

**ORDINANCE NO. 20100624-030**

**AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE OF A REFUNDING BOND FOR THE PURPOSE OF REFINANCING NOTES ISSUED IN 1999 TO SECURE A HUD 108 LOAN, DELEGATING AUTHORITY TO THE CITY MANAGER TO APPROVE CERTAIN TERMS OF THE BOND, AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.**

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

**PART 1. FINDINGS:** Council finds that:

- (A) the City of Austin, Texas (City, or Issuer), is a political subdivision of the state of Texas and is a home-rule city operating pursuant to the Texas Local Government Code and its Charter; and
- (B) in 1996, the City authorized the execution and delivery of promissory notes in a principal amount not to exceed \$8,785,000, pursuant to Ordinance No. 960718-G approved by council on July 18, 1996, from the United States Department of Housing and Urban Development (HUD) under Section 108 of title 1 of the Housing and Community Development Act of 1974 (HUD Act) to assist in financing construction of the Millennium Youth Entertainment Center (formerly known as the Central City Entertainment Center) in east Austin; and
- (C) pursuant to Section 8 of Ordinance No. 960718-G, as approved by council, the City secured, executed, and delivered a replacement note evidenced and secured by twenty City of Austin Promissory Notes B-94-MC-48-0500, in the aggregate principal amount of \$7,830,000 (the 1999 Notes); and
- (D) the 1999 Notes are currently outstanding in the aggregate principal amount of \$3,415,000 and mature on August 1 in each of the years 2011 through 2016; and
- (E) the City pledged federal Community Development Block Grant funds and various city-owned properties to secure the 1999 Notes; and
- (F) on May 4, 2010, a representative of HUD contacted the City and offered the opportunity to refinance the existing 1999 Notes maturing in the years 2011 through 2016 (the Refunded Notes) at historically low interest rates as a result of a public offering being conducted by HUD on or about July 21, 2010; and

(G) the Refunded Notes mature on August 1 in the years and in the principal amounts, and bear interest at the rates set forth below with the estimated projected interest rates after HUD refunding provided for comparison:

Existing Interest Rate on remaining Payments and Projected Rates:

<u>Maturity</u>	<u>Principal Amount (\$)</u>	<u>Existing Interest Rate (%)</u>	<u>Projected Interest Rate (%)</u>
1-Aug-2011	\$550,000	6.16%	0.42%
1-Aug-2012	\$585,000	6.26%	1.04%
1-Aug-2013	\$625,000	6.33%	1.49%
1-Aug-2014	\$670,000	6.41%	1.93%
1-Aug-2015	\$715,000	6.49%	2.43%
1-Aug-2016	\$270,000	6.59%	2.81%

(H) HUD projected that the interest rates on a new obligation issued by the City to refund the Refunded Notes could range from approximately 0.42% to 2.81%, which would result in an average expected rate of approximately 1.69% and could result in approximately \$467,981 in net present value of interest savings, but the final interest rates and actual savings will not be known until HUD conducts its public offering; and

(I) the City has received from HUD and has reviewed a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. Section 5308, for Series HUD 2010-A Certificates (Contract), which contains all terms related to the new loan being offered by HUD to refund the Refunded Notes (the 2010 HUD 108 Loan), including the form of the bond to evidence the City's repayment obligations related to the 2010 HUD Loan; and

(J) all of the Refunded Notes mature or are subject to redemption prior to maturity within 6 years of the date of the bond authorized by this Ordinance; and

(K) Chapter 1207, Texas Government Code (Chapter 1207), particularly Section 1207.002, authorizes the City to issue refunding bonds to refund all or any part of the City's outstanding bonds, notes, or other general or special obligations; and

(L) Section 1207.081 provides that refunding bonds may be issued to be exchanged for, and on the surrender and cancellation of, the obligation to be refunded; and

(M) Section 1207.005 further provides that a refunding bond may be secured by and made payable from taxes, revenue, or both, another source, or a combination of sources to the extent the City is otherwise authorized to secure payment by any type of bond by or from that source or those sources; and

(N) Section 1207.007 further authorizes the City Council to delegate to any officer or employee of the City the authority to establish the terms and details related to the issuance and sale or exchange of the refunding bonds, including the form and designation of the refunding bonds, the principal amount of the refunding bonds and the amount of the refunding bonds to mature in each year, the dates, price, interest rates, interest payment dates, principal payment dates, and redemption features of the refunding bonds, any other details relating to the issuance and sale or exchange of the refunding bonds as specified by the City Council in the proceedings authorizing the issuance of the refunding bonds; and

(O) the City Council of the City finds and declares a public purpose and deems it advisable and in the best interests of the City to issue a bond (defined in Section 2 below as the Bond) to refund the Refunded Notes in order to achieve debt service savings for the benefit of the taxpayers of the Issuer; and

(P) the City Council further finds that issuing the Bond authorized by this Ordinance for the purposes described in these findings is in the best interests of the City since it is reasonably expected and highly likely that since the interest rates on the bond (as projected by HUD) are expected to be between 3.78% and 5.74% less than the current rates on the Refunded Notes, the City will achieve significant interest cost savings; nevertheless, the manner in which the refunding is being executed does not make it practicable for the City Council to make a determination at this time as to the actual interest cost savings that will be achieved upon issuance of the Bond; and

(Q) the Bond authorized by this Ordinance is to be issued pursuant to Chapter 1207 and other applicable laws of the State of Texas; and

(R) the City Council now finds it necessary and appropriate to approve the form and content of the Contract and the Bond, including the pledge of funds and revenues described in the Contract and the Bond, and to authorize certain City officials to execute the Contract and the Bond and all other documents related to this issuance, and to take all other actions deemed necessary, in connection with obtaining the 2010 HUD 108 Loan; and

(S) it is officially found and determined that the meeting at which the Ordinance was adopted was open to the public, and public notice of the time, place, and purpose this meeting was given all as required by Chapter 551 of the Texas Government Code.

**PART 2. CONTRACT APPROVAL:** The City Council approves the Contract in substantially the form attached to this Ordinance as Exhibit A and further authorizes the Mayor, the City Manager, Assistant City Manager, the Director of Finance of the City,

the City Clerk, the Director of the City's Neighborhood Housing and Community Development Office, and the City Treasurer to execute the Contract and all other documents related to the 2010 HUD 108 Loan and to approve any and all changes to the Contract from the form approved by this Ordinance, and such approval shall be evidence by the signature of such official of the City and the delivery of the executed Contract concurrent with the initial delivery of the Contract to HUD; and further

**PART 3. BOND APPROVAL:** A bond of the City, in substantially the form attached to this Ordinance as Exhibit B (the Bond) is authorized by the City Council to be issued and delivered in the aggregate principal amount of \$3,415,000 for the purpose of refunding all outstanding City of Austin, Texas, Promissory Notes B-94-MC-48-0500, maturing in the years 2011 through 2016 inclusive. The Bond shall be (i) payable in principal installments on the dates and in the amounts set forth in the Bond, (ii) be secured as provided in the Bond and the Contract (and as further described below); (iii) bear interest from August 1, 2011 at the rates approved by the City Manager (as further described below); (iv) be delivered in exchange for the Refunded Notes in the manner set forth in the Contract; and (v) contain all other terms and provisions as set forth in the Bond and the Contract. The Mayor and the City Manager and the City Clerk are hereby authorized to execute the Bond on behalf of the City and to approve any and all changes to the Bond from the form approved by this Ordinance and such approval shall be evidenced by the signature of the official of the City on the Bond and the delivery of the executed Bond concurrent with the initial delivery of the Bond to HUD in accordance with the requirements set forth in the Bond and the Contract.

**PART 4. DELEGATION OF CERTAIN TERMS** As authorized by Section 1207.007, the City Manager is authorized, appointed, and designated as the officer of the City to act on behalf of the City to effect the sale and delivery of the Bond in the manner set forth in the Contract and to establish and approve the respective rate of interest to be borne on each principal installment (but in no event to exceed 6.06% for any principal installment date, which is the lowest rate of interest currently being born by the Refunded Notes), and to approve all other matters relating to the issuance, sale, and delivery of the Bonds. The City Manager, acting on behalf of the City, is further authorized to complete the "Interest Rate" column under "Schedule P&I" attached to the Bond to be issued and delivered pursuant to this Ordinance and pursuant to the Contract with the final interest determined following public offering by HUD.

**PART 5. PLEDGE OF CERTAIN FUNDS AND REVENUES TO SECURE NOTE:** Without limiting the full and complete approval of the form of the Contract set forth in Section 1 above, the City Council specifically authorizes the lien on and pledge of the funds and revenues of the City as set forth in Sections 5 and 15 of the Contract, including:

- (i) all allocations or grants which have been made or for which the City may become eligible under Section 106 of the HUD Act, as well as any grants which are or may become available to the City pursuant to Section 108(q) of the HUD Act;
- (ii) program income, as defined at 24 CFR 570.500(a) (or any successor regulation), directly generated from the use of the "Guaranteed Loan Funds" (as defined in the Contract);
- (iii) other security as described in paragraph 15, et seq., of the Contract or incorporated in the Contract by paragraph D, as applicable and if any;
- (iv) all proceeds (including insurance and condemnation proceeds) from any of the foregoing; and
- (v) all funds or investments in the accounts established pursuant to paragraphs 1 and 6 of the Contract.

**PART 6. APPROVAL OF ALL OTHER DOCUMENTS AND ACTIONS:** The City Council hereby authorizes the City Manager, the Assistant City Manager, and the Director of Finance, and the Director of the City's Neighborhood Housing and Community Development Office to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, documents and agreements, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Contract and the Bond, to obtain the 2010 HUD 108 Loan, and to obtain the Texas Attorney General's approval of the Contract and the Bond.

**PART 7. ENFORCEABILITY OF ORDINANCE:** If any section, paragraph, clause, or provision of this Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance. In case any obligation of the City authorized or established by this Ordinance is held to be in violation of law as applied to any person or any circumstance, such obligation shall be deemed to be the obligation of the City to the fullest extent permitted by law.

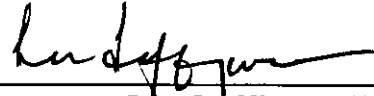
**PART 8. INCORPORATION OF FINDINGS:** The City Council finds that the statements set forth in the findings of this Ordinance are true and correct and the City Council hereby incorporates these findings as part of this Ordinance.

**PART 9. EFFECTIVE DATE:** Pursuant to Section 1201.028 of the Texas Government Code this Ordinance shall be effective immediately upon adoption.

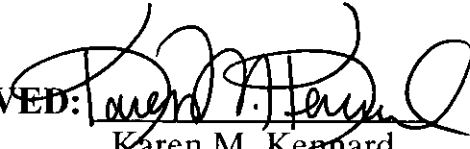
**PASSED AND APPROVED**

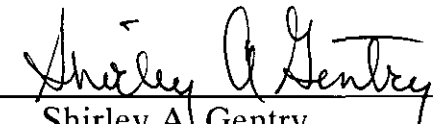
\_\_\_\_\_, June 24, 2010

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Lee Leffingwell  
Mayor

**APPROVED:**   
Karen M. Kennard  
Acting City Attorney

**ATTEST:**   
Shirley A. Gentry  
City Clerk

## **EXHIBIT A**

## U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, 42 U.S.C. §5308

#### For Series HUD 2010-A Certificates

This Contract for Loan Guarantee Assistance ("Contract") is entered into by the City of Austin, Texas, as Borrower (the "Borrower"), and the Secretary of Housing and Urban Development ("Secretary"), as guarantor for the Guarantee made pursuant to section 108 ("Section 108") of title I of the Housing and Community Development Act of 1974, as amended (the "Act") and 24 CFR Part 570, Subpart M, of the bond executed contemporaneously herewith and numbered B-94-MC-48-0500, in the Aggregate Principal Amount of \$3,415,000, and any amended bond or bonds issued in substitution for such bond and having the same bond number (the "Bond"). This is one of multiple Contracts under the Funding Approval ("Commitment") of the same number, which was approved by the Secretary on February 7, 1995. Such Aggregate Principal Amount will be paid or credited to the account of the Borrower pursuant hereto (including any funds used to pay off prior interim notes or other obligations refinanced by the Bond), and all such amounts are collectively referred to herein as the "Guaranteed Loan Funds." The Bond (including the Fiscal Agency Agreement and the Trust Agreement as defined in the Bond and incorporated therein) is hereby incorporated into the Contract. Terms used in the Contract with initial capital letters and not otherwise defined in the text hereof shall have the respective meanings given thereto in the Bond. The Fiscal Agency Agreement and the Trust Agreement are sometimes collectively referred to herein as the "Fiscal Agency/Trust Agreements," and the Fiscal Agent and the Trustee are sometimes collectively referred to as the "Fiscal Agent/Trustee."

#### PART I

- A. **The Bond.** The Bond is payable to the Trustee as Registered Holder. On the Public Offering Date, it is expected that trust certificates backed by the Bond and similar obligations issued by other Section 108 borrowers, denominated "Section 108 Government Guaranteed Participation Certificates Series HUD 2010-A," will be purchased for a purchase price of the full Aggregate Principal Amounts thereof by underwriters selected by the Secretary (the



"Underwriters") pursuant to an Underwriting Agreement between the Underwriters and the Secretary, at a closing on such Public Offering Date as determined by the Secretary and the Underwriters. The Borrower agrees that the interest rate at which the trust certificate of a specified maturity is sold to the Underwriters shall be the interest rate inserted on the Public Offering Date in Schedule P&I of the Bond for the Principal Amount of corresponding maturity. The Bond shall be effective as an obligation of the Borrower only upon its delivery by the Secretary to the Fiscal Agent/Trustee and sale to the Underwriters at the closing on the Public Offering Date. The Borrower authorizes the Secretary to deliver the Bond, together with the Secretary's Guarantee thereof, to the Fiscal Agent/Trustee as of such closing on the Public Offering Date, in accordance with the Fiscal Agency/Trust Agreements. After the Public Offering Date, the Borrower agrees that the Trustee pursuant to the Trust Agreement will maintain the books and records of all payments on the Bond and all Principal Amounts and interest rates on such Principal Amounts.

- B. **Consents.** By execution of this Contract, the Borrower ratifies and consents to the Secretary's selection of the Underwriters and authorizes the Secretary to negotiate with the Underwriters the terms of the Underwriting Agreement and of the public offering of interests in the trust certificates to investors (including the applicable interest rates). In addition, by execution hereof the Borrower ratifies and consents to the Secretary's selection of the Fiscal Agent/Trustee and agrees to the respective terms of the Fiscal Agency/Trust Agreements.
- C. **Prior Contracts.** As of the date of the Secretary's Guarantee of the Bond, this Contract supersedes any prior Contract for Loan Guarantee Assistance entered into between the parties with respect to the Guaranteed Loan Funds, the terms of the Secretary's Guarantee, and any other matter covered by this Contract, provided that any such prior Contract continues to govern any action taken by the Borrower or the Secretary pursuant thereto and prior to the Secretary's Guarantee of the Bond (except for the provisions of paragraph 4 of this Contract). Notwithstanding the preceding sentence, if such prior Contract contained provisions for security for the benefit of the Secretary in addition to the security identified in paragraphs 5(a), 5(b), 5(d), or 5(e) hereof, which security may be generally set forth or incorporated in paragraph 5(c) (and any related

provisions incorporated in paragraph 12) of such prior Contract, or may be set forth in paragraph 15 or any succeeding paragraphs (including related provisions incorporated in paragraph 12) of such prior Contract, such additional security provisions of the prior Contract are hereby incorporated in this Contract and shall be deemed a part hereof.

## II

### 1. **Receipt, Deposit and Use of Guaranteed Loan Funds.**

(a) Except for fees and charges deducted on the Public Offering Date pursuant to paragraph 4(a) by the Fiscal Agent/Trustee, or funds used to pay off any interim obligation refinanced by the Bond, the Guaranteed Loan Funds shall be electronically transferred in accordance with the Borrower's instructions for deposit in a separate, identifiable custodial account (the "Guaranteed Loan Funds Account") with a financial institution whose deposits or accounts are Federally insured. The Guaranteed Loan Funds Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Account" (**Attachment 1**) and shall be continuously maintained for the Guaranteed Loan Funds. Such Letter Agreement must be executed when the Guaranteed Loan Funds Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.)

The Borrower shall make withdrawals from said account only for payment of the costs of Section 108 activities approved by HUD, for transfer to the Loan Repayment Account or for the temporary investment of funds pursuant to this paragraph 1(a). Such temporary investment of funds into the Guaranteed Loan Funds Investment Account shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Guaranteed Loan Funds Account. At that time, any balance of funds in the Guaranteed Loan Funds Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof, held in the Guaranteed Loan Funds Investment Account.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with the cash requirements of the approved activities. In no event shall the investments mature on or after N/A, or have maturities which exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Guaranteed Loan Funds Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Investment Account" (**Attachment 2**), which account shall be maintained for all Government Obligations purchased with funds from the Guaranteed Loan Funds Account. The Guaranteed Loan Funds Investment Account need only be established if and when the Borrower is required to invest, or otherwise invests, the Guaranteed Loan Funds in Government Obligations. Such Letter Agreement must be executed when the Guaranteed Loan Funds Investment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) All proceeds and income derived from such investments shall be returned to the Guaranteed Loan Funds Account.

All funds in the Guaranteed Loan Funds Account or the Guaranteed Loan Funds Investment Account must be withdrawn and disbursed by the Borrower for approved activities by N/A. Any funds remaining in either Account after this date shall be immediately transferred to the Loan Repayment Account established pursuant to paragraph 6 of this Contract.

(b) The Borrower shall by the fifteenth day of each month provide the Secretary with a written statement showing the balance of funds in the Guaranteed Loan Funds Account and the withdrawals from such account during the preceding calendar month, and a statement identifying the obligations and their assignments in the Guaranteed Loan Funds Investment Account, until such Accounts are fully disbursed.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Bond, all right, title, and interest of the Borrower in and to the Guaranteed Loan Funds and Guaranteed Loan Funds Investment Accounts shall immediately vest in the Secretary for use in making payment on the Bond, purchase of Government Obligations in

accordance with paragraph 10, or payment of any other obligations of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, in each case as elected by the Secretary in his sole discretion.

2. **Payments Due on Bond.** The Borrower shall pay to the Fiscal Agent/Trustee, as collection agent for the Bond, all amounts due pursuant to the terms of the Bond. In accordance with the Bond and the Fiscal Agency/Trust Agreements, payment shall be made by 3:00 P.M. (New York City time) on the seventh Business Day (the "Bond Payment Date") preceding the relevant Interest Due Date or Principal Due Date (each as defined in the Bond). If any Bond Payment Date falls on a day that is not a Business Day, then the required payment shall be made on the next Business Day. Payment may be made by check or wire transfer.

Upon final payment of all amounts due to Holders under the Bond, including any payment made by the Secretary pursuant to the Guarantee, the Fiscal Agent/Trustee is required by the Fiscal Agency/Trust Agreements to return the Bond to the Secretary. Upon final payment to the Secretary of any amounts due as a result of Guarantee Payments or otherwise due under this Contract, the Secretary will cancel and return the Bond to the Borrower in discharge of the Borrower's obligations under the Bond.

3. **Selection of New Fiscal Agent or Trustee.** The Secretary shall select a new Fiscal Agent or Trustee if the Fiscal Agent or Trustee resigns or is removed by the Secretary. The Borrower hereby consents in advance to any such selection and to any changes in the Fiscal Agency/Trust Agreements agreed to by any Fiscal Agent or Trustee and the Secretary, subject to paragraph 4(d) of this Contract.
4. **Payments Due Fiscal Agent or Trustee; Documents to the Secretary.**

(a) The Borrower agrees to pay the Borrower's share, as determined by the Secretary, of the customary and usual issuance, underwriting, and other costs related to the public offering and future administration of the Bond and the trust certificates, as approved by the Secretary, including the cost of reimbursement and/or compensation of the Trustee pursuant to the Trust Agreement, including Sections 3.11 and 7.01 thereof. In connection with the public offering, such payment shall either be made by wire

transfer to the Trustee on the day prior to the Public Offering Date or shall be deducted from the Guaranteed Loan Funds on the Public Offering Date.

(b) The Borrower shall submit to the Secretary not later than twelve (12) Business Days prior to the Public Offering Date applicable to the Bond, this executed Contract, the executed Bond, and an opinion acceptable to the Secretary from the Borrower's counsel to the effect that: (i) the governing body of the Borrower has authorized by resolution or ordinance, in accordance with applicable State and local law, the issuance of the Bond and the execution of this Contract; (ii) the Bond and this Contract are valid, binding, and enforceable obligations of the Borrower; (iii) the pledge of funds pursuant to 24 CFR §570.705(b)(2) and paragraph 5(a) of this Contract is valid and binding; and (iv) there is no outstanding litigation that will affect the validity of the Bond or this Contract. In addition, the Borrower shall submit any other additional documents or opinions specifically required by this Contract (e.g., paragraph 5(c), or paragraph 15, *et seq.*), at the time required thereby.

(c) The Borrower agrees to reimburse the Underwriters upon demand by the Secretary for the Borrower's share, as determined by the Secretary, of all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) incurred in connection with a proposed public offering, if the Underwriters incur such additional costs for the public offering because the Borrower withdraws from the offering within ten Business Days of the Public Offering Date, or if the Borrower fails for any reason timely to submit in acceptable form any document required by this Contract (including paragraph 4(b)) to be submitted before the Public Offering Date. By execution and delivery of this Contract to the Secretary, the Borrower hereby expressly authorizes the Secretary to pay amounts due under this paragraph from funds pledged under paragraph 5(a) of this Contract.

(d) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses, or any indemnification by the Borrower from any source other than funds or other security pledged pursuant to paragraphs D (if applicable), 5, or 15, *et seq.*, of this Contract.

5. **Security.** The Borrower hereby pledges as security for repayment of the Bond, and such other charges as may be authorized in this Contract, the following:

(a) All allocations or grants which have been made or for which the Borrower may become eligible under Section 106 of the Act, as well as any grants which are or may become available to the Borrower pursuant to Section 108(q).

(b) Program income, as defined at 24 CFR 570.500(a) (or any successor regulation), directly generated from the use of the Guaranteed Loan Funds.

(c) Other security as described in paragraph 15, *et seq.*, or incorporated herein by paragraph D hereof, as applicable.

(d) All proceeds (including insurance and condemnation proceeds) from any of the foregoing.

(e) All funds or investments in the accounts established pursuant to paragraphs 1 and 6 of this Contract.

6. **Loan Repayment Account.**

(a) All amounts pledged pursuant to paragraphs 5(b), 5(c), and 5(d) of this Contract shall be deposited immediately on receipt in a separate identifiable custodial account (the "Loan Repayment Account") with a financial institution whose deposits or accounts are Federally insured. The Loan Repayment Account shall be established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Account" (**Attachment 1**) and shall be maintained for such pledged funds. The Loan Repayment Account need only be established if and when the Borrower receives amounts pledged pursuant to paragraph 5(b), 5(c) or 5(d). Such Letter Agreement must be executed when the Loan Repayment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) Borrower shall make withdrawals from said account only for the purpose of paying interest and principal due on the Bond (including the purchase of Government Obligations in accordance with paragraph 10 hereof), for payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or for the temporary investment of funds pursuant to this paragraph, until final payment and

discharge of the indebtedness evidenced by the Bond, unless otherwise expressly authorized by the Secretary in writing. Such temporary investment of funds shall be required within three Business Days after the balance of deposited funds exceeds the amount of the Federal deposit insurance on the Loan Repayment Account. At that time, any balance of funds in the Loan Repayment Account exceeding such insurance coverage shall be fully (100%) and continuously invested in Government Obligations, as defined in paragraph 10 hereof.

All temporary investments, whether or not required as above, shall be limited to Government Obligations having maturities that are consistent with cash requirements for payment of principal and interest as required under the Bond. In no event shall the maturities of such investments exceed one year. All such investments shall be held in trust for the benefit of the Secretary by the above financial institution in an account (the "Loan Repayment Investment Account") established and designated as prescribed in the attached form document entitled "Letter Agreement for Section 108 Loan Guarantee Program Custodial Investment Account" (**Attachment 2**), which account shall be maintained for all Government Obligations purchased with funds from the Loan Repayment Account. Such Letter Agreement must be executed when the Loan Repayment Investment Account is established. (A fully executed copy of such Letter Agreement shall be submitted to the Secretary within thirty days of its execution.) All proceeds and income derived from such investments shall be returned to the Loan Repayment Account.

(b) Borrower shall by the fifteenth day of each month, provide the Secretary with a written statement showing the balance of funds in the Loan Repayment Account and the deposits and withdrawals of all funds in such account during the preceding calendar month and a statement identifying the obligations and their assignments in the Loan Repayment Investment Account, for any month in which there are funds in such Accounts.

(c) Upon the Secretary giving notice that the Borrower is in Default under this Contract or the Bond, all right, title, and interest of the Borrower in and to the Loan Repayment and Loan Repayment Investment Accounts shall immediately vest in the Secretary for use in making payment on the Bond, purchase of Government Obligations in accordance with paragraph 10, or payment of any other obligation of the Borrower under this Contract or the Fiscal

Agency/Trust Agreements, in each case as elected by the Secretary in his sole discretion.

7. **Use of CDBG, EDI or BEDI Funds for Repayment.** Any funds available to the Borrower under Section 106 of the Act (including program income derived therefrom) are authorized to be used by the Borrower for payments due on the Bond, Optional Redemption (as defined in the Bond), payment of any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, or the purchase of Government Obligations in accordance with paragraph 10. Any funds specifically available to the Borrower for such payments or as a debt service reserve under an EDI Grant Agreement pursuant to Section 108(q) of the Act which supports the eligible project(s) and activities financed by the Bond may also be used therefor; any other use of Section 108(q) funds for such purposes shall require the prior written approval of the Secretary. Unless otherwise specifically provided herein or unless otherwise expressly authorized by the Secretary in writing, the Borrower shall substantially disburse funds available in the Loan Repayment or the Loan Repayment Investment Accounts before funds from grants under Section 106 of the Act are withdrawn from the U.S. Treasury for such purposes.
8. **Secretary's Right to Restrict Use of CDBG Funds to Repayment.** Upon a determination by the Secretary that payments required by paragraph 2 and/or paragraph 4 of this Contract are unlikely to be made as specified, the Secretary may give the Borrower notice that the availability to the Borrower of funds pledged under paragraph 5(a) of this Contract for purposes other than satisfaction of the pledge is being restricted. This restriction shall be in an amount estimated by the Secretary to be sufficient to ensure that the payments referred to in paragraph 2 and/or paragraph 4 hereof are made when due. This restriction may be given effect by conditioning the restricted amounts to prohibit disbursement for purposes other than satisfaction of the pledge at the time such restricted funds are approved as grants, by limiting the Borrower's ability to draw down or expend the restricted funds for other purposes, and by disapproving payment requests submitted with respect to such grants for purposes other than satisfaction of the pledge.
9. **Secretary's Right to Use Pledged Funds for Repayment.** The Secretary may use funds pledged under paragraph 5(a) of this Contract or funds restricted under grants pursuant to paragraph 8 of this Contract to make any payment required of the Borrower



under paragraph 2 and/or paragraph 4, if such payment has not been timely made by the Borrower.

10. **Defeasance.** For purposes of this Contract, the Bond shall be deemed to have been paid (defeased) if there shall have been deposited with the Trustee either moneys or Government Obligations (defined below), which in the sole determination of the Secretary, mature and bear interest at times and in amounts sufficient, together with any other moneys on deposit with the Trustee for such purpose, to pay when due the principal and interest to become due on the Bond. The Aggregate Principal Amount of the Bond or any unpaid Principal Amount may be so defeased, in whole or in part, as of any Interest Due Date, or any other Business Day acceptable to both HUD and the Borrower. In accordance with the Bond and the Trust Agreement, the Borrower shall give timely notice and written instructions to the Secretary and the Trustee concerning any principal amounts proposed to be defeased, including any Optional Redemptions proposed, which instructions shall be approved by the Secretary. If the unpaid Aggregate Principal Amount of the Bond guaranteed pursuant to this Contract shall be defeased and deemed to have been paid in full, then the Borrower shall be released from all agreements, covenants, and further obligations under the Bond.

"Government Obligation" means a direct obligation of, or any obligation for which the full and timely payment of principal and interest is guaranteed by, the United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Bonds and Bonds - State and Local Government Series or certificates of ownership of the principal of or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus (exclusive of undivided profits) in excess of \$100,000,000.

11. **Default.**

(a) A Default under the Bond and this Contract shall occur upon failure by the Borrower to:

(i) pay when due an installment of principal or interest on the Bond; or (ii) punctually and properly perform, observe, and comply with any covenant, agreement, or condition contained in: (A) this

Contract, (B) any security agreement, deed of trust, mortgage, assignment, guarantee, or other contract securing payment of indebtedness evidenced by the Bond, or (C) any future amendments, modifications, restatements, renewals, or extensions of any such documents.

(b) The Borrower waives notice of Default and opportunity for hearing with respect to a Default under paragraph 11(a).

(c) In addition to Defaults under paragraph 11(a), the Secretary may declare the Bond in Default if the Secretary makes a final decision in accordance with the provisions of section 111 of the Act and 24 CFR 570.913 (or any successor provisions), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with title I of the Act. Notwithstanding any other provision, following the giving of such reasonable notice, the Secretary may, in the Secretary's sole discretion pending the Secretary's final decision, withhold the guarantee of any or all obligations not yet guaranteed on behalf of the Borrower under outstanding commitments, and/or direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account initiated by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account.

12. **Remedial Actions.** Upon a Default or declaration of Default under this Contract, the Secretary may, in the Secretary's sole discretion, take any or all of the following remedial actions:

(a) With any funds or security pledged under this Contract, the Secretary may (i) continue to make payments due on the Bond, (ii) make an acceleration payment with respect to the principal amount of the Bond subject to Optional Redemption as provided in Section B of the Bond, (iii) purchase Government Obligations in accordance with paragraph 10 of this Contract, (iv) pay any interest due for late payment as provided in the Bond, this Contract, or the Fiscal Agency/Trust Agreements, (v) pay any other obligation of the Borrower under this Contract or the Fiscal Agency/Trust Agreements, and/or (vi) pay any reasonable expenses incurred by the Secretary or the Fiscal Agent/Trustee as result of the Borrower's Default.

(b) The Secretary may withhold the guarantee of any or all obligations not yet guaranteed or the disbursement of any or all grants not yet disbursed in full under outstanding guarantee commitments or grant approvals for the Borrower under Sections 108 and/or 106 of the Act.

(c) The Secretary may direct the Borrower's financial institution to: refuse to honor any instruments drawn upon, or withdrawals from, the Guaranteed Loan Funds Account or the Loan Repayment Account by the Borrower, and/or refuse to release obligations and assignments by the Borrower from the Guaranteed Loan Funds Investment Account or the Loan Repayment Investment Account; and/or direct the Borrower and/or the Borrower's financial institution to transfer remaining balances from the Guaranteed Loan Funds Account to the Loan Repayment Account.

(d) With respect to amounts subject to Optional Redemption, the Secretary may accelerate the Bond.

(e) The Secretary may exercise any other appropriate remedies or sanctions available by law or regulation applicable to the assistance provided under this Contract, or may institute any other action available under law, to recover Guaranteed Loan Funds or to reimburse the Secretary for any payment under the Secretary's Guarantee or any reasonable expenses incurred by the Secretary as a result of the Default.

(f) All notices and submissions provided for hereunder shall be in writing (including by telex, telecopier or any other form of facsimile communication) and mailed or sent or delivered, as to each party hereto, at its address set forth below or at such other address as shall be designated by such party in a written notice to the other party hereto. All such notices and other communications shall be effective when received as follows:

(i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or five Business Days after deposit in the mail, postage prepaid; (iii) if sent by telex, upon receipt by the sender of an answer back; and (iv) if sent by telecopier, upon confirmed receipt.

The Secretary:

U.S. Dept. of Housing and Urban Development  
Attention: Paul Webster, Director  
Financial Management Division  
451 7th Street SW, Room 7180  
Washington, DC 20410

Borrower:

City of Austin, Texas  
Attn: Elizabeth A. Spencer, Acting  
Director  
Neighborhood Housing & Community Development  
1000 East 11<sup>th</sup> Street  
Austin, TX 78702

13. **Limited Liability.** Notwithstanding any other provision of this Contract, the Fiscal Agency/Trust Agreements or the Bond, any recovery against the Borrower for any liability for amounts due pursuant to the Bond, the Fiscal Agency/Trust Agreements and this Contract shall be limited to the sources of security pledged in paragraphs D, 5, or any Special Conditions of this Contract, as applicable. Neither the general credit nor the taxing power of the Borrower, or of the State in which the Borrower is located, is pledged for any payment due under the Bond, the Contract, or the Fiscal Agency/Trust Agreements.
14. **Incorporated Grant Agreement.** The Contract and the Bond are hereby incorporated in and made a part of the Grant Agreement authorized by the Secretary on October 20, 1994 under the Funding Approval for grant number B-94-MC-48-0500 to the Borrower. In carrying out activities with the Guaranteed Loan Funds hereunder, the Borrower agrees to comply with the Act and 24 CFR Part 570, as provided in Subpart M thereof.
15. **Special Conditions and Modifications:**
- (a) The Guaranteed Loan Funds shall be used only to prepay principal amounts due on or after August 1, 2010, under that certain promissory note issued by the Borrower and identified as Note Number B-94-MC-48-0500, Series 1999-A. The Guaranteed Loan Funds shall be deposited in a defeasance account established with the Trustee pursuant to the Contract for Loan Guarantee Assistance executed in connection with the issuance of such promissory note. The Borrower agrees to pay to the Trustee moneys in an amount equal to the amount of principal and interest to become due on such promissory note on August 1, 2010 for deposit in such defeasance account. Such payment shall be in addition to any payment required under paragraph 4(a) of this Contract and shall be made by wire transfer to the

Trustee on the day prior to the Public Offering Date. In addition to the Secretary's rights under paragraph 9 of this Contract, the Secretary may use funds pledged under paragraph 5(a) of this Contract or funds restricted under grants pursuant to paragraph 8 of this Contract to make any payment required of the Borrower under this paragraph 15(a), if such payment has not been timely made by the Borrower.

(b) Additional Grounds for Default. Notice of Default.  
Restriction of Pledged Grants. Availability of Other  
Remedial Actions.

- (i) The Borrower acknowledges and agrees that the Secretary's guarantee of the Bond is made in reliance upon the availability of grants pledged pursuant to paragraph 5(a) (individually, a "Pledged Grant" and, collectively, the "Pledged Grants") in any Federal fiscal year subsequent to the Federal fiscal year ending September 30, 2010 to: (A) pay when due the payments to become due on the Bond, or (B) defease (or, if permitted, prepay) the full amount outstanding on the Bond. The Borrower further acknowledges and agrees that if the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are unlikely to be available for either of such purposes, such determination shall be a permissible basis for any of the actions specified in paragraphs (ii) and (iii) below (without notice or hearing, which the Borrower expressly waives).
- (ii) Upon written notice from the Secretary to the Borrower at the address specified in paragraph 12(f) above that the Secretary (in the Secretary's sole discretion) has determined that Pledged Grants are unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above (such notice being hereinafter referred to as the "Notice of Impaired Security"), the Secretary may limit the availability of Pledged Grants by withholding amounts at the time a Pledged Grant is approved or by disapproving payment requests (drawdowns) submitted with respect to Pledged Grants.
- (iii) If after 60 days from the Notice of Impaired

Security the Secretary (in the Secretary's sole discretion) determines that Pledged Grants are still unlikely to be available for either of the purposes specified in (A) and (B) of paragraph (i) above, the Secretary may declare the Bond in Default and exercise any and all remedies available under paragraph 12. This paragraph (iii) shall not affect the right of the Secretary to declare the Bond and/or this Contract in Default pursuant to paragraph 11 and to exercise in connection therewith any and all remedies available under paragraph 12.

(iv) All notices and submissions provided for hereunder shall be submitted as directed in paragraph 12(f) above.

(c) Notwithstanding any other provision of the Bond or this Contract, the following provisions to assure compliance with Texas law shall govern:

(i) Part I, paragraph A, of the Contract is amended to delete the second sentence thereof, and to insert the following sentence in its place:

"The Borrower agrees that the interest rate at which the trust certificate corresponding to a specified Principal Due Date on Schedule P&I of the Bond is sold to the Underwriters shall be the interest rate inserted on the Public Offering Date in Schedule P&I of the Bond for the Principal Amount corresponding to such Principal Due Date; provided, however, in no event shall the interest rate for any such Principal Due Date exceed 6.06%.

(ii) Paragraph 4(d) of the Contract is amended by deleting the paragraph as written in its entirety and substituting therefor the following:

"(d) The undertakings in paragraphs 3 and 4 of this Contract are expressly subject to the requirement that the Fiscal Agency/Trust Agreements shall in no event require payment of fees or charges, reimbursement of expenses or any indemnification by the Borrower from any source other than funds pledged pursuant to paragraphs

5(a) and (b) of this Contract."

(iii) The provisions of the Fiscal Agency/Trust Agreements (including any future amendments thereto or any new fiscal agency or trust agreements in the future) relating to indemnification, standard of care, choice of law and disposition of unclaimed property as they concern the Borrower are subject to the limitations of this Contract and will be enforceable against the Borrower only to the extent permitted by Texas law. The Secretary further agrees that he will require the Fiscal Agent and Trustee to maintain the registration books referred to in section 5.01 of the Amended and Restated Master Fiscal Agency Agreement and in section 5.03 of the Trust Agreement in a form that can be converted to a writing and a copy of which can be provided to the Borrower in Texas within a reasonable time after request.

(iv) To the extent that a pledge of ad valorem tax is securing payment of all or a portion of the principal of and interest on the Note, acceleration of the maturity date of that portion of the Note shall not be available as a remedy in the event of a default by the Borrower under the Note or this Contract.

[Rest of Page Intentionally Left Blank]

**THE UNDERSIGNED**, as authorized officials on behalf of the Borrower or the Secretary, have executed this Contract for Loan Guarantee Assistance, which shall be effective upon delivery of the Note and Guarantee as of the Public Offering Date (except that paragraphs 4 and 15(a) hereof shall be effective when this Contract is executed on behalf of the Borrower and delivered to the Secretary).

The City of Austin, Texas

**BORROWER**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**SECRETARY OF HOUSING AND URBAN  
DEVELOPMENT**

BY: \_\_\_\_\_  
(Signature)

Yolanda Chávez  
(Name)

Deputy Assistant Secretary  
for Grant Programs \_\_\_\_\_  
(Title)



**ATTACHMENT 1  
TO EXHIBIT A**

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**LETTER AGREEMENT FOR  
SECTION 108 LOAN GUARANTEE PROGRAM  
DEPOSIT ACCOUNT**

---

Name of Institution (and Branch)

---

Street

---

City, State, Zip Code

\*\*\*\*\*

☐ This account is established for funds received by the Borrower under Note(s) guaranteed by the United States Department of Housing and Urban Development (HUD) under the Section 108 Loan Guarantee Program (**Guaranteed Loan Funds Account**).

☐ This account is established for repayment of the Note(s) guaranteed by HUD under the Section 108 Loan Guarantee Program (**Loan Repayment Account**).

☐ This account is established as a debt service reserve under the Section 108 Loan Guarantee Program (**Debt Service Reserve Account**).

You are hereby authorized and requested to establish a deposit account to be specifically designated:

"[Name of Borrower] \_\_\_\_\_, as  
Trustee of United States Department of Housing and Urban Development." All deposits made into such account shall be subject to withdrawal therefrom by the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter withdrawals may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower withdrawals and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any instrument drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. You are permitted,

however, to debit from the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Signature]

Name and Title: \_\_\_\_\_

\*\*\*\*\*

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: \_\_\_\_\_, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, to refuse to honor any instruments drawn upon or withdrawals from such account by parties other than HUD. In no instance shall the funds in the deposit account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to statutory limits.

Name of Institution: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Name and Title: \_\_\_\_\_

**ATTACHMENT 2  
TO EXHIBIT A**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

LETTER AGREEMENT FOR  
SECTION 108 LOAN GUARANTEE PROGRAM  
INVESTMENT ACCOUNT

\_\_\_\_\_  
Name of Institution (and Branch)

\_\_\_\_\_  
Street

\_\_\_\_\_  
City, State, Zip Code

\*\*\*\*\*

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Guaranteed Loan Funds Account **(Guaranteed Loan Funds Investment Account)**.

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Loan Repayment Account **(Loan Repayment Investment Account)**.

☐ This account is established to hold obligations and their assignments, such obligations having been purchased with funds from the Debt Service Reserve Account **(Debt Service Reserve Investment Account)**.

You are hereby authorized and requested to hold obligations and assignments of those obligations in trust for the United States Department of Housing and Urban Development (HUD) in an account specifically designated:

"[Name of Borrower] \_\_\_\_\_, as  
Trustee of United States Department of Housing and Urban Development." All obligations and assignments shall be subject to release to the Borrower named below, unless and until HUD provides you with a notice that it is assuming control over the account. Thereafter, releases may not be made by the Borrower. Within a reasonable period of time, not to exceed two business days, after your receipt of such notice from HUD, you shall so prevent such Borrower releases and, if requested by HUD in writing, shall thereafter forward monthly to HUD, to an account it specifies in its notice, the collected and available balance in such account.

You are further authorized, after receipt of the notice from HUD, to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in this account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by you. . You are permitted, however, to debit from the account your customary fees and charges for maintaining the account and the amount of any deposits that are made to the account and returned unpaid for any reason.

Such account shall also be subject to your standard agreement and documents relating to the opening and maintenance of bank accounts with you. In the event of any conflict between this Letter Agreement and such agreements and documents, this Letter Agreement shall control.

This letter is submitted to you in duplicate. Please execute the duplicate copy of the certificate below, acknowledging the existence of such account, so that we may present the copy signed by you to HUD.

Name of Borrower: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
[Signature]

Name and Title: \_\_\_\_\_

\*\*\*\*\*

The undersigned institution certifies to the United States Department of Housing and Urban Development (HUD) that the account identified is in existence in this institution under account number: \_\_\_\_\_, and agrees with the Borrower named above and HUD to promptly comply with HUD's notice in the manner provided in the above letter, but in no event to exceed two business days. The undersigned institution further agrees, after receipt of the HUD notice as set forth above, , to refuse to honor any request for release of the obligations and assignments from such account by parties other than HUD. In no instance shall the obligations in the account be used to offset funds which may have been advanced to, or on behalf of, the Borrower by the financial institution, except as set forth above. Deposits in this institution are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration up to the statutory limits..

Name of Institution: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

Name and Title: \_\_\_\_\_

## **EXHIBIT B**

# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Fixed Rate Bond for Series 2010-A Certificates

BORROWER: Austin, TX

BOND NO. B-94-MC-48-0500

REGISTERED HOLDER:  
THE BANK OF NEW YORK MELLON

DATE:

AGGREGATE PRINCIPAL  
AMOUNT: \$3,415,000

For value received, the undersigned, the City of Austin (the "Borrower," which term includes any successors or assigns), a public entity or agency organized and existing under the laws of the State (or Commonwealth, if applicable) of Texas, promises to pay to the order of THE BANK OF NEW YORK MELLON, as Registered Holder (the "Holder," which term includes any successors or assigns), the Principal Amounts set forth on the attached Schedule P&I as of each applicable Principal Due Date set forth therein, together with interest on such unpaid Principal Amounts at the rates applicable thereto as specified on such attached Schedule P&I. Interest shall be calculated and payments shall be made in the manner set forth below. The Holder is acting hereunder on behalf of a trust (the "Trust") created pursuant to a Trust Agreement by and between the Secretary of Housing and Urban Development (the "Secretary") and Chemical Bank (now known as The Bank of New York Mellon), as trustee (the "Trustee"), dated as of January 1, 1995, as amended (the "Trust Agreement"), as supplemented by the applicable Supplement to the Trust Agreement, by and between the Secretary and the Trustee.

### A. Principal and Interest

Interest on a Principal Amount of this Bond that is due as of a given date specified on the Schedule P&I attached hereto (such date, the "Principal Due Date" for such Principal Amount) shall accrue at the per annum rate specified on such Schedule P&I from (and including) the date hereof to (but excluding) such Principal Due Date or, if applicable, to the applicable Interest Due Date on which an Optional Redemption (as defined below) occurs. The aggregate of the interest amounts accrued on the entire unpaid Principal Amount of this Bond shall be due semiannually as of February 1 and August 1 of each year (each, an "Interest Due Date"), commencing on February 1, 2011, until the Aggregate Principal Amount listed on the Schedule P&I attached to this Bond is paid in full. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

### B. Optional Redemption

Certain Principal Amounts indicated as being eligible for Optional Redemption on the Schedule P&I hereto may be paid, in whole or in part, at the option of the Borrower as of any



Interest Due Date on or after the date specified in such Schedule (an "Optional Redemption"). In order to elect an Optional Redemption of a redeemable Principal Amount, the Borrower shall give notice of its intention to redeem a Principal Amount to the Trustee and the Secretary not less than 60 days nor more than 90 days prior to the Interest Due Date as of which the Borrower intends to redeem the Principal Amount. The Trustee shall apply any payments received in respect of Optional Redemptions in accordance with written instructions of the Borrower, as approved by the Secretary. Principal Amounts that are not indicated as being eligible for Optional Redemption on such Schedule may not be prepaid.

C. Additional Definitions

For purposes of this Bond, the following terms shall be defined as follows:

"Business Day" shall mean a day on which banking institutions in New York, New York, are not required or authorized to remain closed and on which the Federal Reserve Bank and the New York Stock Exchange are not closed. If any payment (including a payment by the Secretary) is required to be made on a day that is not a Business Day, then payment shall be made on the next Business Day.

"Contract" shall mean the Contract for Loan Guarantee Assistance, and any amendments thereto, between the Secretary and the Borrower, the designated public entity named therein (if applicable), or the State named therein (if applicable), which refers to and incorporates this Bond by the number hereof.

D. Borrower's Timely Payment to Trustee

Notwithstanding anything contained in this Bond, the Borrower, in accordance with the Contract, shall be required to make all payments of interest and principal, including any Optional Redemption payments, directly to the Trustee on the seventh Business Day prior to the appropriate Interest Due Date, Principal Due Date or date of Optional Redemption, as applicable.

E. Interest on Late Payments

If a payment of principal or interest herein provided for has not been duly received by the Holder from either the Borrower or the Secretary by the close of business on the applicable Interest Due Date or Principal Due Date, interest shall accrue on the amount of such payment at the applicable interest rate or rates payable on this Bond, from the relevant due date until the date such payment is made. Nothing in the immediately preceding sentence shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Bond.

F. Applicability of Fiscal Agency Agreement and Trust Agreement

This Bond and payments made hereunder shall be administered pursuant to the terms of the Trust Agreement and are subject to such agreement. The terms and provisions of the Trust Agreement, insofar as they affect the rights, duties and obligations of the Holder and/or the Borrower, are hereby incorporated herein and form a part of this Bond. Capitalized terms not

defined in this Bond shall have the meanings ascribed to them in Trust Agreement. The Amended and Restated Master Fiscal Agency Agreement dated as of May 17, 2000, between the Secretary and The Chase Manhattan Bank (now known as The Bank of New York Mellon), as Fiscal Agent (the "Fiscal Agency Agreement") provides for JPMorgan Chase Bank, acting as Fiscal Agent to perform certain duties, including the duties of registrar for this Bond until this Bond is canceled or a new registrar appointed in accordance with the Fiscal Agency Agreement. The Trust Agreement provides for the Trustee to perform certain duties, including the duties of paying agent and collection agent for this Bond until a new Trustee is appointed in accordance with the Trust Agreement. This Bond may be surrendered to the Fiscal Agent for registration of transfer or exchange, as provided in the Fiscal Agency Agreement. The Fiscal Agent and the Trustee shall permit reasonable inspection to be made of a copy of the Fiscal Agency Agreement or Trust Agreement kept on file at its corporate trust office. Neither the Fiscal Agency Agreement nor the Trust Agreement shall change the Borrower's payment obligations under this Bond.

G. Applicability of Contract and Secretary's Guarantee

This Bond evidences indebtedness incurred pursuant to and in accordance with the Contract and pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5308) (the "HCD Act"). This Bond is subject to the terms and provisions of the Contract, to which Contract reference is hereby made for a statement of said terms and provisions and for a description of the collateral security for this Bond. The payment of principal on the applicable Principal Due Dates and of interest on the applicable Interest Due Dates under this Bond is unconditionally guaranteed by the Secretary to the Holder through a guarantee (the "Guarantee"). Execution of the Secretary's Guarantee is required before this Bond is effective, and such Guarantee shall be issued pursuant to and in accordance with the terms of the Contract and Section 108 of the HCD Act.

H. Default

A default under this Bond shall occur upon failure by the Borrower to pay principal or interest on this Bond when due to the Trustee hereunder. On any Interest Due Date on or after the first permissible Optional Redemption Date, if either (i) a Borrower defaults on the payment of any interest or Principal Amount when due or (ii) the Secretary gives notice of a final decision to declare the Borrower in default pursuant to the following paragraph, then the Secretary may, but is not obligated to, make an acceleration payment to the Trustee equal to the Aggregate Principal Amount of the Bond, together with accrued and unpaid interest thereon to such Interest Due Date. The Secretary shall give notice of such payment on the fourteenth Business Day preceding such Interest Due Date and shall make such payment on the seventh Business Day preceding such Interest Due Date. In the event that any such acceleration payment is made from sources other than funds pledged by the Borrower as security under the Contract (or other Borrower funds), the amounts paid on behalf of the Borrower shall be deemed to be immediately due and payable to the Secretary. Nothing in this paragraph shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Bond.

In addition, the Secretary may declare the Borrower in default under this Bond if the Secretary makes a final decision in accordance with the provisions of 24 CFR § 570.913 (or any successor regulation thereof), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with Title I of the HCD Act. Following the giving of such reasonable notice, the Secretary may take the remedial actions specified as available in the relevant provisions of the Contract pending the Secretary's final decision.

I. Holder's Reliance on Guarantee

Following a default by the Borrower under the terms of this Bond, the Holder agrees to rely wholly and exclusively for repayment of this Bond upon the Guarantee. The enforcement of any instruments or agreements securing or otherwise related to this Bond shall be the sole responsibility of the Secretary, and the Holder shall not be responsible for the preparation, contents or administration of such instruments and agreements, or for any actions taken in connection with such instruments and agreement. The Holder, to the extent it is legally able to do so, shall bind or cause to be bound its successors and assigns to all limitations imposed upon the Holder by this Bond.

J. Amendment

This Bond may only be amended with the prior written consent of the Secretary and the Borrower. No such amendment shall reduce, without the prior written consent of the Holder of this Bond, in any manner the amount of, or delay the timing of, payments required to be received on this Bond by the Holder or Trustee, including Guarantee Payments.

K. Waivers

The Borrower hereby waives any requirement for presentment, protest or other demand or notice with respect to this Bond. The Borrower hereby waives notice of default and opportunity for hearing for any failure to make a payment when due.

L. Delivery and Effective Date

This Bond is deemed issued, executed, and delivered on behalf of the Borrower by its authorized official as an obligation guaranteed by the Secretary pursuant to Section 108 of the HCD Act, effective as of the date of the Secretary's Guarantee.

**M. Borrower Specific Provisions**

Proceeds of this Bond shall be used solely for the purpose of refinancing through defeasance funds advanced under previous Note(s) having the same Bond number.

[Remainder of Page Intentionally Left Blank]

**THE UNDERSIGNED**, as an authorized official of the Borrower, has executed and delivered this Bond.

Austin, Texas  
**BORROWER**

**BY:** \_\_\_\_\_  
**(Signature)**

\_\_\_\_\_  
**(Name)**

\_\_\_\_\_  
**(Title)**

## **SCHEDULE P&I**

Bond No. B-94-MC-48-0500

Borrower: Austin, Texas

Principal Amount	Principal Due Date	Interest Rate	Optional Redemption Available	
			YES	NO
\$ 550,000	August 1, 2011			X
\$ 585,000	August 1, 2012			X
\$ 625,000	August 1, 2013			X
\$ 670,000	August 1, 2014			X
\$ 715,000	August 1, 2015			X
\$ 270,000	August 1, 2016			X
\$	August 1, 2017			X
\$	August 1, 2018			X
\$	August 1, 2019			X
\$	August 1, 2020			X
\$	August 1, 2021		X	
\$	August 1, 2022		X	
\$	August 1, 2023		X	
\$	August 1, 2024		X	
\$	August 1, 2025		X	
\$	August 1, 2026		X	
\$	August 1, 2027		X	
\$	August 1, 2028		X	
\$	August 1, 2029		X	
\$	August 1, 2030		X	

\$ 3,415,000 = Aggregate Principal Amount

Principal Amounts due on or after August 1, 2021, for which Optional Redemption is available may be redeemed, subject to the terms contained herein and in the Trust Agreement, on any Interest Due Date on or after August 1, 2020.

**FORM OF REGISTRATION CERTIFICATE**  
**OF THE COMPTROLLER OF PUBLIC ACCOUNTS:**

**COMPTROLLER'S REGISTRATION CERTIFICATE:**      **REGISTER NO.** \_\_\_\_\_

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

(COMPTROLLER'S SEAL)

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas