

RESOLUTION NO.

WHEREAS, the City is authorized by Section 373.005(d), Texas Local Government Code to issue notes or other obligations guaranteed by the Secretary of the U.S. Department of Housing and Urban Development (HUD) for the purpose of financing those activities described in Section 8, Housing and Community Development Act of 1974 (42 U.S.C. Section 5308), as amended, in furtherance of an approved community development program under Chapter 373 of the Texas Local Government Code; and

WHEREAS, the City published notice of its Annual HUD Action Plan and state community development program required by Chapter 373 of the Texas Local Government Code for Fiscal Year 2005-2006 (2006 Action Plan) and announced the 30 day public comment period for the 2006 Action Plan; and

WHEREAS, the City conducted public hearings and received citizen input on April 7, 2005, and May 12, 2005, as required by Texas Local Government Code Section 373.006(4) and Title 24 of the Code of Federal Regulations, for its 2006 Action Plan which included the submission of an application to the HUD Secretary for a \$3,000,000 Section 108 guaranteed loan to fund business loans under the Neighborhood Commercial Management Program (NCM Program); and

WHEREAS, pursuant to Resolution No. 20050728-012 adopted July 28, 2005, the City Council approved the City's 2006 Action Plan and authorized the City Manager to submit to the HUD Secretary the application for the \$3,000,000 Section 108 HUD guaranteed loan to fund business loans under the NCM Program (Loan Application); and

WHEREAS, on August 28, 2006, the City submitted the Loan Application; and

WHEREAS, the HUD Secretary notified the City that the City's request for loan guarantee assistance under Section 108 of the Housing and Community Development Act of 1974, in the principal amount of \$3,000,000, to be used to finance activities described in the Loan Application was approved; and

WHEREAS, the City Council by Resolution No. 20080724-041 authorized execution and delivery of various HUD documents evidencing the HUD Section 108 guaranteed loan on July 24, 2008 (2008 Proposed HUD Loan Transaction); and

WHEREAS, the City was unable to consummate the 2008 Proposed HUD Loan Transaction.

WHEREAS, the City on August 25, 2011 requested the HUD Secretary to modify the Loan Application by allowing the City to fund loans originated under the City's Family Business Loan Program (FBL Program), rather than under the NCM Program, with proceeds from HUD Section 108 Loan No. B-05-MC-48-0500; and

WHEREAS, the City published notice of its Annual HUD Action Plan and state community development program required by Chapter 373 of the Texas Local Government Code for Fiscal Year 2011-2012 (2012 Action Plan) and announced the 30 day public comment period for the Action Plan; and

WHEREAS, the City conducted public hearings and received citizen input on April 7, 2011, and June 23, 2011, as required by Texas Local

Government Code Section 373.006(4) and title 24 of the Code of Federal Regulations, for its 2012 Action Plan which included the FBL Program; and

WHEREAS, pursuant to Resolution No. 20110728-031, the City Council approved the City's 2012 Action Plan including funding business loans under the FBL Program on July 28, 2011; and

WHEREAS, the City Council by Resolution No. 20120524-015 finally approved the FBL Program guidelines and criteria on May 24, 2012; and

WHEREAS, the City Council desires to authorize the execution and delivery of the contract, note, any conversion note, and other documents relating to the \$3,000,000 HUD Section 108 guaranteed loan No. B-05-MC-48-0500 [City of Austin Family Business Loan Program] to fund business loans under the FBL Program pursuant to Chapter 373 of the Texas Local Government Code (HUD Section 108 Loan); **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

- (1) The City Council repeals Resolution No. 20080724-041.
- (2) The City Council authorizes and approves the negotiation and execution of the HUD Section 108 Loan. The Mayor, the City Manager, the Officer of the Economic Growth and Redevelopment Services Office, and the Chief Financial Officer of the City (Authorized Officers) are each individually authorized and directed to take all actions necessary or desirable to complete the HUD Section 108 Loan financing in accordance with the provisions of this Resolution.

- (3) The City Council authorizes and approves the issuance by the City of a \$3,000,000 Variable/Fixed Rate Note (Note) to the registered holder of the Note in substantially the form attached as **Exhibit A**. This authorization is specifically conditioned on the interest rate for the Note, and any conversion of the Note from variable rate to fixed rate, being no more than the maximum net effective interest rate permitted by law to be paid on obligations issued or assumed by the City in the exercise of its borrowing powers, as prescribed by Texas law, including Texas Government Code, Chapter 1204 (Highest Lawful Rate). The actual principal amount of the Note and the interest on the Note shall be: (i) secured solely by, and payable solely from, the security described in the Note, and the contract relating to the Note; and (ii) payable in the manner provided in the Note. The Authorized Officers are each individually authorized to execute and deliver the Note, with such changes, insertions, deletions, or modification as may be approved by an Authorized Officer to obtain the guaranteed financing under the HUD Section 108 Loan. The execution of the Note is conclusive evidence the City Council approved the Note.
- (4) The City Council authorizes and approves the contract for loan guarantee assistance (Contract) between the City and HUD relating to the Note in substantially the form attached as **Exhibit B**. The Authorized Officers are each individually authorized to execute and deliver the Contract relating to the Note, with such changes, insertions, deletions, or modification as may be

approved by an Authorized Officer to obtain the guaranteed financing under the HUD Section 108 Loan, provided that the Contract contains provisions assuring compliance with Texas law relating to the maximum rate of interest, choice of law, and, if any ad valorem taxes are pledged to secure payment of all or a portion of the Note, limitations on actions relating to ad valorem taxes. The execution of the Contract relating to the Note is conclusive evidence the City Council approved the Contract relating to the Note.

- (5) The City Council authorizes and approves the custodial agreement (Custodial Agreement) between the City and **J.P. Morgan Chase Bank** relating to the Note in substantially the form attached as **Exhibit C**, The Authorized Officers are each individually authorized to execute and deliver the Custodial Agreement relating to the Note, with such changes, insertions, deletions, or modification as may be approved by an Authorized Officer to obtain the guaranteed financing under the HUD Section 108 Loan.
- (6) The City Council authorizes and approves the Authorized Officers to approve and execute any documents necessary to complete the conversion of the Note from variable to fixed rate provided that such conversion is in compliance with the requirements and legal limitations contained in this Resolution, the Contract, and the Note.
- (7) The City Council authorizes and approves the Authorized Officers to pay from the proceeds of the HUD Section 108 Loan

all expenses related to the issuance and delivery of the Note, the Contract, any conversion of the Note, and the related agreements.

- (8) The City Council authorizes and approves the Authorized Officers to pay the City's share of all expenses of approval by the Texas Attorney General's Office, as well as the City's share of any expenses of any public offering.
- (9) The City Council authorizes and approves each of the Authorized Officers to execute and deliver documents not mentioned in this Resolution if these documents are needed to complete the issuance and delivery of the Note, including any documents required to complete the conversion of the Note in accordance with the terms of the Note and the Contract, the execution and delivery of the Contract, to obtain approval from the Texas Attorney General's Office, and to complete the documents specifically described in this Resolution.

BE IT FURTHER RESOLVED:

That it is determined the City posted sufficient written notice of the date, hour, place, and subject of the meeting of the City Council at which this Resolution was adopted at a place convenient and readily accessible at all times to the general public at the Austin City Hall for the time required by the Open Meetings Act, Chapter 551, Texas Government Code. The meeting has been open to the public as required by law at all times during which this Resolution and its subject matter were discussed, considered, and formally

acted upon. The City Council approves and confirms the written notice, the contents, and the posting.

ADOPTED: _____, 2012 **ATTEST:** _____
Shirley A. Gentry
City Clerk