part because
23 such transaction results in a smaller profit or a larger loss
24 than would have resulted if the transaction had been at
25 arm's length and had the Yield of the Bonds not been
26 relevant to either party.

27 (i) Elections. The City hereby directs and authorizes the
28 Mayor, the City Manager, the Treasurer and the Chief Financial
29 Officer of the City, either or any combination of them, to make
30 elections permitted or required pursuant to the provisions of the Code
31 or the Regulations, as they consider necessary or appropriate in
32 connection with the Bonds, in the Certificate as to Tax Exemption or
33 similar or other appropriate certificate, form or document.

34 (j) Bonds Not Hedge Bonds. With respect to the original
35 bonds refinanced by the Refunded Bonds, (1) the City reasonably
36 expected to spend at least 85% of the spendable proceeds of the
37 original bonds within three years after such original bonds were issued

1 and (2) not more than 50% of proceeds of the original bonds were
2 invested in Nonpurpose Investments having a substantially guaranteed
3 Yield for a period of 4 years or more.

4 (k) Current Refunding. The Bonds are issued to refund the
5 Refunded Bonds, and the Bonds will be issued within 90 days before
6 the redemption of the Refunded Bonds.

7 (l) Reimbursement. The City reasonably expects to
8 reimburse capital expenditures with respect to the termination
9 payment referenced in Part 3.11 hereof paid with funds on hand from
10 the proceeds of sale of Bonds, and this paragraph shall constitute a
11 declaration of official intent under the Treas. Reg. §1.150-2. The
12 maximum principal amount of the Bonds expected to be issued for the
13 termination payment is \$10,000,000.

14 **ARTICLE 13. MISCELLANEOUS**

15 **PART 13.01. Further Procedures.** The Mayor, the City Manager, the Chief
16 Financial Officer, City Treasurer and the City Clerk, and other appropriate officials
17 of the City, are hereby authorized and directed to do any and all things necessary
18 or convenient to carry out the terms of this Ordinance.

19 **PART 13.02. Severability.** If any Part, paragraph, clause or provision of this
20 Ordinance shall for any reason be held to be invalid or unenforceable, the
21 invalidity or unenforceability of such Part, paragraph, clause or provision shall not
22 affect any of the remaining provisions of this Ordinance.

23 **PART 13.03. Meeting.** It is hereby found, determined and declared that a
24 sufficient written notice of the date, hour, place and subject of the meeting of the
25 City Council at which this Ordinance was adopted was posted at a place
26 convenient and readily accessible at all times to the general public at the City Hall
27 of the City for the time required by law preceding this meeting, as required by
28 V.T.C.A., Government Code, Chapter 551, and that this meeting has been open to
29 the public as required by law at all times during which this Ordinance and the
30 subject matter thereof has been discussed, considered and formally acted upon.
31 The City Council further ratifies, approves and confirms such written notice and
32 the contents and posting thereof.

33 **PART 13.04. Benefits of Ordinance.** Nothing in this Ordinance, expressed
34 or implied, is intended or shall be construed to confer upon any person other than
35 the City, the Paying Agent/Registrar, the Credit Facility Provider, the Surety Bond

1 Issuer, the Liquidity Provider, the Interest Rate Management Agreement
2 Counterparty(ies), the Remarketing Agent, the Tender Agent, any future Auction
3 Agent or Broker-Dealer, the Holders and any other beneficiary of a Parity
4 Obligation, any right, remedy, or claim, legal or equitable, under or by reason of
5 this Ordinance or any provision hereof, this Ordinance and all its provisions being
6 intended to be and being for the sole and exclusive benefit of such Persons.

7 **PART 13.05. Inconsistent Provisions.** All ordinances, orders or resolutions,
8 or parts thereof, which are in conflict or inconsistent with any provision of this
9 Ordinance are hereby repealed to the extent of such conflict and the provisions of
10 this Ordinance shall be and remain controlling as to the matters contained in this
11 Ordinance.

12 **PART 13.06. Rating Agencies.**

13 (a) If Moody's, Fitch or Standard & Poor's maintain a rating
14 on the Bonds such rating agencies shall receive notice by or on behalf
15 of the City, of:

16 (i) any change to the Paying Agent/Registrar,
17 Tender Agent or Remarketing Agent;

18 (ii) any material amendment pursuant to Article
19 9 of this Ordinance or any amendment or supplement to
20 the Series 2008 Liquidity Agreement, including, but not
21 limited to, any expiration, termination, or extension
22 thereof; and of defeasance of the Bonds in full.

23 (iii) Any changes to the Liquidity Facility, the
24 Credit Facility, or any agreement with the Liquidity
25 Facility Provider, Credit Facility Provider, Remarketing
26 Agent or Tender Agent pertaining to the Bonds;

27 (iv) Any expiration, termination or extension of
28 any Liquidity Facility or Credit Facility or the obtaining
29 of an Alternate Liquidity Facility or Alternate Credit
30 Facility pertaining to the Bonds;

31 (v) Any action in connection with a change to a
32 Daily Mode, Term Rate Mode or Fixed Rate Mode or
33 Commercial Paper Mode; and

1 (vi) Any redemption, defeasance, mandatory
2 tender, Mandatory Purchase Date or acceleration of all
3 the Outstanding Bonds.

4 (b) Information Provided to Rating Agencies. The City
5 agrees to provide any Rating Agency with respect to the Bonds of a
6 subseries such information with respect to the City as the Rating
7 Agency reasonably requests from time to time, which information is
8 customarily prepared by the City and publicly available

9 (c) Rating Agency Requirements. Notwithstanding anything
10 herein to the contrary and as authorized by law, the Pricing Officer is
11 hereby authorized to include in the Pricing Certificate any provision
12 required by Moody's, Fitch or Standard & Poor's required to obtain
13 the initial ratings on the Bonds.

14 **PART 13.07. Demands; Requests.** All notices, demands and requests to be
15 given to or made hereunder by the City, the Paying Agent/Registrar, the Tender
16 Agent, the Remarketing Agents, the Liquidity Facility Providers, the Credit
17 Facility Providers, the Rating Agencies shall, unless otherwise expressly provided
18 herein, be given or made in writing and is deemed to be properly given or made if
19 by United States registered or certified mail, return receipt requested, postage
20 prepaid, addressed as set forth below. Notices, demands and requests that may be
21 given by Electronic Means may be sent to the telephone or fax numbers, as
22 applicable, set forth below:

As to the City:

City of Austin
700 Lavaca, Suite 1510
Austin, Texas 78701
Attention: Art Alfaro, Treasurer
Phone: (512) 974-7882
Fax: (512) 370-3838
E-Mail: art.alfaro@ci.austin.tx.us

As to the Paying Agent/Registrar:

Deutsche Bank
25 DeForest Avenue, 2nd Floor
Summit, New Jersey 07901
Attention: Trust & Securities Services
Phone: (908) 608-4094
Fax: (908) 608-3220
E-mail: debra.schwalb@db.com

As to the Tender Agent:

Deutsche Bank
25 DeForest Avenue, 2nd Floor
Summit, New Jersey 07901
Attention: Trust & Securities Services
Phone: (908) 608-4094
Fax: (908) 608-3220
E-mail: debra.schwalb@db.com

As to the Remarketing Agent(s):

The Address, Phone Number, Fax
Number and E-mail Address Specified
in the Related Remarketing Agreement

As to the Credit Facility Provider(s) and
Liquidity Facility Provider(s)

The Address, Phone Number, Fax
Number and E-mail Address Specified
in the Related Credit Facility or
Liquidity Facility, as the case may be

As to the Auction Agent:

The Address, Phone Number, Fax
Number and E-mail Address Specified
in the Auction Agreement

As to the Broker-Dealer(s):

The Address, Phone Number, Fax Number and E-mail Address Specified in the Related Broker-Dealer Agreement

As to the Series 2008 Interest Rate Management Agreement Counterparty:

Morgan Keegan Financial Products, Inc.
50 North Front Street, 16th Floor
Memphis, Tennessee 38103
Attention: Swap Desk
Fax: (901) 579-4363

and

Deutsche Bank, AG, New York Branch
60 Wall Street
New York, New York 10005
Attention: Patrick Marsh
Fax: (212) 797-2210 or (212) 797-2218

As to the Rating Agencies:

Fitch Ratings, Inc.
One State Street Plaza
New York, New York 10004
Attention: Municipal Structured Finance
Phone:
Fax:
Email: trudy.zibit@fitchratings.com

Moody's Investors Service, Inc.
7 World Trade Center at 250 Greenwich Street
Public Finance Group
New York, New York 10007
Attention: MSPG – 23rd Floor
Phone:
Fax: 212-553-1066
Email: MSPGSurveillance@moodys.com

Standard & Poor's
55 Water Street, 38th Floor
New York, New York 10041
Phone:
Fax:
Email: pubfin_structured@sandp.com

or to such other address as is provided by the entity.

The City shall provide, or cause to be provided, each rating agency then maintaining a rating on the Bonds with the notice of any redemption and the notice of any Mandatory Purchase Dates.

PART 13.08. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is 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 V.T.C.A., Government Code, Chapter 551.

PART 13.09. Authorized Officials. Any agreement, instrument, certificate or other document which this Ordinance provides may be approved or executed by one or more Authorized Officials, including the Pricing Certificate, shall be considered conclusively to be approved, executed and delivered on behalf of the City, as its act and deed, in the form and content executed and delivered by an Authorized Official. Any finding or determination made by an Authorized Official relating to the issuance of the Bonds and the terms and execution of documents in connection therewith, and the terms and execution of the other agreements and documents referenced in this Ordinance, shall have the same force and effect as a finding or determination made by the City Council.

PART 13.10. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

1 **PART 13.11. Effective Date.** This Ordinance is hereby passed one reading
2 as authorized by V.T.C.A., Government Code, Section 1201.028 and shall be
3 effective immediately upon its passage and adoption.

4 [remainder of page left blank intentionally]
5

DRAFT

1 **PASSED AND APPROVED**

2
3
4
5
6 July 24, 2008

§
§
§

Will Wynn
Mayor

9
10 **APPROVED:**

11 David Allan Smith
12 City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

13
14 **(CITY SEAL)**

15
DRAFT