

**ORDINANCE NO.**

**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX SUBORDINATE LIEN REVENUE REFUNDING BONDS, SERIES 2012 (CONVENTION CENTER/ WALLER CREEK VENUE PROJECT).**

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

## SECTION 1: DEFINITIONS AND FINDINGS.

(a) Definitions. Unless otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section for all purposes of this Ordinance shall have the respective meanings specified:

“Additional Bonds” means bonds issued by the City pursuant to Section 19 of this Ordinance.

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

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

“Bond Date” means March 1, 2012.

“Bond Fund” means the Fund referenced in Section 15 of this Ordinance for the payment of the Parity Bonds.

“Bond Year” – means the period of time that commences on the day following the interest payment date on the Bonds occurring in November of any year and ending on the interest payment date on the Bonds occurring in November of the following year.

“Bonds” means the City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 2012 (Convention Center/Waller Creek Venue Project) authorized by this Ordinance

“Business Day” means any day other than (a) a Saturday or Sunday, (b) a day on which banks located in the cities in which the designated office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, (c) a day on which the New York Stock Exchange

is closed, or (d) a day on which the payment system of the Federal Reserve System is not operational.

“City” means the City of Austin, Texas, and, where appropriate, the City Council.

“Code” has the meaning set forth in Section 23(a) of this Ordinance.

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

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

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

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

“Fiscal Year” means the City’s fiscal year, which is currently October 1 to September 30.

“Fitch” means Fitch, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the City.

“Government Obligations” mean (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the

68 agency or instrumentality and on the date of their acquisition or purchase by  
69 the City are rated as to investment quality by a nationally recognized  
70 investment rating firm not less than AAA or its equivalent, (iii) noncallable  
71 obligations of a state or an agency or a county, municipality, or other  
72 political subdivision of a state that have been refunded and on the date of  
73 their acquisition or purchase by the City, are rated as to investment quality  
74 by a nationally recognized investment rating firm not less than AAA or its  
75 equivalent. and (iv) any other then authorized securities or obligations under  
76 applicable State law that may be used to defease obligations such as the  
77 Bonds..

78 “Guaranty Agreement” has the meaning set forth in Section 16 of this  
79 Ordinance.

80 “Holder” or “Owner” means, when used with respect to any Bond (or Parity  
81 Bond), the person or entity in whose name such Bond (or Parity Bond) is  
82 registered in the Security Register. Any reference to a particular percentage  
83 or proportion of the Holders or Owners shall mean the Holders or Owners at  
84 a particular time of the specified percentage or proportion in aggregate  
85 principal amount of all Bonds (or Parity Bonds) then Outstanding under this  
86 Ordinance.

87 “Hotel Occupancy Tax” means the tax, levied by the City pursuant to the  
88 Tax Act, on the cost of occupancy of any sleeping room furnished by any  
89 hotel located within the corporate limits of the City, in which the cost of  
90 occupancy is \$2.00 or more each day, which tax is currently levied at a rate  
91 of 7% of the consideration paid by the occupant of the sleeping room to the  
92 hotel.

93 “Interest Rate Management Agreement” means any Credit Agreement  
94 between the City and another party entered into in connection with, or  
95 related, to the City’s Variable Rate Obligations, that is in the form of an  
96 interest rate exchange agreement, pursuant to which the City pays a fixed  
97 percentage rate of a notional amount and the other party pays a variable  
98 percentage rate of the same notional amount, of which the notional amount  
99 is equal to the principal amount of the Variable Rate Obligations of the City,  
100 and of which the notional amount is reduced as the principal of the Variable  
101 Rate Obligation is paid.

102 “Interest Rate Management Agreement Counterparty” means any  
103 counterparty under any Interest Rate Management Agreement.

104 “Issue Date” means the date the Bonds are issued and delivered to the initial  
105 purchasers.

106 “Junior Obligations” means the payment obligations of the City under an  
107 Interest Rate Management Agreement, that are termination payments,  
108 settlement payments or other payments that are not included in clause (iii) of  
109 the definition of Parity Obligations.

110 “Junior Subordinate Lien Bonds” means Additional Bonds issued by the  
111 City pursuant to Section 19(c) of this Ordinance secured wholly or partly by  
112 liens on the Pledged Revenues that are junior and subordinate to the lien on  
113 Pledged Revenues securing payment of the Parity Bonds.

114 “Moody’s” means Moody’s Investors Service, Inc., a corporation organized  
115 and existing under and by virtue of the laws of the State of Delaware, and its  
116 successors and assigns, except that if such corporation shall be dissolved or  
117 liquidated or shall no longer perform the functions of a securities rating  
118 agency, then the term “Moody’s” shall be deemed to refer to any other  
119 nationally recognized securities rating agency selected by the City.

120 “Ordinance” means this Ordinance No. 20120301-\_\_\_\_ and all exhibits,  
121 appendices, amendments and supplements.

122 “Outstanding”, when used with reference to any Prior Lien Bonds, Parity  
123 Bonds or Junior Subordinate Lien Bonds, means, as of a particular date, all  
124 Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien Bonds delivered  
125 except: (a) any such Prior Lien Bonds, Parity Bonds or Junior Subordinate  
126 Lien Bonds paid, discharged or canceled by or on behalf of the City at or  
127 before the particular date; (b) any Prior Lien Bonds, Parity Bonds and Junior  
128 Subordinate Lien Bonds defeased pursuant to the defeasance provisions of  
129 the authorizing ordinance, or otherwise defeased as permitted by applicable  
130 law; and (c) any Prior Lien Bonds, Parity Bonds or Junior Subordinate Lien  
131 Bonds in lieu, of or in substitution for, which another obligation is delivered  
132 pursuant to the ordinances authorizing the issuance of the Prior Lien Bonds,  
133 Parity Bonds or Junior Subordinate Lien Bonds.

134 “Parity Bonds” mean (a) with respect to the Pledged Hotel Occupancy Tax  
135 Revenues, the outstanding Previously Issued Bonds, the Bonds and  
136 Additional Bonds secured by a lien on Pledged Hotel Occupancy Tax  
137 Revenues on a parity with the Bonds and (b) with respect to the Special  
138 Hotel Occupancy Tax deposited to the credit of the Venue Project Fund, the  
139 outstanding Bonds and Additional Bonds secured by a lien on the Special  
140 Hotel Occupancy Tax Revenues on a parity with the Bonds.

141 “Parity Obligations” mean at any time all (i) Parity Bonds, (ii) all  
142 Reimbursement Obligations, (iii) obligations of the City to make scheduled  
143 payments under an Interest Rate Management Agreement, and (iv) any  
144 future obligation of the City under Credit Agreements or other agreements to  
145 the extent such obligations are secured by a lien on Pledged Hotel  
146 Occupancy Tax Revenues on an equal and ratable basis with the lien  
147 securing the Parity Bonds.

148 “Paying Agent/Registrar” means, with respect to the Bonds, the Paying  
149 Agent/Registrar to be appointed as provided in Section 4 of this Ordinance,  
150 and its successors in that capacity.

151 “Pledged Hotel Occupancy Tax Revenues” mean that portion of the  
152 revenues derived by the City from the Hotel Occupancy Tax which is equal  
153 to at least 4.5% of the consideration paid by occupants of sleeping rooms  
154 furnished by hotels located within the corporate limits of the City, in which  
155 the cost of occupancy is \$2.00 or more each day.

156 “Pledged Revenues” mean, collectively, (i) the Pledged Hotel Occupancy  
157 Tax Revenues, (ii) the Special Hotel Occupancy Tax deposited to the credit  
158 of the Venue Project Fund, (iii) interest and other income realized from the  
159 investment of amounts on deposit in the funds and accounts to be maintained  
160 pursuant to this Ordinance to the extent such interest and other income are  
161 required to be transferred or credited to the Tax Fund, and (iv) any  
162 additional revenue, receipts or income hereafter pledged to the Bonds in  
163 accordance with Section 20(b) of this Ordinance.

164 “Previously Issued Bonds” mean the City of Austin, Texas, Hotel  
165 Occupancy Tax Subordinate Lien Variable Rate Revenue Refunding Bonds,  
166 Series 2008, dated August 14, 2008, originally issued in the aggregate  
167 principal amount of \$125,280,000.

168 “Prior Lien Bonds” mean the outstanding “City of Austin, Texas, Hotel  
169 Occupancy Tax Revenue Refunding Bonds, Series 2004,” dated February 1,  
170 2004, originally issued in the aggregate principal amount of \$52,715,000.

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

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

177 “Rating Confirmation Notice” means, with respect to an action that affects  
178 the Bonds, a writing from each Rating Agency confirming that the rating(s)  
179 issued by such Rating Agency on such series of Bonds will not be lowered  
180 or withdrawn (other than a withdrawal of a short-term rating upon a change  
181 to a long-term mode with respect to the Previously Issued Bonds) as a result  
182 of the action proposed to be taken.

183 “Refunded Bonds” has the meaning set forth in Section 1 of this Ordinance.

184 “Reimbursement Obligation” mean any obligation entered into by the City  
185 in connection with any Parity Bond pursuant to which the City obligates  
186 itself to reimburse a bank, insurer, surety or other entity for amounts paid or  
187 advanced by such party pursuant to a letter of credit, line of credit, standby  
188 bond purchase agreement, credit facility, liquidity facility, insurance policy,  
189 surety bond or other similar credit agreement, guaranty or liquidity  
190 agreement to secure any portion of principal of, interest on or purchase price  
191 of any Parity Bond or reserves in connection therewith or otherwise relating  
192 to any Parity Bond. The City’s obligations under a Guaranty Agreement, its  
193 obligations under a liquidity facility, and its obligations to reimburse a credit  
194 facility provider for amounts paid under a credit facility constitute  
195 Reimbursement Obligations.

196 “Reserve Fund” means the Fund referenced in Section 16 of this Ordinance  
197 to provide a reserve amount for the payment of Parity Bonds.

198 “Reserve Fund Requirement” means the least of (i) 10% of the Outstanding  
199 principal amount of the Parity Bonds or (ii) the maximum annual Debt  
200 Service Requirements scheduled to occur in the then current and each future  
201 Fiscal Year for all Parity Bonds at any time Outstanding, or (iii) the  
202 maximum amount in a reasonably required reserve fund that can be invested  
203 without restriction as to yield pursuant to Subsection (d) of section 148 of  
204 Code, and regulations promulgated under Subsection (d) of section 148 of  
205 the Code.

206 “Reserve Fund Surety Bond” means any surety bond, insurance policy, letter  
207 of credit or other guaranty issued to the City for the benefit of the Holders of  
208 the Parity Bonds to satisfy any part of the Reserve Fund Requirement as  
209 provided in Section 16 of this Ordinance.

210 “Security Register” means the books of registration maintained by the  
211 Paying Agent/Registrar for recording the names and addresses of and the  
212 principal amounts registered to each Holder.

213 “Special Hotel Occupancy Tax” means the 2% hotel occupancy tax  
214 approved at the election held May 2, 1998 to finance the Convention  
215 Center/Waller Creek Venue Project and levied by the City pursuant to  
216 Ordinance No. 980709-G, adopted by the City Council of the City on July 9,  
217 1998, on the cost of occupancy of any sleeping room furnished by any hotel  
218 located within the corporate limits of the City, in which the cost of  
219 occupancy is \$2.00 or more each day.

220 “Standard & Poor’s” means Standard & Poor’s Ratings Services, a Standard  
221 & Poor’s Financial Services LLC, business, organized and existing under  
222 and by virtue of the laws of the State of New York, and its successors and  
223 assigns, except that if such corporation shall be dissolved or liquidated or  
224 shall no longer perform the functions of a securities rating agency, then the  
225 term “Standard & Poor’s” shall be deemed to refer to any other nationally  
226 recognized securities rating agency selected by the City after consultation  
227 with the Remarketing Agent, if any, and the Broker-Dealer, if any.

228 “Tax Act” means Chapter 351 of the Texas Tax Code, Vernon’s Texas  
229 Codes Annotated.

230 “Transfer Date” means each February 14, May 14, August 14, and  
231 November 14, beginning May 14, 2012.

232 “Transfer Period” means the period of time beginning on any Transfer Date  
233 and ending on the day immediately preceding the next succeeding Transfer  
234 Date

235 “Variable Rate Obligations” mean any obligation pursuant to which the City  
236 is to pay interest at an interest rate that is not fixed for the life of the  
237 obligation and any obligation, such as an interest rate exchange agreement or  
238 other Credit Agreement, pursuant to which the City is to make payments the  
239 amounts of which are not known at the time the obligation is issued or  
240 incurred.

241 “Venue Project Fund” means the Fund so designated, created and  
242 established pursuant to Ordinance No. 980709-G, adopted by the City  
243 Council on July 9, 1998, providing for the levy, assessment and collection of  
244 the Special Hotel Occupancy Tax.

245 (b) Findings. The City has issued, sold, and delivered, and there are currently  
246 outstanding obligations totaling in original principal amount \$20,175,000 of the  
247 following issue or series (the “Refunded Bonds”): City of Austin, Texas, Convention

Center/Waller Creek Venue Project Bonds, Series 1999A, dated June 15, 1999, scheduled to mature on November 15 in each of the years 2012, 2019 and 2029.

Pursuant to the provisions of V.T.C.A., Government Code, Chapter 1207, the City may issue refunding bonds and deposit the proceeds of sale directly with the place of payment for the Refunded Bonds, or other authorized depository, and that deposit, when made in accordance with said statute, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Bonds.

The City finds that the Refunded Bonds should be refunded at this time, and this refunding will result in the City saving approximately \$\_\_\_\_\_ in debt service payments on its indebtedness and further provide net present value savings of approximately \$\_\_\_\_\_.

**SECTION 2: AUTHORIZATION-DESIGNATION-PRINCIPAL AMOUNT - PURPOSE - DATE.** Special hotel occupancy tax revenue bonds of the City, payable solely from the sources and secured in the manner provided in this Ordinance, shall be and are authorized to be issued in the aggregate principal amount of \$\_\_\_\_\_, to be designated and bear the title “CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX SUBORDINATE LIEN REVENUE REFUNDING BONDS, SERIES 2012 (CONVENTION CENTER/WALLER CREEK VENUE PROJECT)” (the “Bonds”), for the purpose of refinancing and refunding the Refunded Bonds, and paying costs of issuance, in conformity with the Constitution and laws of the State of Texas, including the Bond Act.

**SECTION 3: FULLY REGISTERED OBLIGATIONS - AUTHORIZED DENOMINATIONS - STATED MATURITIES - BOND DATE - INTEREST RATES.** The Bonds are issuable in fully registered form only; shall be dated the Bond Date, shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), and the Bonds shall become due and payable on November 15 in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at per annum rates in accordance with the following schedule:

<u>Year of</u> <u>Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		



2020  
2021  
2022  
2023  
2024  
2025  
2026  
2027  
2028  
2029

The Bonds shall accrue interest on the unpaid principal amounts from the Issue Date at the rate(s) per annum shown above (calculated on the basis of a 360-day year of twelve 30-day months), and such interest shall be payable on May 15 and November 15 in each year, commencing November 15, 2012, until maturity or prior redemption.

**SECTION 4: TERMS OF PAYMENT-PAYING AGENT/REGISTRAR.** The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (the “Holders”) appearing on the registration and transfer books (the “Security Register”) maintained by the Paying Agent/Registrar and the payment shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of Deutsche Bank National Trust Company, to serve as Paying Agent/Registrar for the Bonds, is approved and confirmed. The Security Register shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided in this Ordinance, in accordance with the terms and provisions of a “Paying Agent/Registrar Agreement”, substantially in the form attached as Exhibit A and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor or Mayor Pro Tem and City Clerk of the City are authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice to be sent to each Holder by United States Mail, first class postage prepaid; this notice shall also give the address of the new Paying Agent/Registrar.

The principal of and premium, if any, on the Bonds are payable at the Stated Maturities or redemption of the Bonds, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices in Jersey City, New Jersey (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid by the Paying Agent/Registrar to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last Business Day of the month preceding each interest payment date) and interest payments shall be made (i) by check sent by United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a day other than a Business Day, then the date for that payment shall be the next succeeding day which is a Business Day; and payment on this date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more Stated Maturities on a scheduled payment date, which non-payment shall continue for thirty (30) days thereafter, a new record date for such interest payment for such Stated Maturity or Maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) Business Days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of such maturity or maturities appearing on the Security Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

## **SECTION 5: REDEMPTION.**

(a) Optional Redemption. The Bonds having Stated Maturities on and after November 15, 2022, shall be subject to redemption prior to maturity, at the option of the City, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on November 15, 2021, or on any date after November 15, 2021, at the redemption price of par plus accrued interest to the date of redemption.

(b) Exercise of Redemption Option. At least forty-five (45) days prior to a redemption date for the Bonds (unless a shorter notification period is satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Bonds, the principal amount of each Stated Maturity to be redeemed, and the date of redemption. The decision of the City to exercise the right to redeem Bonds shall be entered in the minutes of the governing body of the City.

342 (c) Selection of Bonds for Redemption. If less than all Outstanding Bonds of  
343 the same Stated Maturity are to be redeemed on a redemption date, the Paying  
344 Agent/Registrar shall treat such Bonds as representing the number of Bonds Outstanding,  
345 which is obtained by dividing the principal amount of such Bonds by \$5,000, and shall  
346 select the Bonds to be redeemed within such Stated Maturity by lot.

347 (d) Notice of Redemption. Not less than thirty (30) days prior to a redemption  
348 date for the Bonds, a notice of redemption shall be sent by United States Mail, first class  
349 postage prepaid, in the name of the City and at the City's expense, to each Holder of a  
350 Bond to be redeemed in whole or in part at the address of the Holder appearing on the  
351 Security Register at the close of business on the Business Day next preceding the date of  
352 mailing such notice, and any notice of redemption so mailed shall be conclusively  
353 presumed to have been given irrespective of whether received by the Holder.

354 All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii)  
355 identify the Bonds to be redeemed and, in the case of a portion of the principal amount to  
356 be redeemed, the principal amount to be redeemed, (iii) state the redemption price,  
357 (iv) state that the Bonds, or the portion of the principal amount to be redeemed, shall  
358 become due and payable on the redemption date specified, and the interest on the Bonds,  
359 or on the portion of the principal amount of the Bonds to be redeemed, shall cease to  
360 accrue from and after the redemption date, and (v) specify that payment of the  
361 redemption price for the Bonds, or the principal amount to be redeemed, shall be made at  
362 the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon  
363 presentation and surrender by the Holder. If a Bond is subject by its terms to prior  
364 redemption and has been called for redemption and notice of redemption has been given  
365 or waived as provided in this Ordinance, that Bond (or the principal amount to be  
366 redeemed) shall become due and payable, and interest shall cease to accrue from and  
367 after the redemption date, provided moneys sufficient for the payment of these Bonds (or  
368 of the principal amount thereof to be redeemed) at the then applicable redemption price  
369 are held for the purpose of such payment by the Paying Agent/Registrar.

370 (e) Conditional Notice of Redemption. With respect to any optional redemption  
371 of the Bonds, unless moneys sufficient to pay the principal of and premium, if any, and  
372 interest on the Bonds to be redeemed shall have been received by the Paying  
373 Agent/Registrar prior to the giving of notice of redemption, the notice may state that the  
374 redemption is conditional upon the receipt of the moneys by the Paying Agent/Registrar  
375 on or prior to the date fixed for such redemption, or upon the satisfaction of any  
376 prerequisites set forth in such notice of redemption; and, if such prerequisites are not  
377 made or sufficient moneys are not received, such notice shall be of no force and effect,  
378 the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in  
379 the manner in which the notice of redemption was given, to the effect that the Bonds have  
380 not been redeemed.

**SECTION 6: REGISTRATION - TRANSFER - EXCHANGE OF BONDS - PREDECESSOR BONDS.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each Holder of the Bonds issued under of this Ordinance. Any Bond may, in accordance with its terms and the terms of this Ordinance, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange executed by the Holder or by his authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond (other than the Initial Bond(s) authorized in Section 8 of this Ordinance) at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the City of authorized denominations and of like Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bond(s) authorized in Section 8 of this Ordinance) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of, and furnished by, the City, to the Holder requesting the exchange.

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

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise provided in this Ordinance, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges that are required to be paid for the transfer or exchange.

Bonds cancelled by reason of an exchange or transfer pursuant to this Ordinance are defined to be "Predecessor Bonds," evidencing all or a portion of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or

transfer. Additionally, the term “Predecessor Bonds” includes any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu of the Bond pursuant to Section 22 of this Ordinance and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within 45 days of the date fixed for redemption of such Bond; however, this limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond called for redemption in part.

**SECTION 7: BOOK-ENTRY ONLY TRANSFERS AND TRANSACTIONS.** Notwithstanding the provisions contained in Sections 4, 5 and 6 of this Ordinance relating to the payment, redemption and transfer/exchange of the Bonds, the City approves and authorizes the use of the “Book-Entry Only” securities clearance, settlement and transfer system provided by The Depository Trust Company (“DTC”), a limited purpose trust company organized under the laws of the State of New York, in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations, by and between the City and DTC (the “Depository Agreement”).

Pursuant to the Depository Agreement and the rules of DTC, the Bonds shall be deposited with DTC, who shall hold the Bonds for its participants (the “DTC Participants”). While the Bonds are held by DTC under the Depository Agreement, the Holder of the Bonds on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Bond (the “Beneficial Owners”) being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Bonds or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Bonds, the City covenants and agrees with the Holders to cause Bonds to be printed in definitive form and provide for Bond certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Bonds in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Bonds shall be made in accordance with the provisions of Sections 4, 5, and 6 of this Ordinance.

**SECTION 8: EXECUTION - REGISTRATION.** The Bonds shall be executed on behalf of the City by the Mayor or Mayor Pro Tem under its seal reproduced

or impressed on the Bonds and countersigned by the City Clerk. The signature of these officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Bond Date shall be deemed to be executed on behalf of the City, notwithstanding that any of these individuals shall cease to hold office at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 10(c), manually executed by the Comptroller of Public Accounts of the State of Texas or an authorized agent, or a certificate of registration substantially in the form provided in Section 10(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond signed shall be conclusive evidence, and the only evidence, that such Bond has been certified, registered and delivered.

**SECTION 9: INITIAL BOND(S).** The Bonds shall be initially issued either (i) as a single fully registered bond in the total principal amount shown in Section 1 hereof, with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as multiple fully registered bonds, being one bond for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the purchaser's designee, shall cancel the Initial Bond(s) delivered and exchange them for definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses the Holders identified all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the purchaser's designee, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

**SECTION 10: FORMS.** (a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Registration, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this

Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including legends reflecting the purchase of insurance for payment of the Bonds and any reproduction of an opinion of counsel) on the Bonds as may be established by the City or determined by the officers executing such Bonds as evidenced by their execution. Any portion of the text of any Bonds may be set forth on the of the Bond, with an appropriate reference on the face of the Bond.

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

(b) Form of Definitive Bond.

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF AUSTIN, TEXAS  
HOTEL OCCUPANCY TAX SUBORDINATE LIEN  
REVENUE REFUNDING BOND, SERIES 2012  
(CONVENTION CENTER/WALLER CREEK VENUE PROJECT)

Bond Date:	Interest Rate:	Stated Maturity:	CUSIP No.:
March 1, 2012	_____ %	November 15, 20__	_____

Registered Owner:

Principal Amount: DOLLARS

The City of Austin (the "City"), a body corporate and municipal corporation in the Counties of Travis, Williamson and Hays, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, solely from the revenues identified in this Bond, on the Stated Maturity date specified above the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid Principal Amount hereof from the Issue Date at the per annum rate of interest specified above; such interest being payable

on May 15 and November 15 of each year, commencing November 15, 2012, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Bond is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Bond. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last Business Day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register on the Record Date or by such other method acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a day other than a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds") for the purpose of refinancing and refunding the Refunded Bonds and paying costs of issuance, under and in strict conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Government Code, Chapter 1207, and pursuant to an Ordinance adopted by the governing body of the City (the "Ordinance").

The Bonds maturing on and after November 15, 2022 may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on November 15, 2021, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall



564 have been called for redemption and notice of such redemption given, then upon such  
565 redemption date such Bond (or the portion of its principal sum to be redeemed) shall  
566 become due and payable, and interest thereon shall cease to accrue from and after the  
567 redemption date therefor, provided moneys for the payment of the redemption price and  
568 the interest on the principal amount to be redeemed to the date of redemption are held for  
569 the purpose of such payment by the Paying Agent/Registrar.

570 In the event a portion of the principal amount of a Bond is to be redeemed and the  
571 registered owner is someone other than Cede & Co., payment of the redemption price of  
572 such principal amount shall be made to the registered owner only upon presentation and  
573 surrender of such Bond to the Designated Payment/Transfer Office of the Paying  
574 Agent/Registrar, and a new Bond or Bonds of like maturity and interest rate in any  
575 authorized denominations provided by the Ordinance for the then unredeemed balance of  
576 the principal sum thereof will be issued to the registered owner, without charge. If a  
577 Bond is selected for redemption, in whole or in part, the City and the Paying  
578 Agent/Registrar shall not be required to transfer such Bond to an assignee of the  
579 registered owner within 45 days of the redemption date therefor; provided, however, such  
580 limitation on transferability shall not be applicable to an exchange by the registered  
581 owner of the unredeemed balance of a Bond redeemed in part.

582 The Bonds are special obligations of the City payable solely from and, together  
583 with the other Parity Obligations executed and delivered in connection with the issuance  
584 of the Bonds, equally and ratably secured by a subordinate parity lien on and pledge of,  
585 the Pledged Revenues in the manner provided in the Ordinance. Additionally, the Bonds  
586 shall be equally and ratably secured by a lien on the funds, if any, deposited to the credit  
587 of the Bond Fund and the Reserve Fund in accordance with the terms of the Ordinance.  
588 The Bonds do not constitute a legal or equitable pledge, charge, lien or encumbrance  
589 upon any property of the City, except with respect to the Pledged Revenues. The holder  
590 hereof shall never have the right to demand payment of this obligation out of any funds  
591 raised or to be raised by ad valorem taxation.

592 Subject to satisfying the terms and conditions prescribed therefor, the City has  
593 reserved the right to issue additional revenue obligations payable from and equally and  
594 ratably secured by a parity lien on and pledge of the Pledged Revenues, in the same  
595 manner and to the same extent as the Bonds.

596 Reference is hereby made to the Ordinance, a copy of which is on file in the  
597 Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the  
598 provisions of which the Holder by the acceptance hereof hereby assents, for definitions of  
599 terms; the description of and the nature and extent of the security for the Bonds; the  
600 Pledged Revenues pledged to the payment of the Bonds; the nature and extent and  
601 manner of enforcement of the lien and pledge securing the payment of the Bonds; the

terms and conditions for the issuance of additional revenue obligations; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the liens, pledges, charges and covenants made in the Ordinance may be discharged at or prior to the Stated Maturity of this Bond, and this Bond deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained in the Ordinance. Capitalized terms used in this Bond have the same meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar executed by, the registered owner hereof, or his authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of non-payment of interest on one or more maturities on a scheduled payment date, which non-payment shall have continued for thirty (30) days thereafter, a new record date for such interest payment for such maturity or maturities (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) Business Days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of such maturity or maturities appearing on the Security Register at the close of business on the last Business Day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the City is an organized and legally existing municipal corporation under and pursuant to the Constitution and laws of the State of Texas; that the issuance of the Bonds is authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City

641 have been properly done, have happened and have been performed in regular and due  
642 time, form and manner as required by the Constitution and laws of the State of Texas and  
643 the Ordinance; that the Bonds do not exceed any constitutional or statutory limitation;  
644 and that due provision has been made for the payment of the Bonds by a pledge of the  
645 Pledged Revenues. In case any provision in this Bond or any application thereof shall be  
646 invalid, illegal, or unenforceable, the validity, legality, and enforcement of the remaining  
647 provisions and applications shall not in any way be affected or impaired thereby. The  
648 terms and provisions of this Bond and the Ordinance shall be construed in accordance  
649 with and shall be governed by the laws of the State of Texas.

650 IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be  
651 executed under the official seal of the City as of the Bond Date.

652 CITY OF AUSTIN, TEXAS  
653  
654

655 \_\_\_\_\_  
656 Mayor

657 COUNTERSIGNED:  
658

659 \_\_\_\_\_  
660  
661 City Clerk  
662

663 (SEAL)

(c) Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond(s) only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER )  
 )  
OF PUBLIC ACCOUNTS ) REGISTER NO.  
 )  
THE STATE OF TEXAS )

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 registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_.

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

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to Appear on Definitive Bonds only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the bond or bonds of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar in Jersey City, New Jersey is the Designated Payment/Transfer Office for this Bond.

Deutsche Bank National Trust Company,  
as Paying Agent/Registrar

Registration date: \_\_\_\_\_ By \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned 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 under this Bond, and irrevocably  
constitutes and appoints \_\_\_\_\_  
attorney to transfer the within Bond on the books kept for registration of the Bonds, 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.

(f) The Initial Bond(s) shall be in the form set forth in paragraph (b) of this  
Section, except that the form of a single fully registered Initial Bond shall be modified as  
follows:

Heading and paragraph one shall be amended to read as follows:

REGISTERED  
NO. T-1

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF AUSTIN, TEXAS  
HOTEL OCCUPANCY TAX SUBORDINATE LIEN  
REVENUE REFUNDING BOND, SERIES 2012  
(CONVENTION CENTER/WALLER CREEK VENUE PROJECT)

Bond Date:  
\_\_\_\_\_, 2012

Registered Owner:

Principal Amount: DOLLARS

The City of Austin (the "City"), a body corporate and municipal corporation in the Counties of Travis, Williamson and Hays, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, solely from the revenues identified in this Bond, the Principal Amount stated above on November 15 in each of the years and in principal installments in accordance with the following schedule:

YEAR	PRINCIPAL INSTALLMENTS	INTEREST RATE(S)
------	---------------------------	---------------------

(Information to be inserted from schedule in Section 2 hereof).

(or so much thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the Issue Date at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on May 15 and November 15 of each year, commencing November 15, 2012, until maturity or prior redemption. Principal installments of this Bond are payable in the year of maturity or on a redemption date to the registered owner hereof, by Deutsche Bank National Trust Company (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in Jersey City, New Jersey (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last Business Day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of registered owner recorded in the Security Register on the Record Date or by such other method acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner or holder hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

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

If Texas law is amended at any time while the Bonds and Parity Obligations or Junior Obligations related to the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the City under this Section 11 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, or other law, then to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable filing requirements to continue the perfection of such security interest.

## **SECTION 12: LEVY OF HOTEL OCCUPANCY TAX.**

(a) The City has levied, and while any Bonds and Parity Obligations or Junior Obligations related to the Bonds remain Outstanding the City levies and covenants that it shall continue to levy, a Hotel Occupancy Tax on the cost of occupancy of any sleeping room furnished by any hotel within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more each day, at a rate of at least 7% of the consideration paid by the occupant of the sleeping room to the hotel, all as authorized by the Tax Act. The City further covenants that it shall enforce the provisions of this Ordinance, or any other ordinance levying a hotel occupancy tax, concerning the collection, remittance and payment of the Hotel Occupancy Tax.

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

### **SECTION 13: SPECIAL FUNDS.**

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

(1) Convention Center Hotel Occupancy Tax Fund (“Tax Fund”);

(2) Convention Center Hotel Occupancy Tax Bond Debt Service Fund (“Senior Debt Service Fund”);

(3) Subordinate Lien Hotel Occupancy Tax Debt Service Fund (“Original Subordinate Debt Service Fund”, and together with the Senior Debt Service Fund, the “Debt Service Fund”);

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

(5) 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 ordinance authorizing the issuance of the Prior Lien Bonds and this Ordinance.



(b) Special Hotel Occupancy Tax Special Funds. The City 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 sub-accounts within such Venue Project Fund on the books of the City for the benefit of such Bonds, namely:

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

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

(3) 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, 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 ordinance authorizing the issuance of the Previously Issued Bonds and this Ordinance.

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

(1) Subordinate Lien Hotel Occupancy Tax Fund (the “Bond Fund”) for the payment of the Parity Obligations when and as the same shall become due and payable; and

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

The Bond Fund and Reserve Fund 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 provisions of this Ordinance.

#### **SECTION 14: FLOW OF FUNDS.**

(a) Flow of Funds Regarding Pledged Hotel Occupancy Tax Revenues. The City covenants and agrees that all Pledged Hotel Occupancy Tax Revenues shall be

854 deposited as received into the Tax Fund. Money from time to time credited to the Tax  
855 Fund shall be applied as follows in the following order of priority:

856 First, to transfer all amounts to the Debt Service Fund required by the  
857 ordinance authorizing the issuance of the Prior Lien Bonds (in such relative  
858 order of priority as is required by the related ordinances).

859 Second, to transfer all amounts to the Debt Service Reserve Fund  
860 required by the ordinance authorizing the issuance of the Prior Lien Bonds  
861 (in such relative order of priority as is required by the related ordinances).

862 Third, to transfer to the Bond Fund all amounts necessary to provide  
863 for the payment of Parity Obligations.

864 Fourth, to transfer to the Reserve Fund the amounts required pursuant  
865 to Section 16 of this Ordinance.

866 Fifth, to the payment of all Junior Obligations secured under this  
867 Ordinance on a *pari passu* basis.

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

869 (b) Flow of Funds Regarding Special Hotel Occupancy Tax. The City  
870 covenants and agrees that all receipts and revenues collected and received by the City  
871 from the Special Hotel Occupancy Tax shall be deposited to the credit of the Venue  
872 Project Fund and more particularly to the credit of the Tax Account. Following the  
873 issuance of the Bonds and while Parity Obligations and Junior Obligations remain  
874 Outstanding, money from time to time credited to the Tax Account shall be applied as  
875 follows in the following order of priority:

876 First, to transfer all amounts to the Debt Service Account required by  
877 the ordinance authorizing the issuance of the Prior Lien Bonds (in such  
878 relative order of priority as is required by the related ordinances).

879 Second, to transfer all amounts to the Debt Service Reserve Account  
880 required by the ordinance authorizing the issuance of the Prior Lien Bonds  
881 (in such relative order of priority as is required by the related ordinances).

882 Third, to transfer to the Bond Fund all amounts necessary to provide  
883 for the payment of the Parity Bonds and Parity Obligations related to the  
884 Bonds.

885 Fourth, to transfer to the Reserve Fund the amounts required pursuant  
886 to Section 16 of this Ordinance.

887 Fifth, to the payment of all Junior Obligations related to the Parity  
888 Bonds related to the Bonds secured hereunder on a *pari passu* basis.

889 Sixth, to pay the costs of operating or maintaining the Convention  
890 Center/Waller Creek Venue Project.

891 **SECTION 15: BOND FUND.** Subject to satisfying the required payments for  
892 the benefit of the Prior Lien Bonds in accordance with the ordinance authorizing their  
893 issuance, the City covenants and agrees that before each Interest Payment Date, stated  
894 maturity date and mandatory redemption date for the Parity Bonds (and before the dates  
895 payments are due on other Parity Obligations) there shall be deposited into the Bond  
896 Fund, which is to be an Eligible Account held for the benefit of the Parity Obligations,  
897 from the Pledged Revenues, an amount equal to one hundred percent (100%) of the  
898 amount required to fully pay the amount then due and payable on the Parity Obligations,  
899 and such deposits shall be made in substantially equal quarterly installments (based on  
900 the total annual Debt Service Requirements to be paid on the Parity Obligations divided  
901 by the number of Transfer Dates to occur during the period covered by such calculation)  
902 on or before each Transfer Date, beginning on the first Transfer Date to occur after the  
903 delivery of the Bonds.

904 In addition, on each Transfer Date, the City covenants and agrees to cause to be  
905 deposited into the Bond Fund from the Pledged Revenues an amount calculated to pay all  
906 expenses of providing for the full and timely payment of the principal of, premium, if  
907 any, and interest on the Parity Bonds in accordance with their terms, including without  
908 limitation, all fees charged or incurred for paying agent/registrar services rendered in  
909 connection with the Parity Bonds.

910 Money credited to the Bond Fund shall be used solely for the purpose of paying on  
911 a *pari passu* basis (except as otherwise provided) principal (at maturity or prior  
912 redemption or to purchase Parity Bonds issued as term bonds in the open market to be  
913 credited against mandatory redemption requirements), interest and redemption premiums  
914 on Parity Bonds and all other amounts due on other Parity Obligations, plus all other  
915 charges, costs and expenses relating to such payment, including those described in the  
916 preceding paragraph. On the Business Day immediately preceding each payment due  
917 date for the Parity Obligations, the City shall transfer from the Bond Fund and Reserve  
918 Fund, if necessary, to the appropriate paying agent/registrar amounts equal to the  
919 amounts due on the Parity Obligations on such date.

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

922  
923           **SECTION 16:     RESERVE FUND.**

924           (a)     The Reserve Fund has been established for the benefit of the Parity Bonds.  
925     The City shall establish and maintain a balance in the Reserve Fund equal to the Reserve  
926     Fund Requirement. The Reserve Fund Requirement may be funded by a Reserve Fund  
927     Surety Bond issued by an insurance company or other entity that maintains ratings (either  
928     for the long term unsecured debt of the issuer of such Reserve Fund Surety Bond or for  
929     obligations insured, secured or guaranteed by such issuer) in the highest letter category  
930     by two major municipal securities credit rating services.

931           (b)     In accordance with the provisions of the ordinance authorizing the issuance  
932     of the Previously Issued Bonds, there is currently on deposit in the Reserve Fund the sum  
933     of \$\_\_\_\_\_ (the "Current Reserve Amount"). By reason of the issuance of the Bonds,  
934     the total amount to be accumulated and maintained as the Reserve Fund Requirement has  
935     been determined to be \$\_\_\_\_\_. The difference between the Reserve Fund  
936     Requirement and the Current Reserve Amount will be funded in full on the date of the  
937     delivery of the Bonds with proceeds of sale of the Bonds.

938           (c)     At such time as the Previously Issued Bonds are no longer Outstanding,  
939     paragraph (a) above shall be amended to read as follows:

940                   (a)     "The Reserve Fund has been established for the benefit of the  
941     Parity Bonds. The City shall establish and maintain a balance in the Reserve  
942     Fund equal to the Reserve Fund Requirement. In addition to or in lieu of  
943     cash on deposit in the Reserve Fund, the Reserve Fund Requirement may be  
944     funded by a Reserve Fund Surety Bond issued by an insurance company or  
945     other entity that is rated as of the date of acquisition of the Reserve Fund  
946     Surety Bond (either for the long term unsecured debt of the issuer of such  
947     Reserve Fund Surety Bond or for obligations insured, secured or guaranteed  
948     by such issuer) in either of the two highest letter categories by two major  
949     municipal securities credit rating services."

950           (d)     In any Transfer Period in which the Reserve Fund contains less than the  
951     Reserve Fund Requirement, or in which the City is obligated to repay or reimburse any  
952     issuer of a Reserve Fund Surety Bond (in the event such Reserve Fund Surety Bond is  
953     drawn upon), then after making all required transfers to the Bond Fund, there shall be  
954     transferred into the Reserve Fund from the available Pledged Revenues on each Transfer  
955     Date amounts necessary to reestablish the Reserve Fund Requirement and satisfy any  
956     repayment obligations to the issuer of any Reserve Fund Surety Bond. After such  
957     amount has been accumulated in the Reserve Fund and after satisfying any repayment  
958     obligation to any Reserve Fund Surety Bond issuer and so long thereafter as such fund

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

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

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

**SECTION 17: DEFICIENCIES IN FUNDS OR ACCOUNTS.** Subject to satisfying the required payments for the benefit of the Prior Lien Bonds in accordance with the ordinance authorizing their issuance, if on any Transfer Date there shall not be transferred into any fund or account maintained pursuant to this Ordinance the full amounts required in this Ordinance, amounts equivalent to such deficiency shall be set apart and transferred to such fund or account from the first available and unallocated Pledged Revenues, and such transfer shall be in addition to the amounts otherwise required to be transferred to such fund or account on any succeeding Transfer Date or Transfer Dates.

**SECTION 18: INVESTMENT OF FUNDS; TRANSFER OF INVESTMENT INCOME.**

(a) Money in all funds shall, at the option of the City, be invested in the manner provided by Texas law and the City's investment policy; except all such deposits and investments shall be made in such manner that the money required to be expended from

any fund will be available at the proper time or times. All such investments shall be valued no less frequently than the last Business Day of the City's Fiscal Year at market value, except that any direct obligations of the United States of America - State and Local Government Series shall be continuously valued at their par value or principal face amount. For purposes of maximizing investment returns, money in such funds may be invested, together with money in other funds or with other money of the City, in common investments or in a common pool of such investments maintained by the City at an official depository of the City or in any fund or investment vehicle permitted by Texas law, which shall not be considered to be a loss of the segregation of such money or funds if safekeeping receipts, certificates of participation or other documents clearly evidencing the investment or investment pool in which such money is invested and the share purchased with such money or owned by such funds are held by or on behalf of each such fund. If and to the extent necessary, such investments or participations in these funds shall be promptly sold to prevent any default.

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

(c) Notwithstanding anything to the contrary contained in this Ordinance, any interest and income derived from deposits and investments of any amounts credited to any fund or account may be (i) transferred into any rebate account or subaccount and (ii) paid to the federal government if in the opinion of nationally recognized bond counsel such payment is required to comply with any covenant contained in an order, resolution or ordinance to prevent interest on any Parity Bonds from being includable within the gross income of the owners thereof for federal income tax purposes.

## **SECTION 19: ADDITIONAL BONDS**

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

(b) Refunding Bonds. The City expressly reserves the right to issue refunding bonds to refund all or a portion of the Parity Bonds or refunding bonds previously issued to refund Parity Bonds. Such refunding bonds may be secured by a lien on Pledged Revenues on a parity with or subordinate to the lien securing the Parity Bonds.

1033 (c) Other Additional Bonds.

1034 (1) In regard to the Pledged Revenues, the City reserves and retains  
1035 the right to issue or incur additional obligations secured wholly or partly by  
1036 a parity lien on such Pledged Revenues or by a lien junior and subordinate to  
1037 the lien on such Pledged Revenues securing payment of the Parity Bonds;  
1038 provided, however, that no such Parity Bonds or Junior Subordinate Lien  
1039 Bonds shall be issued unless the following conditions are satisfied:

1040 (i) the City's Chief Financial Officer (or other officer  
1041 of the City having primary responsibility for the financial  
1042 affairs of the City) shall provide a certificate showing that, for  
1043 the City's most recent completed Fiscal Year or for any  
1044 consecutive 12-month period out of the most recently 18  
1045 months preceding the month the ordinance authorizing the  
1046 issuance of the Parity Bonds or Junior Subordinate Lien Bonds  
1047 is adopted (the "Coverage Period"), (A) the Pledged Hotel  
1048 Occupancy Tax Revenues for the Coverage Period are equal to  
1049 at least 130% of the maximum annual Debt Service  
1050 Requirement of all Prior Lien Bonds and Parity Bonds then  
1051 Outstanding scheduled to occur in the then current or any future  
1052 Fiscal Year after taking into consideration the issuance of the  
1053 Parity Bonds, if any, proposed to be issued, and deducting from  
1054 the maximum annual Debt Service Requirement for such Prior  
1055 Lien Bonds and Parity Bonds an amount equal to the revenues  
1056 received from the Special Hotel Occupancy Tax for the  
1057 Coverage Period and (B) the "Net Pledged Hotel Occupancy  
1058 Tax Revenues" for the Coverage Period (i.e., the Pledged Hotel  
1059 Occupancy Tax Revenues after deducting an amount equal to  
1060 the maximum annual Debt Service Requirement applied in  
1061 satisfying the coverage requirement in clause (A) above),  
1062 together with any other revenues pledged wholly or partly to  
1063 the payment of any Junior Subordinate Lien Bonds, are equal to  
1064 at least 130% of the maximum annual Debt Service  
1065 Requirement on all Junior Subordinate Lien Bonds then  
1066 Outstanding and scheduled to occur in the then current or any  
1067 future Fiscal Year after giving effect to the issuance of the  
1068 Junior Subordinate Lien Bonds then being issued, if any;  
1069 provided, however, at such time as the Prior Lien Bonds are no  
1070 longer Outstanding, the coverage requirement in clause (A)  
1071 above shall be reduced to 125% and the coverage requirement  
1072 of clause (B) shall be reduced to 100%; and

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

(2) Among the future obligations authorized to be issued or incurred pursuant to this Section 19(c) are Credit Agreements. The City may enter into such a Credit Agreement payable from and secured wholly or partly by a lien on Pledged Revenues if it obtains either (i) the consent from any Credit Facility Provider issuing a Credit Facility (as such terms are defined in the ordinance authorizing the Previously Issued Bonds) in support of the Bonds or (ii) written confirmation from each Rating Agency then rating the Parity Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the Bonds; provided, however, that such consent in clause (i) and confirmation in clause (ii) above is not required for Interest Rate Management Agreements. The City may secure its obligations under a future Credit Agreement by a lien on Pledged Revenues if such lien is on a parity with or subordinate to the lien securing the Parity Bonds.

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

(i) At the sole discretion of the City, such Variable Rate Obligations shall be deemed to bear interest at one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt if such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days before the date of calculation; (B) if the City has entered into a related Credit Agreement in the nature of an Interest Rate Management Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days before the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in a financial



1111 newspaper or journal with national circulation may be selected  
1112 by the City and used for this purpose.

1113 (ii) If the City has entered into a Credit Agreement in  
1114 connection with an issue of obligations payable from and  
1115 secured by Pledged Revenues and if Clause B of paragraph  
1116 (c)(1)(i) above does not apply, (X) payments due under the  
1117 Credit Agreement, from either the City or the other party to the  
1118 Credit Agreement, shall be included in such calculation except  
1119 to the extent that the payments are already taken into account in  
1120 the debt service calculation, (Y) any payments that would  
1121 otherwise be included under the debt service calculation which  
1122 are to be replaced by payments under a Credit Agreement from  
1123 either the City or the other party to the Credit Agreement shall  
1124 be excluded from such calculation, and (Z) payments due under  
1125 a Credit Agreement that are paid at a variable rate shall be  
1126 deemed to be made at a fixed rate determined in a manner  
1127 consistent with clause A of paragraph (c)(1)(i) above. For any  
1128 calculation of historic data, only those payments actually made  
1129 in the subject period shall be taken into account in making such  
1130 calculation and for prospective calculations, only those  
1131 payments reasonably expected to be made in the subject period  
1132 shall be taken into account in making the calculation.

1133 (4) If the City has entered into a Credit Agreement to discharge or  
1134 purchase any of its obligations payable from or secured by Pledged  
1135 Revenues under arrangements where the City's obligation to repay the  
1136 amounts advanced under the Credit Agreement for the discharge or purchase  
1137 is payable over more than one year from the advance under the Credit  
1138 Agreement, then the portion of the obligations committed to be discharged  
1139 or purchased pursuant to the Credit Agreement shall be excluded from any  
1140 calculation of debt service requirements, and the principal of and interest  
1141 requirements that constitute the City's reimbursement obligation shall be  
1142 added.

1143 (5) In determining the Pledged Hotel Occupancy Tax Revenues  
1144 available to satisfy the coverage requirements of condition (c)(1) above, the  
1145 City may take into consideration an increase in the portion of the Pledged  
1146 Hotel Occupancy Tax Revenues that became effective during the Coverage  
1147 Period and, for purposes of satisfying the above coverage tests, make a pro  
1148 forma determination of the Pledged Hotel Occupancy Tax Revenues for the

Coverage Period based on such increased portion of the Pledged Hotel Occupancy Tax Revenues being in effect for the entire Coverage Period.

(6) Any Additional Bonds may bear any name or designation provided by the ordinance authorizing their issuance and may be issued in such form and manner as may be authorized by law. Furthermore, any such bonds may be secured by any other source of payment lawfully available for such purposes, including a Credit Agreement, financial guaranty insurance policy or similar credit or liquidity support. Any Reimbursement Obligation or obligation under a Credit Agreement may be secured by Pledged Revenues on a basis *pari passu* with the Parity Bonds or Junior Subordinate Lien Bonds.

## **SECTION 20: COVENANTS AND PROVISIONS RELATING TO ALL PARITY OBLIGATIONS**

(a) Punctual Payment of Parity Obligations. The City covenants it will punctually pay or cause to be paid the interest and any premium on and principal of all Parity Obligations according to their terms and will faithfully do and perform, and at all times fully observe, any and all covenants, undertakings, stipulations and provisions contained in this Ordinance and in any other ordinance authorizing the issuance of such Parity Obligations.

(b) Pledge and Encumbrance of Pledged Revenues. The City covenants and represents that it has the lawful power to create a lien on and to pledge the Pledged Revenues to secure the payment of the Parity Obligations and Junior Obligations and has lawfully exercised such power under the Constitution and laws of the State of Texas. The City further covenants and represents that, other than to the payment of the Prior Lien Bonds, the bonds and obligations authorized and reserved to be issued in this Ordinance, the Pledged Revenues are not and will not be made subject to any other lien, pledge or encumbrance to secure the payment of any debt or obligation of the City unless such lien, pledge or encumbrance is junior and subordinate to the lien and pledge securing payment of the Parity Obligations.

(c) Bondholders' Remedies. This Ordinance shall constitute a contract between the City and the Holders of the Bonds from time to time Outstanding and the beneficiaries of other Parity Obligations and Junior Obligations and this Ordinance shall be and remain irrevocable until the Bonds and the other Parity Obligations and Junior Obligations shall be fully paid or discharged or provision for payment or discharge shall have been made as provided in this Ordinance. In the event of a default in the payment of the principal of or interest or any premium on any of the Bonds or a default in the performance of any duty or covenant provided by law or in this Ordinance, each Holder

of a Bond and each beneficiary of any Parity Obligation or Junior Obligations may pursue all legal remedies afforded by the Constitution and laws of the State of Texas to compel the City to remedy such default and to prevent further default or defaults. Without in any way limiting the generality of the preceding, it is expressly provided that each Holder of a Bond and each beneficiary of any Parity Obligation or Junior Obligations may at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the City under this Ordinance, including the application of Pledged Revenues in the manner required in this Ordinance; provided, however, that no Holder of a Bond and no beneficiary of a Parity Obligation or a Junior Obligation shall ever have the right to demand payment of the principal of, interest on or any redemption premium on the Bonds or any payment on any Parity Obligation or Junior Obligations out of any funds raised or to be raised by taxation, other than the Pledged Hotel Occupancy Tax Revenues and the Special Hotel Occupancy Tax.

(d) Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the pledge of the Pledged Revenues under this Ordinance and all other obligations of the City to the Holders shall cease, terminate, and become void and be discharged and satisfied.

Bonds or any principal amount(s) of the Bonds shall be considered to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) of the Bonds at maturity or to the redemption date, together with all interest due on such Bonds, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/ Registrar, or an authorized escrow agent, which Government Obligations have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of, premium, if any, and interest on such Bonds, or the principal amount(s), on and before the Stated Maturity thereof or (if notice of redemption has been given or waived or if irrevocable arrangements acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of money or Government Obligations will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of section 148 of the Code, or Regulations.

Any money so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Obligations held in trust by the Paying

Agent/Registrar or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest on the Bonds with respect to which such money has been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such money was deposited and are held in trust to pay shall, upon the request of the City, be remitted to the City against a written receipt for the funds. Notwithstanding the above and preceding, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

With respect to the Previously Issued Bonds, all money or Government Obligations set aside and held in trust pursuant to the provisions of this Section 21(d) shall be used at the first practicable date to pay the Purchase Price or Redemption Price, as applicable, of the Bonds being deemed paid, retired and no longer outstanding as contemplated in the first paragraph of this Section 21(d). Capitalized terms used in this paragraph and not otherwise defined in this Ordinance shall have the meanings assigned in the ordinance authorizing the issuance of the Previously Issued Bonds.

(e) Non-Business Days. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds or the due date for the payment or performance of any obligation shall be other than a Business Day, then such payment need not be made on such due date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption or other due date, and no interest shall accrue for the period from the scheduled due date to the date of actual payment. If any Transfer Date shall not be a Business Day, then the transfer otherwise required to be made on such date pursuant to Section 15 shall be made on the next succeeding Business Day.

## **SECTION 21: ALTERATION OF RIGHTS AND DUTIES; AMENDMENT OF ORDINANCE.**

Capitalized terms used in this Section and not otherwise defined in this Ordinance shall have the meanings assigned in the ordinance authorizing the Previously Issued Bonds.

(a) Alteration of Rights and Duties. The rights, duties, and obligations of the City and the Holders of the Bonds are subject in all respects to all applicable federal and state laws including, without limitation, the provisions of federal law regarding the

composition of indebtedness of political subdivisions, as the same now exist or may be amended.

(b) Amendment of Ordinance Without Consent. The City may, without the consent of or notice to any of the Holders of the Bonds, amend this Ordinance for any one or more of the following purposes:

(1) to cure any ambiguity, defect, omission or inconsistent provision in this Ordinance or in the Bonds; or to comply with any applicable provision of law or regulation of federal agencies; provided, however, that such action shall not adversely affect the interests of the Holders of the Bonds;

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

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

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

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

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

provided, however, that if and to the extent required by a Credit Facility, Liquidity Facility, an Interest Rate Management Agreement, another Credit Agreement or other provision of this Ordinance, the City shall first obtain the consent of the Credit Facility Provider, any Liquidity Facility Provider and the Interest Rate Management Agreement Counterparty to any such amendment pursuant to this Section 21.

1293  
1294 (c) Amendments of Ordinance Requiring Consent.

1295 (1) The City may at any time adopt one or more ordinances  
1296 amending, modifying, adding to or eliminating any of the provisions of this  
1297 Ordinance but, if such amendment is not of the character described in  
1298 Section 21(b) of this Ordinance, only with the consent given in accordance  
1299 with Section 21(d) of this Ordinance of the Holders of not fewer than a  
1300 majority of the aggregate unpaid principal amount of the Parity Bonds then  
1301 Outstanding and affected by such amendment, modification, addition, or  
1302 elimination; provided, however, that nothing in this Section 21(c) shall  
1303 permit (1) an extension of the maturity of the principal of or interest on any  
1304 Bond issued hereunder, or (2) a reduction in the principal amount of any  
1305 Bond or the rate of interest on any Bond or redemption price, or (3) a  
1306 privilege or priority of any Bond or Bonds over any other Bond or Bonds, or  
1307 (4) a reduction in the aggregate principal amount of the Bonds required for  
1308 consent to such amendment.

1309 (2) If and to the extent required by a Credit Facility, Liquidity  
1310 Facility, an Interest Rate Management Agreement, another Credit  
1311 Agreement or other provision of this Ordinance, the City shall first obtain  
1312 the consent of the Credit Facility Provider, any Liquidity Provider and the  
1313 Interest Rate Management Agreement Counterparty to any such amendment  
1314 pursuant to this Section 21(c).

1315 (d) Consent of Holders. Any consent required by Section 21(c) shall be  
1316 considered given

1317 (1) By all Holders of Outstanding Bonds if a Credit Facility is in  
1318 effect, the Credit Facility Provider is not in default under the Credit Facility  
1319 and the Credit Facility Provider has given its written consent to the  
1320 amendments in writing,

1321 (2) By all Holders of Outstanding Bonds if the Bonds are  
1322 remarketed following a mandatory tender of all Bonds and the substance of  
1323 such amendment has been disclosed to the market in connection with such  
1324 remarketing,

1325 (3) By all Holders of Outstanding Bonds if the Bonds are in an  
1326 Auction Rate Mode and if written notice of the substance of the proposed  
1327 amendment has been furnished to the Holders and if following such  
1328 disclosure, there have occurred at least two consecutive Auctions and in

each such Auction either Sufficient Clearing Bids existed or the Auction Rate determined was the Winning Bid Rate;

(4) By any Holder in any number of concurrent writings of similar tenor, signed by such Holder or his authorized attorney. Proof of the execution of any such consent or of the writing appointing any such attorney and of the ownership of Parity Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted to be taken by the City under such instrument, namely:

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

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

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

Consents obtained pursuant to Section 21(d)(4) shall be valid only if given following the mailing of notice by or on behalf of the City requesting such consent and setting forth the substance of the amendment of this Ordinance in respect of which such consent is sought and stating that copies thereof are available at the office of the City Clerk for inspection. Such notice shall be mailed by certified mail to each Holder of the Parity Bonds affected at the address shown on the Security Register.

(e) Revocation of Consent. Any consent by any Holder of a Bond pursuant to the provisions of Section 21(d)(4) shall be irrevocable for a period of six months from the date of mailing of the notice provided for in this Section, and shall be conclusive and binding upon all future Holders of the same Bond and any Bond delivered on transfer thereof or in exchange for or replacement thereof during such period. Such consent may be revoked at any time after six months from the date of the first mailing of such notice by the owner who gave such consent or by a successor in title, by filing notice thereof with the Paying Agent/Registrar, but such revocation shall not be effective if the Holders of a majority in aggregate principal amount of the Parity Bonds Outstanding as in this

Ordinance defined have, before the attempted revocation, consented to and approved the amendment.

**SECTION 22: MUTILATED - DESTROYED - LOST AND STOLEN BONDS.** In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, destroyed, lost or stolen.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

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

**SECTION 23: TAX EXEMPTION.**

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

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

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

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

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



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

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

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

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

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

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

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

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Bonds),

1437 and not use or permit the use of such Gross Proceeds (including all  
1438 contractual arrangements with terms different than those applicable to the  
1439 general public) or any property acquired, constructed or improved with such  
1440 Gross Proceeds in any activity carried on by any person or entity (including  
1441 the United States or any agency, department and instrumentality thereof)  
1442 other than a state or local government, unless such use is solely as a member  
1443 of the general public; and

1444 (2) not directly or indirectly impose or accept any charge or other  
1445 payment by any person or entity who is treated as using Gross Proceeds of  
1446 the Bonds or any property the acquisition, construction or improvement of  
1447 which is to be financed or refinanced directly or indirectly with such Gross  
1448 Proceeds (including property financed with Gross Proceeds of the Refunded  
1449 Bonds), other than taxes of general application within the City or interest  
1450 earned on investments acquired with such Gross Proceeds pending  
1451 application for their intended purposes.

1452 (d) No Private Loan. Except to the extent permitted by section 141 of the Code  
1453 and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the  
1454 Bonds to make or finance loans to any person or entity other than a state or local  
1455 government. For purposes of the foregoing covenant, such Gross Proceeds are  
1456 considered to be “loaned” to a person or entity if: (1) property acquired, constructed or  
1457 improved with such Gross Proceeds is sold or leased to such person or entity in a  
1458 transaction which creates a debt for federal income tax purposes; (2) capacity in or  
1459 service from such property is committed to such person or entity under a take-or-pay,  
1460 output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits  
1461 of ownership, of such Gross Proceeds or any property acquired, constructed or improved  
1462 with such Gross Proceeds are otherwise transferred in a transaction which is the  
1463 economic equivalent of a loan.

1464 (e) Not to Invest at Higher Yield. Except to the extent permitted by section 148  
1465 of the Code and the Regulations and rulings thereunder, the City shall not at any time  
1466 prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds  
1467 in any Investment (or use Gross Proceeds to replace money so invested), if as a result of  
1468 such investment the Yield from the Closing Date of all Investments acquired with Gross  
1469 Proceeds (or with money replaced thereby), whether then held or previously disposed of,  
1470 exceeds the Yield of the Bonds.

1471 (f) Not Federally Guaranteed. Except to the extent permitted by section 149(b)  
1472 of the Code and the Regulations and rulings thereunder, the City shall not take or omit to  
1473 take any action which would cause the Bonds to be federally guaranteed within the  
1474 meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

1475 (g) Information Report. The City shall timely file the information required by  
1476 section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such  
1477 other form and in such place as the Secretary may prescribe.

1478 (h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in  
1479 section 148(f) of the Code and the Regulations and rulings thereunder:

1480 (1) The City shall account for all Gross Proceeds (including all  
1481 receipts, expenditures and investments thereof) on its books of account  
1482 separately and apart from all other funds (and receipts, expenditures and  
1483 investments thereof) and shall retain all records of accounting for at least six  
1484 years after the day on which the last outstanding Bond is discharged.  
1485 However, to the extent permitted by law, the City may commingle Gross  
1486 Proceeds of the Bonds with other money of the City, provided that the City  
1487 separately accounts for each receipt and expenditure of Gross Proceeds and  
1488 the obligations acquired therewith.

1489 (2) Not less frequently than each Computation Date, the City shall  
1490 calculate the Rebate Amount in accordance with rules set forth in section  
1491 148(f) of the Code and the Regulations and rulings thereunder. The City  
1492 shall maintain such calculations with its official transcript of proceedings  
1493 relating to the issuance of the Bonds until six years after the final  
1494 Computation Date.

1495 (3) As additional consideration for the purchase of the Bonds by  
1496 the Purchasers and the loan of the money represented thereby and in order to  
1497 induce such purchase by measures designed to insure the excludability of the  
1498 interest thereon from the gross income of the owners thereof for federal  
1499 income tax purposes, the City shall pay to the United States out of the Bond  
1500 Fund or its general fund, as permitted by applicable Texas statute, regulation  
1501 or opinion of the Attorney General of the State of Texas, the amount that  
1502 when added to the future value of previous rebate payments made for the  
1503 Bonds equals (i) in the case of a Final Computation Date as defined in  
1504 Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the  
1505 Rebate Amount on such date; and (ii) in the case of any other Computation  
1506 Date, ninety percent (90%) of the Rebate Amount on such date. In all cases,  
1507 the rebate payments shall be made at the times, in the installments, to the  
1508 place and in the manner as is or may be required by section 148(f) of the  
1509 Code and the Regulations and rulings thereunder, and shall be accompanied  
1510 by Form 8038-T or such other forms and information as is or may be  
1511 required by Section 148(f) of the Code and the Regulations and rulings  
1512 thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

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

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

(k) Bonds Not Hedge Bonds. (1) The City reasonably expects to spend at least 85% of the spendable proceeds of the Bonds within three years after such Bonds are issued and (2) not more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

(l) Current Refunding. The Refunded Bonds being refunded by the Bonds constitute a current refunding as the payment and/or redemption of such Refunded Bonds will occur within 90 days of the delivery of the Bonds.

**SECTION 24: SALE OF BONDS – BOND PURCHASE AGREEMENT.**  
The Bonds authorized by this Ordinance are sold by the City to Estrada Hinojosa & Company, Inc. and RBC Capital Markets LLC (collectively, the “Purchasers” or “Underwriters”) in accordance with the Bond Purchase Agreement, dated March 1, 2012, substantially in the form attached as Exhibit B and incorporated by reference as a part of this Ordinance for all purposes. The Mayor or Mayor Pro Tem is authorized and directed to execute said Bond Purchase Agreement for and on behalf of the City and as the act and deed of this Council, and in regard to the approval and execution of the Purchase Contract, the Council finds, determines and declares that the representations, warranties

and agreements of the City contained in the Bond Purchase Agreement are true and correct in all material respects and shall be honored and performed by the City.

**SECTION 25: OFFICIAL STATEMENT.** Furthermore, the use of the Official Statement by the Purchasers in connection with the public offering and sale of the Bonds is ratified, confirmed and approved in all respects. The final Official Statement reflecting the terms of sale (together with such changes approved by the Mayor, City Clerk, City Manager, Chief Financial Officer, Deputy Chief Financial Officer or City Treasurer, one or more of said officials), shall be and is in all respects approved and the Purchasers are authorized to use and distribute said final Official Statement, dated March 1, 2012, in the offering, sale and delivery of the Bonds to the public. The Mayor and City Clerk are further authorized and directed to manually execute and deliver for and on behalf of the City copies of said Official Statement in final form as may be required by the Purchasers, and such final Official Statement in the form and content manually executed by said officials shall be deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Purchasers.

**SECTION 26: ESCROW AGREEMENT APPROVAL AND EXECUTION.** The "Escrow Agreement" (the "Agreement") by and between the City and Deutsche Bank National Trust Company, Jersey City, New Jersey (the "Escrow Agent"), attached as Exhibit C and incorporated by reference as a part of this Ordinance for all purposes, is approved as to form and content, and such Agreement in substantially the form and substance attached to this Ordinance, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the City, is authorized to be executed by the Mayor or Mayor Pro Tem and City Clerk for and on behalf of the City and as the act and deed of this City Council; and such Agreement as executed by said officials shall be deemed approved by the City Council and constitute the Agreement approved by this Ordinance.

Furthermore, appropriate officials of the City in cooperation with the Escrow Agent are authorized and directed to make the necessary arrangements for the deposit of a portion of the proceeds of sale of the Bonds and other available funds of the City to the credit of the "SPECIAL 2012 CITY OF AUSTIN, TEXAS, HOTEL OCCUPANCY TAX/CONVENTION CENTER/WALLER CREEK VENUE PROJECT REFUNDING BOND ESCROW FUND" (the "Escrow Fund") maintained by the Escrow Agent for the payment and redemption of the Refunded Bonds on April 24, 2012; all as contemplated and provided in V.T.C.A., Government Code, Chapter 1207, as amended, this Ordinance and the Agreement. The Escrow Agent is not a depository of the City.

**SECTION 27: PROCEEDS OF SALE.** Immediately following the delivery of the Bonds, proceeds of sale in the sum of (i) \$\_\_\_\_\_ shall be deposited to the

credit of the Escrow Fund, (ii) \$\_\_\_\_\_ shall be deposited to the credit of the Bond Fund, and (iii) \$\_\_\_\_\_ shall be deposited to the Reserve Fund as provided in this Ordinance. The balance of the proceeds of sale of the Bonds shall be expended to pay costs of issuance and municipal bond insurance premium and any excess amount budgeted for such purpose shall be deposited to the credit of the Bond Fund.

On or prior to the date of the delivery of the Bonds, the City Treasurer or other appropriate official, shall cause to be transferred in immediately available funds to the Escrow Agent from moneys on deposit in the interest and sinking fund maintained for the payment of the Refunded Bonds the sum of \$\_\_\_\_\_ to accomplish the refunding.

**SECTION 28: REDEMPTION OF REFUNDED BONDS.** (a) The Refunded Bonds scheduled to mature on November 15 in each of the years 2012, 2019 and 2029, and aggregating in principal amount \$20,175,000, shall be redeemed and the same are called for redemption on April 24, 2012, at the redemption price of par and accrued interest to the date of redemption. The City Clerk is authorized and directed to file a copy of this Ordinance, together with a suggested form of notice of redemption to be sent to bondholders, with The Bank of New York Mellon Trust Company, N.A. (the successor paying agent/registrar to Chase Bank of Texas, National Association, the paying agent for the Refunded Bonds), in accordance with the redemption provisions applicable to the Refunded Bonds; such suggested form of notice of redemption being attached as Exhibit D and incorporated by reference as a part of this Ordinance for all purposes.

(b) The redemption of the obligations described above being associated with the refunding of such obligations, the approval, authorization and arrangements given in this Section and provided for the redemption of such obligations on the redemption date designated and in the manner provided shall be irrevocable upon the issuance and delivery of the Bonds; and the City Clerk is authorized and directed to make all arrangements necessary to notify the holders of such obligations of the City's decision to redeem such obligations on the date and in the manner provided in this Section and in accordance with the ordinances authorizing the issuance of the obligations and this Ordinance.

**SECTION 29: CONTROL AND CUSTODY OF BONDS.** The Mayor of the City shall be and is authorized to take and have charge of all necessary orders and records pending the delivery of the Bonds, and shall take and have charge and control of the Initial Bond(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchaser(s).

Furthermore, the Mayor, Mayor Pro Tem, City Clerk, City Manager, Chief Financial Officer, Deputy Chief Financial Officer, City Attorney and City Treasurer, any one or more of said officials, are authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and registration by the Comptroller of Public Accounts and, together with the City's financial advisor, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond(s) to the initial Purchasers and the exchange thereof for obligations described in this Ordinance and in the Official Statement.

**SECTION 30: LEGAL OPINION.** The obligation of the Purchasers to accept delivery of the Bonds is subject to being furnished a final opinion of Fulbright & Jaworski L.L.P., Attorneys, Dallas, Texas, approving such Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Bonds. A true and correct reproduction of said opinion is authorized to be printed on the definitive Bonds or an executed counterpart thereof shall accompany the global Bonds deposited with the Depository Trust Company.

**SECTION 31: 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 said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

**SECTION 32: BENEFITS OF ORDINANCE.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

**SECTION 33: INCONSISTENT PROVISIONS.** All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained in this Ordinance.

**SECTION 34: 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.

**SECTION 35: SEVERABILITY.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this

Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the Council declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 36: CONSTRUCTION OF TERMS.** If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

**SECTION 37: NOTICES TO HOLDERS-WAIVER.** Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise in this Ordinance expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 38: CANCELLATION.** All Bonds surrendered for payment, redemption, transfer or exchange, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the City.

**SECTION 39: CONTINUING DISCLOSURE UNDERTAKING.**

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“Rule” means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.



1697 “SEC” means the United States Securities and Exchange Commission.

1698 (b) Annual Reports. The City shall provide annually to the MSRB (1) within  
1699 six months after the end of each fiscal year ending in or after 2012, financial information  
1700 and operating data with respect to the City of the general type included in the final  
1701 Official Statement authorized by Section 25 of this Ordinance, being the information  
1702 described in the attached **Exhibit E**, and (2) if not provided as part such financial  
1703 information and operating data, audited financial statements of the City, when and if  
1704 available. Any financial statements so to be provided shall be prepared in accordance  
1705 with the accounting principles described in the attached **Exhibit E**, or such other  
1706 accounting principles as the City may be required to employ from time to time pursuant  
1707 to state law or regulation, and audited, if the City commissions an audit of such  
1708 statements and the audit is completed within the period during which they must be  
1709 provided. If audited financial statements are not available by the required time, the City  
1710 will provide unaudited financial information and operating data of the general type  
1711 included in the Official Statement as Appendix B by the required time and audited  
1712 financial statements when and if such audited financial statements become available.

1713 If the City changes its fiscal year, it will notify the MSRB of the change (and of the  
1714 date of the new fiscal year end) prior to the next date by which the City otherwise would  
1715 be required to provide financial information and operating data pursuant to this Section.

1716 The financial information and operating data to be provided pursuant to this  
1717 Section may be set forth in full in one or more documents or may be included by specific  
1718 reference to any document available to the public on the MSRB’s Internet Web site or  
1719 filed with the SEC.

1720 (c) Notice of Certain Events. The City shall provide notice of any of the  
1721 following events with respect to the Bonds to the MSRB in a timely manner and not more  
1722 than 10 business days after occurrence of the event:

- 1723 (i) Principal and interest payment delinquencies;
- 1724 (ii) Non-payment related defaults, if material;
- 1725 (iii) Unscheduled draws on debt service reserves reflecting  
1726 financial difficulties;
- 1727 (iv) Unscheduled draws on credit enhancements reflecting  
1728 financial difficulties;
- 1729 (v) Substitution of credit or liquidity providers, or their  
1730 failure to perform;

(vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

(vii) Modifications to rights of holders of the Bonds, if material;

(viii) Bond calls, if material, and tender offers;

(ix) Defeasances;

(x) Release, substitution, or sale of property securing repayment of the Bonds, if material;

(xi) Rating changes;

(xii) Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;

(xiii) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding paragraph (xii) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with this Section by the time required by this Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices, and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(e) Limitations, Disclaimers and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section with respect to the City and the Bonds 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 subsection (c) hereof of any Bond calls and/or defeasances that cause the City to no longer be such an “obligated person”.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not undertake to provide any other information that may be relevant or material to a complete presentation of the financial results, condition, or prospects of the City or the State of Texas or undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided in this Section. 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.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

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

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

Notwithstanding anything in this Ordinance to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount and Maturity Amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

**SECTION 40: INCORPORATION OF FINDINGS AND DETERMINATIONS.** The findings and determinations of the City Council contained in the preamble hereof are incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

**SECTION 41: BOND INSURANCE.** The Bonds will be insured by Assured Guaranty Municipal Corp., a New York stock insurance company (the "Insurer" or "AGM"). The following provisions shall apply to the Insurance Policy (defined below), but only for so long as the Insurance Policy is in effect with respect to the Bonds:

(a) "Insurance Policy" shall be defined as follows: "the insurance policy issued by the Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due". The term "Insurer" or "AGM" shall include any successor thereto or assignee thereof. The term "Insured Bonds" shall mean any Bonds covered by the Insurance Policy.

(b) The prior written consent of the Insurer shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Reserve Fund.

1838 (c) The Insurer shall be deemed to be the sole holder of the Insured Bonds for  
1839 the purpose of exercising any voting right or privilege or giving any consent or direction  
1840 or taking any other action that the holders of the Bonds insured by it are entitled to take  
1841 pursuant to the Ordinance pertaining to (i) defaults and remedies and (ii) the duties and  
1842 obligations of the Paying Agent/Registrar. Remedies granted to the Bondholders shall  
1843 expressly include mandamus.

1844 (d) No grace period for a covenant default shall exceed thirty (30) days or be  
1845 extended for more than sixty (60) days, without the prior written consent of the Insurer.  
1846 No grace period shall be permitted for payment defaults.

1847 (e) The Insurer shall be included as a third party beneficiary to the Ordinance.

1848 (f) Upon the occurrence of an extraordinary optional redemption, special or  
1849 extraordinary mandatory redemption in part, the selection of Bonds to be redeemed shall  
1850 be subject to the approval of the Insurer. The exercise of any provision of the Ordinance  
1851 which permits the purchase of Bonds in lieu of redemption shall require the prior written  
1852 approval of the Insurer if any Bond so purchased is not cancelled upon purchase.

1853 (g) Any amendment, supplement, modification to, or waiver of, the Ordinance  
1854 or any other transaction document, including any underlying security agreement (each a  
1855 "Related Document"), that requires the consent of Holders or adversely affects the rights  
1856 and interests of the Insurer shall be subject to the prior written consent of the Insurer.

1857 (h) The rights granted to the Insurer under this Ordinance or any other Related  
1858 Document to request, consent to or direct any action are rights granted to the Insurer in  
1859 consideration of its issuance of the Insurance Policy. Any exercise by the Insurer of such  
1860 rights is merely an exercise of the Insurer's contractual rights and shall not be construed  
1861 or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action  
1862 does not evidence any position of the Insurer, affirmative or negative, as to whether the  
1863 consent of the Holders or any other person is required in addition to the consent of the  
1864 Insurer.

1865 (i) Only (i) cash, (ii) noncallable direct obligations of the United States of  
1866 America, including obligations the principal of and interest on which are unconditionally  
1867 guaranteed by the United States of America, (iii) noncallable obligations of an agency or  
1868 instrumentality of the United States, including obligations unconditionally guaranteed or  
1869 insured by the agency or instrumentality and, on the date of their acquisition or purchase  
1870 by the City, are rated as to investment quality by a nationally recognized investment  
1871 rating firm not less than AAA or its equivalent, (iv) noncallable obligations of a state or  
1872 an agency or a county, municipality, or other political subdivision of a state that have  
1873 been refunded and that, on the date of their acquisition or purchase by the City, are rated  
1874 as to investment quality by a nationally recognized investment rating firm not less than

AAA or its equivalent and (v) any other then authorized securities or obligations under applicable law that may be used to defease obligations such as the Bonds, shall be used to effect defeasance of the Bonds unless the Insurer otherwise approves .

To accomplish defeasance, the City shall cause to be delivered (i) either (A) with respect an advanced refunding, a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Insurer verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date (the "Verification"), or (B) with respect a current refunding, a certificate or report of either the City's financial advisor or the paying agent for the Refunded Bonds verifying the sufficiency of the refunding bond proceeds and other cash on hand, if applicable, to pay the principal of and interest on the Bonds in full on the maturity or redemption date (the "Sufficiency"), (ii) an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Insurer), if necessary, (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under the Ordinance and (iv) a certificate of discharge of the Paying Agent/Registrar with respect to the Bonds; each Verification or Sufficiency, as applicable, and defeasance opinion shall be acceptable in form and substance, and addressed, to the City, Paying Agent/Registrar and Insurer. The Insurer shall be provided with final drafts of the above referenced documentation not less than five business days prior to the funding of the escrow.

Bonds shall be deemed "Outstanding" under this Ordinance unless and until they are in fact paid and retired or the above criteria are met.

(j) Amounts paid by the Insurer under the Insurance Policy shall not be deemed paid for purposes of the Ordinance and the Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the City in accordance with the Ordinance. The Ordinance shall not be discharged unless all amounts due or to become due to the Insurer have been paid in full or duly provided for.

(k) The City covenants and agrees to take such action, or to cause the Paying Agent/Registrar to take such action, as is necessary from time to time to preserve the priority of the pledge of the Pledged Revenues under applicable law.

(l) Claims Upon the Insurance Policy and payments by and to the Insurer.

If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent/Registrar, after making all transfers and deposits required under the Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent/Registrar shall give notice to the Insurer and to its designated agent (if

any) (the “Insurer’s Fiscal Agent”) by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent/Registrar shall make a claim under the Insurance Policy and give notice to the Insurer and the Insurer’s Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Insurer and the Insurer’s Fiscal Agent (if any) by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent/Registrar shall designate any portion of payment of principal on Bonds paid by the Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Bondholder, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Insurer, registered in the name of Assured Guaranty Municipal Corp., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent/Registrar’s failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the City on any Bond or the subrogation rights of the Insurer.

The Paying Agent/Registrar shall keep a complete and accurate record of all funds deposited by the Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Bond. The Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent/Registrar.

Upon payment of a claim under the Insurance Policy, the Paying Agent/Registrar shall establish a separate special purpose trust account for the benefit of Bondholders referred to herein as the “Policy Payments Account” and over which the Paying Agent/Registrar shall have exclusive control and sole right of withdrawal. The Paying Agent/Registrar shall receive any amount paid under the Insurance Policy in trust on behalf of Bondholders and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the

1951 payments for which a claim was made. Such amounts shall be disbursed by  
1952 the Paying Agent/Registrar to Bondholders in the same manner as principal  
1953 and interest payments are to be made with respect to the Bonds under the  
1954 sections hereof regarding payment of Bonds. It shall not be necessary for  
1955 such payments to be made by checks or wire transfers separate from the  
1956 check or wire transfer used to pay debt service with other funds available to  
1957 make such payments. Notwithstanding anything herein to the contrary, the  
1958 City agrees to pay to the Insurer (i) a sum equal to the total of all amounts  
1959 paid by the Insurer under the Insurance Policy (the "Insurer Advances"); and  
1960 (ii) to the extent permitted by law and subject to annual appropriation,  
1961 interest on such Insurer Advances from the date paid by the Insurer until  
1962 payment thereof in full, payable to the Insurer at the Late Payment Rate per  
1963 annum (collectively, the "Insurer Reimbursement Amounts"). "Late  
1964 Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of  
1965 interest, publicly announced from time to time by JPMorgan Chase Bank at  
1966 its principal office in The City of New York, as its prime or base lending  
1967 rate (any change in such rate of interest to be effective on the date such  
1968 change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then  
1969 applicable highest rate of interest on the Bonds and (b) the maximum rate  
1970 permissible under applicable usury or similar laws limiting interest rates.  
1971 The Late Payment Rate shall be computed on the basis of the actual number  
1972 of days elapsed over a year of 360 days. The City hereby covenants and  
1973 agrees that the Insurer Advances are secured by a lien on and pledge of the  
1974 Pledged Revenues and payable from such Pledged Revenues on a parity with  
1975 debt service due on the Bonds.

1976 Funds held in the Policy Payments Account shall not be invested by  
1977 the Paying Agent/Registrar and may not be applied to satisfy any costs,  
1978 expenses or liabilities of the Paying Agent/Registrar. Any funds remaining  
1979 in the Policy Payments Account following a Bond payment date shall  
1980 promptly be remitted to the Insurer.

1981 (m) The Insurer shall, to the extent it makes any payment of principal of or  
1982 interest on the Bonds, become subrogated to the rights of the recipients of such payments  
1983 in accordance with the terms of the Insurance Policy. Each obligation of the City to the  
1984 Insurer under the Related Documents shall survive discharge or termination of such  
1985 Related Documents.

1986 (n) To the extent permitted by law, the City shall pay or reimburse the Insurer  
1987 any and all charges, fees, costs and expenses that the Insurer may reasonably pay or incur  
1988 in connection with (i) the administration, enforcement, defense or preservation of any  
1989 rights or security in any Related Document; (ii) the pursuit of any remedies under the



Ordinance or any other Related Document or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Ordinance or any other Related Document whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Ordinance or any other Related Document or the transactions contemplated thereby, other than costs resulting from the failure of the Insurer to honor its obligations under the Insurance Policy. The Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Ordinance or any other Related Document.

(o) After payment of reasonable expenses of the Paying Agent/Registrar, the application of funds realized upon default shall be applied to the payment of expenses of the City or rebate only after the payment of past due and current debt service on the Bonds and amounts required to restore the Reserve Fund to the Reserve Fund Requirement.

(p) The Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with the Ordinance, whether or not the Insurer has received a Notice of Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.

(q) The notice address of the Insurer is: Assured Guaranty Municipal Corp., 31 West 52nd Street, New York, New York 10019, Attention: Managing Director - Surveillance, Re: Policy No. \_\_\_\_\_, Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an event of default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(r) The Insurer shall be provided with the following information by the City or Paying Agent/Registrar, as the case may be:

(1) Annual audited financial statements within one hundred eighty (180) days after the end of the City's fiscal year (together with a certification of the City that it is not aware of any default or event of default under the Ordinance), and the City's annual budget within thirty (30) days after the approval thereof together with such other information, data or reports as the Insurer shall reasonably request from time to time;

(2) Notice of any draw upon the Reserve Fund within two Business Days after knowledge thereof other than (i) withdrawals of amounts in

2026 excess of the Reserve Fund Requirement and (ii) withdrawals in connection  
2027 with a refunding of Bonds;

2028 (3) Notice of any default known to the Paying Agent/Registrar or  
2029 City within five Business Days after knowledge thereof;

2030 (4) Prior notice of the advance refunding or redemption of any of  
2031 the Bonds, including the principal amount, maturities and CUSIP numbers  
2032 thereof;

2033 (5) Notice of the resignation or removal of the Paying  
2034 Agent/Registrar and the appointment of, and acceptance of duties by, any  
2035 successor thereto;

2036 (6) Notice of the commencement of any proceeding by or against  
2037 the City commenced under the United States Bankruptcy Code or any other  
2038 applicable bankruptcy, insolvency, receivership, rehabilitation or similar law  
2039 (an "Insolvency Proceeding");

2040 (7) Notice of the making of any claim in connection with any  
2041 Insolvency Proceeding seeking the avoidance as a preferential transfer of  
2042 any payment of principal of, or interest on, the Bonds;

2043 (8) A full original transcript of all proceedings relating to the  
2044 execution of any amendment, supplement, or waiver to the Related  
2045 Documents; and

2046 (9) All reports, notices and correspondence to be delivered to  
2047 Bondholders under the terms of the Related Documents.

2048 In addition, to the extent that the City has entered into a continuing disclosure  
2049 agreement, covenant or undertaking with respect to the Bonds, all information furnished  
2050 pursuant to such agreements shall also be provided to the Insurer, simultaneously with the  
2051 furnishing of such information.

2052 (s) The Insurer shall have the right to receive such additional information as it  
2053 may reasonably request.

2054 (t) The City will permit the Insurer to discuss the affairs, finances and accounts  
2055 of the City or any information the Insurer may reasonably request regarding the security  
2056 for the Bonds with appropriate officers of the City and will use commercially reasonable  
2057 efforts to enable the Insurer to have access to the facilities, books and records of the City  
2058 on any business day upon reasonable prior notice.

(u) The City shall notify the Insurer of any failure of the City to provide notices, certificates and other information under the transaction documents.

(v) Notwithstanding satisfaction of the other conditions to the issuance of Additional Bonds set forth in the Ordinance, no such issuance may occur (1) if an event of default (or any event which, once all notice or grace periods have passed, would constitute an event of default) exists unless such default shall be cured upon such issuance and (2) unless the Reserve Fund is fully funded at the Reserve Fund Requirement (including the proposed issue) upon the issuance of such Additional Bonds, in either case unless otherwise permitted by the Insurer.

(w) In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Ordinance would adversely affect the security for the Bonds or the rights of the Bondholders, the Paying Agent/Registrar shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.

(x) No contract shall be entered into or any action taken by which the rights of the Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Insurer.

(y) Any interest rate exchange agreement ("Swap Agreement") entered into by the City shall meet the following conditions: (i) the Swap Agreement must be entered into to manage interest costs related to, or a hedge against (a) assets then held, or (b) debt then outstanding, or (iii) debt reasonably expected to be issued within the next twelve (12) months, and (ii) the Swap Agreement shall not contain any leverage element or multiplier component greater than 1.0x unless there is a matching hedge arrangement which effectively off-sets the exposure from any such element or component. Unless otherwise consented to in writing by the Insurer, any uninsured net settlement, breakage or other termination amount then in effect shall be subordinate to debt service on the Bonds and on any debt on parity with the Bonds. The City shall not terminate a Swap Agreement unless it demonstrates to the satisfaction of the Insurer prior to the payment of any such termination amount that such payment will not cause the City to be in default under the Related Documents, including but not limited to, any monetary obligations thereunder. All counterparties or guarantors to any Swap Agreement must have a rating of at least "A-" and "A3" by Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P") and Moody's Investors Service, Inc. ("Moody's"). If the counterparty or guarantor's rating falls below "A-" or "A3" by either S&P or Moody's, the counterparty or guarantor shall execute a credit support annex to the Swap Agreement, which credit support annex shall be acceptable to the Insurer. If the counterparty or the guarantor's long term unsecured rating falls below "Baa1" or

2097 “BBB+” by either Moody’s or S&P, a replacement counterparty or guarantor, acceptable  
2098 to the Insurer, shall be required.

2099 (z) Unless the Insurer otherwise directs, upon the occurrence and continuance of an  
2100 Event of Default or an event which with the notice or lapse of time would constitute an  
2101 Event of Default, amounts on deposits in the Construction Fund shall not be disbursed,  
2102 but shall instead be applied to the payment of debt service or redemption price of the  
2103 Bonds.

2104 (aa) There shall be delivered an opinion of Bond Counsel addressed to the Insurer  
2105 (or a reliance letter relating thereto), or a certificate of discharge from the paying  
2106 agent/registrar for the Refunded Bonds, to the effect that, upon the making of the required  
2107 deposit to the escrow, the legal defeasance of the Refunded Bonds shall have occurred.  
2108 An executed copy of such opinion and reliance letter, if applicable, or discharge  
2109 certificate, as the case may be, shall be forwarded to the Insurer prior to the delivery of  
2110 the Bonds.

2111 **SECTION 42: PUBLIC MEETING.** It is officially found, determined, and  
2112 declared that the meeting at which this Ordinance is adopted was open to the public and  
2113 public notice of the time, place, and subject matter of the public business to be considered  
2114 at such meeting, including this Ordinance, was given, all as required by V.T.C.A.,  
2115 Government Code, Chapter 551, as amended.

2116 **SECTION 43: EFFECTIVE DATE.** This Ordinance is passed on one  
2117 reading as authorized by V.T.C.A., Government Code, Section 1201.028, and shall be  
2118 effective immediately upon its passage and adoption.

2119 *[remainder of page left blank intentionally]*  
2120

2121

**PASSED AND APPROVED**

§  
§  
§

LEE LEFFINGWELL  
Mayor

ATTEST:

APPROVED:

KAREN M. KENNARD  
City Attorney

ATTEST:

SHIRLEY A. GENTRY  
City Clerk

2122