

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF AUSTIN, TEXAS,  
AIRPORT SYSTEM REVENUE BONDS, SERIES 2013, IN THE AGGREGATE PRINCIPAL  
AMOUNT OF \$60,000,000; PROVIDING FOR THE AWARD OF THE SALE OF THE  
BONDS; AND AUTHORIZING RELATED AGREEMENTS**

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

***ARTICLE ONE***

***FINDINGS AND DETERMINATIONS***

Section 1.01 **BOND AUTHORIZATION.** Capitalized terms used in this Article One and not otherwise defined shall have the meaning assigned in Article Two. It is officially found and determined that:

(a) The City has previously issued, and there are currently outstanding, the Prior Lien Bonds.

(b) In the Prior Lien Ordinance authorizing the issuance of the Prior Lien Bonds, the City reserved the right to issue subordinated revenue obligations.

(c) The City has previously issued, and there are currently outstanding the Series 2005 Bonds, pursuant to the Series 2005 Bond Ordinance, issued as Revenue Bonds in compliance with the Prior Lien Ordinance, and the Series 2005 Bonds are secured by a lien on and pledge of the Net Revenues junior and subordinate to the lien and pledge securing the Prior Lien Bonds.

(d) The Series 2005 Bond Ordinance (i) provides for the issuance of additional series of obligations, secured by a lien on and pledge of Net Revenues on a parity with the Series 2005 Bonds, having a lien on and pledge of Net Revenues junior and subordinate to the pledge securing the Prior Lien Bonds, and (ii) reserves the right to issue subordinated revenue obligations.

(e) In the Series 2005 Bond Ordinance, the City agreed not to issue Additional Prior Lien Bonds (as defined in the Prior Lien Ordinance).

(f) The issuance and delivery of the bonds authorized by this Ordinance is in the public interest and the use of the proceeds in the manner specified in this Ordinance constitutes a valid public purpose.

(g) The bonds authorized by this Ordinance are issued as Revenue Bonds in compliance with the Prior Lien Ordinance and the Series 2005 Bond Ordinance and shall be equally and ratably secured on a parity with the Series 2005 Bonds, having a lien on and pledge of the Net Revenues junior and subordinate to the lien and pledge securing the Prior Lien Bonds.

(h) This Ordinance is substantially in the form of the Series 2005 Ordinance, with changes to reflect the terms and conditions of sale of the Bonds.

(i) The table of contents, titles and headings of the articles and sections of this Ordinance have been provided for convenience of reference only and are not considered to be a part of this Ordinance and shall never be considered or given any effect in interpreting this Ordinance or in determining intent, if any question of intent arises.

## **ARTICLE TWO**

### **DEFINITIONS**

Section 2.01. **DEFINITIONS.** Unless otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section for all purposes of this Ordinance, and any ordinance amendatory or supplemental to this Ordinance, shall have the respective meanings specified:

"Act" shall mean Chapter 22, Texas Transportation Code.

"Additional Revenue Bonds" shall mean the additional parity Revenue Bonds permitted to be issued by the City pursuant to Section 6.01.

"Administrative Expense Fund" shall mean the fund by that name established in Section 5.04(f).

"Administrative Expenses" shall mean the fees, expenses and indemnification liabilities payable to the Persons to whom fees and expenses incurred in connection with the Revenue Bonds and Credit Agreement Obligations incurred in connection with a related series of Revenue Bonds, including but not limited to the fees and expenses of the Paying Agent/Registrars, the Credit Providers, the rebate analysts, the remarketing agents and the tender agents, and of which the City is given actual notice at least thirty (30) days prior to the date payment is due.

"Airport" shall mean the air carrier airport developed, constructed and operated by the City pursuant to the city-wide election held within the City on May 1, 1993, and designated as the Austin-Bergstrom International Airport (ABIA).

"Airport Consultant" shall mean a nationally recognized independent firm, person or corporation having a widely known and favorable reputation for special skill, knowledge and experience in methods of development, operation and financing of airports of approximately the same size as the properties constituting the Airport System.

"Airport System" shall mean all or any interest in airport, heliport and aviation facilities, now or from time to time hereafter owned, operated or controlled in whole or in part by the City, including the Airport, together with all properties, facilities and services of the Airport, and all additions, extensions, replacements and improvements to the Airport, and all services provided or to be provided by the City in connection with the Airport, but expressly excluding (i) any heliport or heliports operated by City departments other than the Aviation Department, (ii) the Austin consolidated rental car facility, financed by the issuance of City of Austin, Texas Rental Car Special Facility Revenue Bonds, Taxable Series 2013, as Special Facilities and (iii) the Mueller Airport Property.

73 "Authorized Denominations" shall mean \$100,000 and integral multiples of \$1,000 in excess  
74 of \$100,000.

75 "Authorized Officer" shall mean the City Manager of the City or, to the extent designated by  
76 the City Manager, any Assistant City Manager of the City or the Chief Financial Officer of the City.

77 "Aviation Director" shall mean the Executive Director of the City's Department of Aviation,  
78 or any successor or person acting in that capacity.

79 "Bonds" shall mean the City of Austin, Texas, Airport System Revenue Bonds, Series 2013,  
80 authorized by this Ordinance.

81 "Bond Insurer" or "Insurer" shall mean Assured Guaranty Municipal Corp. (the successor to  
82 Financial Security Assurance Inc., a New York stock insurance company), or any successor to or  
83 assignee of Assured Guaranty Municipal Corp.

84 "Bond Purchase Agreement" shall mean the bond purchase agreement between the City and  
85 the Purchaser, relating to the sale and delivery of the Bonds.

86 "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday or other  
87 day on which banking institutions in the City or in the city where the Designated Payment/Transfer  
88 Office of the Paying Agent/Registrar is located are generally authorized or obligated by law or  
89 executive order to close.

90 "City" shall mean the City of Austin, Texas, and, where appropriate, Council, or any  
91 successor as owner and operator of the Airport System.

92 "Code" shall mean the Internal Revenue Code of 1986.

93 "Construction Fund" shall mean the fund designated in Section 5.04(i) of this Ordinance.

94 "Credit Agreement" shall mean (i) any agreement of the City entered into in connection with  
95 and for the purpose of (A) enhancing or supporting the creditworthiness of a series of Revenue Bonds  
96 or (B) providing liquidity with respect to Revenue Bonds which by their terms are subject to tender  
97 for purchase, and which, by its terms, creates a liability on the part of the City on a parity with the  
98 Revenue Bonds to which it relates, and (ii) a Swap Agreement. A determination by the City that an  
99 agreement constitutes a Credit Agreement under this definition shall be conclusive as against all  
100 Owners.

101 "Credit Agreement Obligations" shall mean any amounts payable by the City under and  
102 pursuant to a Credit Agreement other than amounts payable as an Administrative Expense.

103 "Credit Provider" shall mean the issuer or provider of a Credit Agreement.

104 "Debt Service" shall mean (i) with respect to a series of Revenue Bonds, an amount equal to  
105 the Principal Installment, redemption premium, if any, and interest on such Revenue Bonds, (ii) with  
106 respect to a Credit Agreement other than a Swap Agreement, amounts payable as Credit Agreement  
107 Obligations, and (iii) with respect to a Swap Agreement, regularly scheduled amounts payable by the  
108 City under a Swap Agreement, so long as the counterparty is not in default (specifically excluding  
109 Termination Payments, which shall constitute Subordinate Obligations).

110 "Debt Service Fund" shall mean the fund designated in Section 5.04(d) established with  
111 respect to the Revenue Bonds.

112 "Debt Service Requirements," (i) with respect to Prior Lien Bonds, shall have the meaning  
113 assigned thereto in the Prior Lien Ordinance, and (ii) with respect to Revenue Bonds, shall mean for  
114 any particular period of time, an amount equal to the sum of the following for such period with  
115 respect to all or any portion of Revenue Bonds or Credit Agreement Obligations, as applicable, then  
116 Outstanding:

117 (a) That portion of interest which would accrue with respect to Revenue Bonds during such  
118 period if interest were deemed to accrue only during the 6 month period prior to its payment (12  
119 month period in the case of capital appreciation or compound interest bonds), plus

120 (b) That portion of the principal amount of Revenue Bonds which would accrue during such  
121 period if principal were deemed to accrue only during the 12 month period prior to its scheduled  
122 payment date (either at maturity or by reason of scheduled mandatory redemptions, but after taking  
123 into account all prior optional and mandatory Revenue Bond redemptions),

124 less and except any such interest or principal for the payment of which provision has been made by  
125 (i) appropriating for such purpose amounts sufficient to provide for the full and timely payment of  
126 such interest or principal either from proceeds of bonds, from interest earned or to be earned thereon,  
127 from Airport System funds other than Net Revenues, or from any combination of such  
128 sources and (ii) depositing such amounts (except in the case of interest to be earned, which shall be  
129 deposited as received) into a dedicated fund or account, the proceeds of which are required to be  
130 transferred as needed into the Debt Service Fund, or directly to the Paying Agent/Registrar for the  
131 Revenue Bonds.

132 For purposes of calculation of Debt Service Requirements, in making estimates as to interest  
133 accrued or to accrue on Variable Rate Bonds, the actual interest rate shall be used to the extent known  
134 or ascertainable and to the extent unknown and not ascertainable, the Maximum Interest Rate shall be  
135 used; provided, however, that to the extent Variable Rate Bonds are subject to a Swap Agreement, the  
136 fixed rate that is effective with respect to such Variable Rate Bonds pursuant to such Swap  
137 Agreement shall be used.

138 "Debt Service Reserve Fund" shall mean the fund designated and established in Section  
139 5.04(e) with respect to the Revenue Bonds.

140 "Debt Service Reserve Fund Requirement" shall mean the amount required to be maintained  
141 in the Debt Service Reserve Fund. This amount shall be computed and recomputed annually as a part  
142 of the City's budget process and upon the issuance of each series of Revenue Bonds to be the  
143 arithmetic average of the Debt Service Requirements scheduled to occur in the then current and each  
144 future Fiscal Year for all Revenue Bonds then Outstanding including the series of Revenue Bonds  
145 then being issued. In no event, however, will the amount deposited in the Debt Service Reserve Fund  
146 that is allocable to the Revenue Bonds or Additional Revenue Bonds, in accordance with section  
147 1.148-6 of the regulations promulgated under the Code, exceed the least of (a) 10% of the stated  
148 principal amount of each issue of which the Revenue Bonds or Additional Revenue Bonds are a part,  
149 (b) the maximum annual principal and interest requirements of the issue or (c) 125% of the average  
150 annual principal and interest requirements of the issue, unless there is received an opinion of

151 nationally recognized bond counsel to the effect that the additional amount will not cause the  
152 Revenue Bonds and any Additional Revenue Bonds to be "arbitrage bonds" within the meaning of  
153 section 148 of the Code and the regulations thereunder promulgated from time to time.

154 "Debt Service Reserve Fund Surety Bond" shall mean any surety bond or insurance policy  
155 having a rating in the highest respective rating categories by Moody's and Standard & Poor's issued to  
156 the City for the benefit of the Owners of the Revenue Bonds to satisfy any part of the Debt Service  
157 Reserve Fund Requirement as provided in Section 5.07.

158 "Defeasance Obligations" shall mean (i) direct, noncallable obligations of the United States of  
159 America, including obligations that are unconditionally guaranteed by the United States, (ii)  
160 noncallable obligations of an agency or instrumentality of the United States of America, including  
161 obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that,  
162 on the date of their purchase, are rated as to investment quality by a nationally recognized investment  
163 rating firm not less than "AAA" or its equivalent, and (iii) noncallable obligations of a state or an  
164 agency or a county, municipality, or other political subdivision of a state that have been refunded and  
165 that, on the date Council adopts or approves the proceedings authorizing the financial arrangements,  
166 are rated as to investment quality by a nationally recognized investment rating firm not less than  
167 "AAA" or its equivalent.

168 "Designated Payment/Transfer Office" shall mean (i) with respect to the initial Paying  
169 Agent/Registrar named in Section 8.01, its corporate trust office in Austin, Texas, and (ii) with  
170 respect to any successor Paying Agent/Registrar, the office of the successor designated and located as  
171 may be agreed upon by the City and the successor.

172 "DTC" shall mean The Depository Trust Company, New York, New York, and its successors  
173 and assigns.

174 "DTC Participant" shall mean the securities brokers, dealers, banks, trust companies, clearing  
175 corporations and certain other organizations on whose behalf DTC was created to hold securities to  
176 facilitate the clearance and settlement of securities transactions among DTC Participants.

177 "Federal Payments" shall mean those funds received by the Airport System from the federal  
178 government or any agency of the federal government as payments for the use of any facilities or  
179 services of the Airport System.

180 "Fiscal Year" shall mean the City's fiscal year as from time to time designated by the City,  
181 which is currently October 1 to September 30.

182 "General Obligation Airport Bonds" shall mean those bonds or other obligations of the City  
183 secured by a levy of ad valorem taxes from time to time issued or to be issued by the City for Airport  
184 System purposes.

185 "Gross Revenues" shall mean all income and revenues derived directly or indirectly by the  
186 City from the operation and use of and otherwise pertaining to all or any part of the Airport System,  
187 whether resulting from extensions, enlargements, repairs, betterments or other improvements to  
188 the Airport System, or otherwise, and includes, except to the extent expressly excluded below,  
189 all revenues received by the City from the Airport System, including, without limitation, all rentals,  
190 rates, fees and other charges for the use of the Airport System, or for any service rendered by the City

191 in the operation of the Airport System, interest and other income realized from the investment or  
192 deposit of amounts required to be transferred or credited to the Revenue Fund. Gross Revenues  
193 expressly exclude:

- 194 (a) proceeds of any Prior Lien Bonds, Revenue Bonds and Subordinate Obligations;
- 195 (b) interest or other investment income derived from proceeds of Prior Lien Bonds, Revenue  
196 Bonds and Subordinate Obligations deposited to the credit of a construction fund, and all  
197 other interest or investment income not required to be transferred or credited to the  
198 Revenue Fund;
- 199 (c) any monies received as grants, appropriations, or gifts, the use of which is limited by the  
200 grantor or donor to the construction or acquisition of Airport System facilities, except to  
201 the extent any such monies shall be received as payments for the use of the Airport  
202 System facilities;
- 203 (d) any revenues derived from any Special Facilities (e.g., customer facility charges) which  
204 are pledged to the payment of Special Facilities Bonds;
- 205 (e) insurance proceeds other than loss of use or business interruption insurance proceeds;
- 206 (f) the proceeds of the passenger facility charge currently imposed by the City and any other  
207 per-passenger charge as hereafter may be lawfully authorized;
- 208 (g) sales and other taxes collected by the Airport System on behalf of the State of Texas and  
209 any other taxing entities;
- 210 (h) Federal Payments received by the Airport System unless the City first receives an opinion  
211 from nationally recognized bond counsel to the effect that the payments, if included in  
212 Gross Revenues, would not cause the interest on the Bonds to be includable within the  
213 gross income of the Owners thereof for federal income tax purposes;
- 214 (i) the proceeds received by the City from the sale or other disposition of Airport System  
215 property, except amounts representing interest or finance charges in a deferred sale or  
216 other similar method of conveyance where a portion of the sale price is payable on a  
217 deferred basis, in which case any interest or finance charges shall be considered Gross  
218 Revenues; and
- 219 (j) Other Available Funds transferred to the Revenue Fund as provided in this Ordinance.

220 "Initial Bonds" means the Initial Bonds authorized by Section 3.06.

221 "Interest Payment Date" shall mean each November 15 and May 15, commencing November  
222 15, 2013.

223 "Minimum Capital Reserve" shall mean an amount, designated by the Aviation Director not  
224 less frequently than annually at the end of each Fiscal Year, but in any event not more than \$100,000  
225 each Fiscal Year, necessary to accumulate or to re-accumulate in the Capital Fund a reserve in an  
226 amount not less than \$1,000,000.

227 "Moody's" shall mean Moody's Investors Service, Inc., its successors and assigns, and if this  
228 corporation shall for any reason no longer perform the functions of a securities rating agency,  
229 "Moody's" shall refer to any other nationally recognized securities rating agency designated by the  
230 City.

231 "MSRB" shall mean the Municipal Securities Rulemaking Board.

232 "Mueller Airport Property" shall mean the property and facilities that comprised the former  
233 Robert Mueller Municipal Airport, located within the City. The Mueller Airport Property is not part  
234 of the Airport System.

235 "Net Revenues" shall mean that portion of the Gross Revenues remaining after the deduction  
236 of the Operation and Maintenance Expenses of the Airport System.

237 "Operation and Maintenance Expenses" shall mean all reasonable and necessary current  
238 expenses of the City, paid or accrued, of operating, maintaining and repairing the Airport System,  
239 including, without limitation, those reasonably allocated City overhead expenses relating to the  
240 administration, operation and maintenance of the Airport System; insurance and fidelity bond  
241 premiums; payments to pension and other funds and to any self-insurance fund; any general and  
242 excise taxes or other governmental charges imposed by entities other than the City; any required  
243 rebate of any portion of interest income to the federal government which is payable from Gross  
244 Revenues or the Revenue Fund; costs of contractual and professional services, labor, materials and  
245 supplies for current operations, including the costs of direct City services rendered to the Airport  
246 System as are requested from the City by the Airport System and as are reasonably necessary for the  
247 operation of the Airport System; costs of issuance of Prior Lien Bonds, Revenue Bonds and  
248 Subordinate Obligations for the Airport System (except to the extent paid from the proceeds thereof);  
249 fiduciary costs; costs of collecting and refunding Gross Revenues; utility costs; any lawful refunds of  
250 any Gross Revenues; and all other administrative, general and commercial expenses, but excluding:

- 251 (a) any allowance for depreciation;
- 252 (b) costs of capital improvements;
- 253 (c) reserves for major capital improvements, Airport System operations, maintenance or  
254 repair;
- 255 (d) any allowance for redemption of, or payment of interest or premium on, Prior Lien  
256 Bonds, Revenue Bonds and Subordinate Obligations;
- 257 (e) any liabilities incurred in acquiring or improving properties of the Airport System;
- 258 (f) expenses of lessees under Special Facilities Leases and operation and maintenance  
259 expenses pertaining to Special Facilities to the extent they are required to be paid by such  
260 lessees pursuant to the terms of the Special Facilities Leases;
- 261 (g) any charges or obligations incurred in connection with any lawful Airport System  
262 purpose, including the lease, acquisition, operation or maintenance of any facility or  
263 property benefiting the Airport System, provided that the payment of such charges or

obligations is expressly agreed by the payee to be payable solely from proceeds of the Capital Fund;

(h) liabilities based upon the City's negligence or other ground not based on contract; and

(i) so long as Federal Payments are excluded from Gross Revenues, an amount of expenses that would otherwise constitute Operation and Maintenance Expenses for such period equal to the Federal Payments for such period.

"Ordinance" shall mean this ordinance and all amendments and supplements to this ordinance.

"Other Available Funds" shall mean any amount of unencumbered funds accumulated in the Capital Fund in excess of the Minimum Capital Reserve which, prior to the beginning of any Fiscal Year, are designated by the City as Other Available Funds and transferred at the beginning of such Fiscal Year to the Revenue Fund; but in no event may this amount exceed twenty-five percent (25%) of the Debt Service Requirements for the Prior Lien Bonds and the Revenue Bonds for such Fiscal Year for purposes of Sections 5.03 and 6.01.

"Outstanding" when used with reference to any Prior Lien Bonds, Revenue Bonds or Subordinate Obligations, shall mean, as of a particular date, all those Prior Lien Bonds, Revenue Bonds or Subordinate Obligations delivered except: (a) any obligation paid, discharged or cancelled by or on behalf of the City at or before that date; (b) any obligation defeased pursuant to the defeasance provisions of the ordinance authorizing its issuance, or otherwise defeased as permitted by applicable law; and (c) any obligation in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinance authorizing the issuance of the obligation.

"Owner" or "Registered Owner," when used with respect to any Revenue Bond shall mean the person or entity in whose name the Revenue Bond is registered in the Register. Any reference to a particular percentage or proportion of the Owners shall mean the Owners at a particular time of the specified percentage or proportion in aggregate principal amount of all Revenue Bonds then Outstanding under this Ordinance.

"Paying Agent/Registrar" initially shall mean, for the Bonds, the entity named in Section 8.01 and its successors in that capacity.

"Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision of the government.

"Principal Installment" shall mean, with respect to Revenue Bonds or a series of Revenue Bonds, any amounts, including any mandatory sinking fund installments, which are stated to be due or required to be made on or with respect to a Revenue Bond or series of Revenue Bonds, which, when made, would reduce the amount of the Revenue Bond or series of Revenue Bonds that remain Outstanding or would retire and pay the same in full.

"Prior Lien Bonds" shall mean the Series 2003 Bonds.

"Prior Lien Debt Service Fund" shall mean the debt service fund established and created for the Prior Lien Bonds pursuant to the Prior Lien Ordinance.



"Prior Lien Debt Service Fund" shall mean the debt service reserve fund established and created for the Prior Lien Bonds pursuant to the Prior Lien Ordinance.

"Prior Lien Ordinance" shall mean the ordinance authorizing the Prior Lien Bonds.

"Project" shall mean any acquisition, construction, improvement or equipping of the Airport with the proceeds of the Bonds.

"Purchaser" shall mean, with respect to the Bonds, the entity designated in the Bond Purchase Agreement as the purchaser of the Bonds.

"Qualified Put" shall mean any agreement, however denominated, provided by a qualifying financial institution (as described in the following sentence) which contractually commits to purchase, upon no more than seven days' notice, for not less than a stated price any class or amount of investment securities or other authorized investments of the City at any time that such investment securities or investments must be liquidated in order to make cash transfers from the fund or account that holds such investments. A Qualified Put may be entered into only with a financial institution which (a) is a domestic bank the long-term debt of which is rated at least "AA" by Standard & Poor's and "Aa" by Moody's, or (b) a foreign bank the long-term debt of which is rated "AA" by Standard & Poor's and at least "Aa" by Moody's, or at least "AA" by Standard & Poor's and "Aaa" by Moody's, or (c) a financial institution the long-term debt of which is rated at least "A" by both Standard & Poor's and Moody's and agrees to collateralize its obligations under such agreement by lodging with a third party trustee, escrow agent, custodian or other financial third party direct obligations of the United States of America or its agencies with a market value equal to 102% of the difference between the face amount of its purchase obligation under the agreement and the market value of the investment securities to which the agreement relates (based upon periodic market valuations at least monthly), or (d) a financial institution approved by any bond insurer then insuring a series of Prior Lien Bonds. A Qualified Put may be integrated into any investment authorized under Texas law, such as a repurchase agreement.

"Record Date" shall have the meaning assigned in the FORM OF BONDS.

"Refunding Revenue Bonds" mean one or more series of bonds or other evidences of indebtedness issued by the City for the purpose of (i) refunding Outstanding Revenue Bonds or Credit Agreement Obligations or (ii) to provide for the payment of a Termination Payment.

"Register" shall mean the books of registration kept by the Paying Agent/Registrar in which are maintained the names and addresses of and the principal amounts registered to each Owner.

"Related Document" shall mean any transaction document relating to this Ordinance or the Bonds, including any related underlying security agreement.

"Renewal and Replacement Fund" shall mean the fund designated in Section 5.04(g).

"Renewal and Replacement Fund Requirement" shall mean the amount required to be maintained in the Renewal and Replacement Fund pursuant to Article Five, or any greater amount required by any ordinance authorizing any series of Additional Revenue Bonds.

339 "Revenue Bond Ordinances" shall mean the Series 2005 Bond Ordinance, this Ordinance and  
340 any ordinances pursuant to which Additional Revenue Bonds are issued.

341 "Revenue Bonds" shall mean the Series 2005 Bonds, the Bonds and each series of bonds,  
342 notes or other obligations, other than Credit Agreement Obligations, which the City has reserved the  
343 right to issue or incur from time to time pursuant to Section 6.01, payable from and secured by a lien  
344 on and pledge of Net Revenues junior and subordinate to the lien and pledge securing the Prior Lien  
345 Bonds.

346 "Revenue Fund" shall mean the fund designated in Section 5.04(a).

347 "Rule" shall mean SEC Rule 15c2-12.

348 "SEC" shall mean the United States Securities and Exchange Commission.

349 "Series 2003 Bonds" shall mean the City of Austin, Texas, Airport System Prior Lien  
350 Revenue Refunding Bonds, Series 2003.

351 "Series 2005 Bond Ordinance" shall mean the ordinance of the City adopted by Council on  
352 August 4, 2005, authorizing the issuance of the Series 2005 Bonds, and all amendments to the  
353 ordinance adopted by Council after August 4, 2005.

354 "Series 2005 Official Statement" shall mean the official statement of the City dated August 9,  
355 2005, prepared in connection with the offering and sale of the Series 2005 Bonds.

356 "Series 2005 Bonds" shall mean the City of Austin, Texas, Airport System Refunding  
357 Revenue Bonds, Series 2005 (AMT).

358 "Special Facilities" shall mean structures, hangars, aircraft overhaul, maintenance or repair  
359 shops, heliports, hotels, storage facilities, garages, inflight kitchens, training facilities and any and all  
360 other facilities and appurtenances being a part of or related to the Airport System, the cost of the  
361 construction or other acquisition of which is financed with the proceeds of Special Facilities Bonds.

362 "Special Facilities Bonds" shall mean those bonds previously issued or from time to time  
363 hereafter issued by the City pursuant to Section 6.04.

364 "Special Facilities Lease" shall mean any lease or agreement pursuant to which a Special  
365 Facility is leased by the City to the lessee in consideration for which the lessee agrees to pay (i) all  
366 debt service on the Special Facilities Bonds issued to finance the Special Facility (which payments  
367 are pledged to secure the Special Facilities Bonds) and (ii) the operation and maintenance expenses of  
368 the Special Facility.

369 "Standard & Poor's" or "S&P" shall mean Standard & Poor Ratings Services, a Standard &  
370 Poor's Financial Services LLC business, its successors and assigns, and if this entity shall for any  
371 reason no longer perform the functions of a securities rating agency, "Standard & Poor's" and "S&P"  
372 shall refer to any other nationally recognized securities rating agency designated by the City.

373 "Subordinate Obligations" shall mean each series of bonds, notes or other obligations,  
374 including reimbursement obligations and obligations pursuant to credit agreements and interest rate  
375 hedges, which the City has reserved the right to issue or incur from time to time pursuant to Section

6.03 as Subordinate Obligations secured in whole or in part by liens on the Net Revenues that are junior and subordinate to the lien on Net Revenues securing payment of the Prior Lien Bonds and the Revenue Bonds.

"Swap Agreement" means a Credit Agreement, approved (if required) in writing by the Bond Insurer, with respect to a series of Revenue Bonds pursuant to which the City has entered into an interest rate exchange agreement or other interest rate hedge agreement for the purpose of converting in whole or in part the City's fixed or variable interest rate liability on all or a portion of the Revenue Bonds to a fixed or variable rate liability (including converting a variable rate liability to a different variable rate liability). For the purpose of this definition, a counterparty is not qualified unless it holds, on the date of execution of a Swap Agreement, a current rating by at least two of the following three rating agencies: Moody's, and by Standard & Poor's, and by Fitch Ratings, or their respective successors, at least equal to the rating of each such rating agency assigned to the Revenue Bonds without reference to any Credit Agreement. The "Series 2005 Swap Agreement" previously executed and delivered by the City constitutes a Swap Agreement with respect to the Series 2005 Bonds.

"Termination Payment" shall mean an amount owed by the City to a counterparty pursuant to a Swap Agreement incurred in connection with the termination of the Swap Agreement and which, on the date of execution of the Swap Agreement, is not an amount representing a regularly scheduled payment under the Swap Agreement. "Termination Payment" shall not include any amount representing an Administrative Expense.

"Variable Rate" shall mean an interest rate borne by the Revenue Bonds that is reset from time to time.

"Variable Rate Bonds" shall mean Revenue Bonds which bear a Variable Rate.

Section 2.02 **INTERPRETATIONS.** All terms defined and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part of this Ordinance and shall not in any way modify or restrict any of the terms or provisions of this Ordinance. References to any article or section shall refer to the article or section contained in this Ordinance. References to FORM OF BONDS refer to the form of the Bonds set forth in Exhibit A to this Ordinance. References to any constitutional, statutory or regulatory provision shall include the provision as it exists on the date this Ordinance is adopted and any future amendments to or successor provisions of the provision. This Ordinance and all of its terms and provisions shall be liberally construed to effectuate the purposes set forth in this Ordinance and to sustain the validity of the Revenue Bonds, the Credit Agreement Obligations and the Administrative Expenses and the validity of the lien on and pledge of the Net Revenues to secure their payment.

### **ARTICLE THREE**

#### **TERMS OF THE BONDS**

Section 3.01 **AUTHORIZATION.** The Bonds shall be known and designated as CITY OF AUSTIN, TEXAS, AIRPORT SYSTEM REVENUE BONDS, SERIES 2013. The Bonds are hereby authorized to be issued and delivered pursuant to the authority of the Act and all other

applicable law. The Bonds shall be issued in the aggregate principal amount of \$60,000,000 for the purpose of paying the costs of (i) planning, acquiring, establishing, constructing, improving or equipping the Airport, in accordance with the Act and (ii) the issuance of the Bonds.

**Section 3.02 INTEREST AND MATURITIES.** The Bonds shall be dated the date set forth in the Bond Purchase Agreement. The Bonds shall be issued in fully registered form, without coupons, in Authorized Denominations, and shall be numbered separately from R-1 upward. The Bonds shall mature on May 15, 2028, in the principal amount of \$60,000,000. The Bonds shall bear interest at the rate of 2.25% per annum, until maturity or prior redemption. Interest shall accrue and be paid on each Bond respectively until its maturity or prior redemption, from the later of the date of initial delivery to the Purchaser or the most recent Interest Payment Date to which interest has been paid or provided for. Interest shall be paid on each Interest Payment Date. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

**Section 3.03 REDEMPTION PRIOR TO MATURITY.** The Bonds shall be subject to redemption at the option of the City prior to maturity on any date, in an Authorized Denomination, at the price of par plus accrued interest to the date fixed for redemption. The Bonds also are subject to mandatory sinking fund redemption and extraordinary mandatory redemption prior to their stated maturities on the dates and in the amounts described in the FORM OF BONDS. Notice of redemption shall be provided in the manner described in the FORM OF BONDS.

**Section 3.04 MANNER OF EXECUTION AND AUTHENTICATION.** The Paying Agent/Registrar is appointed as the paying agent for the Bonds. The Bonds shall be payable, shall have the characteristics, shall be executed and sealed, and shall be authenticated, all as provided and in the manner indicated in the FORM OF BONDS. If any officer of the City whose manual or facsimile signature shall appear on the Bonds, as provided in the FORM OF BONDS, shall cease to be the officer before the authentication of the Bonds or before the delivery of the Bonds, the signature shall nevertheless be valid and sufficient for all purposes as if the officer had remained in office.

**Section 3.05 OWNERSHIP.** The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of the Bond for the purpose of making and receiving payment of the principal of and premium, if any, and the interest on, the Bond and for all other purposes, whether the Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Owner of any Bond in accordance with this section shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon the Bond to the extent of the sums paid.

**Section 3.06 TRANSFER AND EXCHANGE.** On the date of initial delivery and payment for the Bonds, one or more Initial Bonds, representing the entire principal amount of all Bonds, payable to the Purchaser, executed by the Mayor and City Clerk of the City, approved by the Attorney General of the State of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bonds, if directed by the City, the Paying Agent/Registrar shall cancel the Initial Bonds and deliver to DTC on behalf of the Purchaser one or more registered Bonds for each year of maturity of the Bonds in the aggregate principal amount of the Bonds, registered in the name of Cede & Co., as nominee of DTC.

458           So long as any Bond remains Outstanding, the Paying Agent/Registrar shall maintain the  
459           Register in which the Paying Agent/Registrar shall provide for the registration and transfer of the  
460           Bonds in accordance with the terms of this Ordinance, subject to reasonable regulations prescribed by  
461           the Paying Agent/Registrar.

462           Each Bond shall be transferable only upon its presentation and surrender at the Designated  
463           Payment Transfer Office of the Paying Agent/Registrar, duly endorsed for transfer, or accompanied  
464           by an assignment duly executed by the Registered Owner or the authorized representative of the  
465           Registered Owner in form satisfactory to the Paying Agent/Registrar. Upon due presentation of any  
466           Bond for transfer, the Paying Agent/Registrar shall authenticate and deliver, within 72 hours after  
467           such presentation, a new Bond or Bonds in exchange for the Bond presented for transfer, registered in  
468           the name of the transferee or transferees, in Authorized Denominations and of the same maturity and  
469           aggregate principal amount and bearing interest at the same rate as the presented Bond or Bonds.

470           A Bond shall be exchangeable upon its presentation and surrender at the Designated Payment  
471           Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest  
472           rate and in any Authorized Denomination, in an aggregate principal amount equal to the unpaid  
473           principal amount of the Bond or Bonds presented for exchange. The Paying Agent/Registrar shall be  
474           and is hereby authorized to authenticate and deliver exchange Bonds in accordance with the  
475           provisions of this Section. Each Bond delivered in accordance with this Section shall be entitled to  
476           the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which a  
477           Bond is delivered.

478           The Paying Agent/Registrar shall require the Owner of any Bond to pay a sum sufficient to  
479           cover any tax or other governmental charge that may be imposed in connection with the transfer or  
480           exchange of the Bond and any fee or charge in connection with the transfer or exchange other than  
481           the Paying Agent/Registrar fees, which shall be paid by the City.

482           The Paying Agent/Registrar shall not be required to transfer or exchange any Bond during the  
483           45-day period prior to the date fixed for redemption; provided, however, that this restriction shall not  
484           apply to the transfer or exchange by the Registered Owner of the unredeemed portion of a Bond  
485           called for redemption in part.

486           Section 3.07   **CANCELLATION.** All Bonds paid or redeemed, and all Bonds in lieu of  
487           which exchange Bonds or replacement Bonds are authenticated and delivered, in accordance with this  
488           Ordinance, shall be cancelled and shall be disposed of in accordance with the rules and regulations  
489           promulgated under the Securities Exchange Act of 1934.

490           Section 3.08   **REPLACEMENT BONDS.** Upon the presentation and surrender to the  
491           Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and  
492           deliver a replacement Bond of like maturity, interest rate, and principal amount, bearing a  
493           number not contemporaneously outstanding, in exchange for the presented Bond. The Paying  
494           Agent/Registrar shall require the Owner of the Bond to pay a sum sufficient to cover any tax or other  
495           governmental charge that may be imposed, and any other expenses, including the fees and expenses  
496           of the Paying Agent/Registrar, to effect this exchange.

497           If any Bond is lost, apparently destroyed, or wrongfully taken, the City, pursuant to the  
498           applicable laws of the State of Texas and in the absence of notice or knowledge that the Bond has

499 been acquired by a bona fide purchaser, shall execute and the Paying Agent/Registrar shall  
500 authenticate and deliver a replacement Bond of like maturity, interest rate, and principal amount,  
501 bearing a number not contemporaneously outstanding, provided that the Owner shall have:

- 502 (a) furnished to the City and the Paying Agent/Registrar satisfactory evidence of the  
503 ownership of and the circumstances of the loss, destruction or theft of the Bond;
- 504 (b) furnished security and indemnity as may be required by the Paying Agent/Registrar and  
505 the City to save them harmless;
- 506 (c) paid all expenses and charges, including, but not limited to, printing costs, legal fees, fees  
507 of the Paying Agent/Registrar and any tax or other governmental charge that may be  
508 imposed, as a result of the loss, destruction or wrongful taking of the Bond; and
- 509 (d) met or complied with any other reasonable requirements of the City and the Paying  
510 Agent/Registrar.

511 If, after the delivery of a replacement Bond, a bona fide purchaser of the original Bond in lieu  
512 of which the replacement Bond was issued presents for payment the original Bond, the City and the  
513 Paying Agent/Registrar shall be entitled to recover the replacement Bond from the Person to whom it  
514 was delivered or any Person taking from the person, except a bona fide purchaser, and shall be  
515 entitled to recover upon the security or indemnity provided to the extent of any loss, damage, cost or  
516 expense incurred by the City or the Paying Agent/Registrar.

517 If any mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about  
518 to become due and payable, the City in its discretion may, instead of issuing a replacement Bond,  
519 authorize the Paying Agent/Registrar to pay that Bond.

520 Each replacement Bond delivered in accordance with this Section shall be entitled to the  
521 benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which a  
522 replacement Bond is delivered.

523 Section 3.09 **BOOK-ENTRY SYSTEM.** This section describes the book-entry system of  
524 DTC. If provided for in the Bond Purchase Agreement, the definitive Bonds shall be registered in the  
525 name of Cede & Co., as nominee of DTC, as registered owner of the Bonds, and held in the custody  
526 of DTC.

527 Unless otherwise requested by DTC, a single certificate will be issued and delivered to DTC  
528 for each maturity of the Bonds. Beneficial owners of Bonds will not receive physical delivery of  
529 Bond certificates except as provided hereinafter. For so long as DTC shall continue to serve as  
530 securities depository for the Bonds as provided herein, all transfers of beneficial ownership interests  
531 will be made by book-entry only, and no investor or other party purchasing, selling or otherwise  
532 transferring beneficial ownership of Bonds is to receive, hold or deliver any Bond certificate.

533 With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, neither the  
534 City nor the Paying Agent/Registrar shall have any responsibility or obligation to any DTC  
535 Participant or to any person on whose behalf a DTC Participant holds an interest in the Bonds.  
536 Without limiting the immediately preceding sentence, neither the City nor the Paying Agent/Registrar  
537 shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC,

Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner of the Bonds, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, and (iii) the payment to any DTC Participant or any other person, other than a Registered Owner of the Bonds, as shown in the Register, of any amount with respect to principal of and premium, if any, or interest on the Bonds.

Replacement Bonds may be issued directly to beneficial owners of Bonds other than DTC, or its nominee, but only in the event that (i) DTC determines not to continue to act as securities depository for the Bonds (which determination shall become effective after reasonable written notice to such effect to the City and the Paying Agent/Registrar), or (ii) the City has advised DTC of its determination (which determination is conclusive as to DTC and the beneficial owners of the Bonds) that DTC is incapable of discharging its duties as securities depository for the Bonds, or (iii) the City has determined (which determination is conclusive as to DTC and the beneficial owners of the Bonds) that the interests of the beneficial owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon concurrence of any event described in (i) or (ii) above, the City shall use its best efforts to attempt to locate another qualified securities depository. If the City fails to locate another qualified securities depository to replace DTC, the City shall cause to be executed, authenticated and delivered replacement Bonds, in certificated form, to the DTC Participants having an interest in the Bonds as shown on the records of DTC provided by DTC to the City. In the event that the City makes the determination noted in (iii) above and has made provisions to notify the beneficial owners of Bonds of such determination by mailing an appropriate notice to DTC, it shall cause to be issued replacement Bonds in certificated form to the DTC Participants having an interest in the Bonds as shown on the records of DTC provided by DTC to the City. The City undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the City to make any determination described in (ii) or (iii) above.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a book entry at DTC (or any successor securities depository), the requirements in this Ordinance of holding, registering, delivering, exchanging or transferring Bonds shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC (or such successor securities depository) as to holding, registering, delivering, exchanging or transferring the book entry to produce the same effect.

The Blanket Letter of Representations, dated June 1, 1995, between the City and DTC shall apply to the Bonds, if the Bond Purchase Agreement provides that the Bonds will be held in book-entry form. Further, the City Manager, acting for and on behalf of the City is directed to approve, execute and deliver any additional letter of representations to DTC with respect to the Bonds necessary to implement the book-entry only system of registration, such approval to be conclusively evidenced by its execution by the City Manager.

If at any time DTC ceases to hold the Bonds, all references herein to DTC shall be of no further force or effect.

578 **ARTICLE FOUR**

579 **FORM OF BONDS**

580 Section 4.01 **FORM GENERALLY.** (a) The Bonds, including the forms of the Registration  
581 Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying  
582 Agent/Registrar, and the Assignment to appear on each Bond, (i) shall be substantially in the form set  
583 forth in Exhibit A to this Ordinance, with appropriate insertions, omissions, substitutions, and other  
584 variations as are permitted or required by this Ordinance or the Bond Purchase Agreement, and (ii)  
585 may have distinguishing letters, numbers, or other marks of identification and legends and  
586 endorsements (including any reproduction of an opinion of counsel) as may be determined by the  
587 City or by the officers executing the Bonds, as evidenced by their execution of the Bonds.

588 (b) The Bonds shall be typed, photocopied, printed, lithographed, or engraved, and may be  
589 produced by any combination of these methods or produced in any other similar manner, all as  
590 determined by the officers executing the Bonds, as evidenced by their execution.

591 Section 4.02 **CUSIP REGISTRATION.** The City may secure identification numbers  
592 through CUSIP Global Services, and may authorize the printing of CUSIP numbers on the face of the  
593 Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the  
594 Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the  
595 attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers  
596 incorrectly printed on the Bonds.

597 Section 4.03 **LEGAL OPINION.** The approving legal opinion of McCall, Parkhurst &  
598 Horton L.L.P., Bond Counsel, may be printed on or attached to the back of each Bond, but errors or  
599 omissions in the printing of the opinion shall have no effect on the validity of the Bonds.

600 **ARTICLE FIVE**

601 **SECURITY AND SOURCE OF PAYMENT**

602 Section 5.01 **PLEDGE AND SOURCE OF PAYMENT.** The City hereby covenants  
603 and agrees that Gross Revenues shall be deposited and paid into the special funds established and  
604 confirmed in this Ordinance, and shall be applied in the manner set forth in this Ordinance, in order  
605 to provide for the payment of all Operation and Maintenance Expenses of the Airport System and to  
606 provide for the payment of all principal, interest and any redemption premiums on the Prior Lien  
607 Bonds and all expenses of providing for their full and timely payment in accordance with their terms  
608 and to provide for the payment of Debt Service on the Revenue Bonds and Credit Agreement  
609 Obligations and for the payment when due of Administrative Expenses. Except as otherwise  
610 specifically provided in this Ordinance, the Revenue Bonds and the Credit Agreement Obligations  
611 shall constitute special obligations of the City that shall be payable from, and shall be equally and  
612 ratably secured by a lien on, the Net Revenues, which lien shall be junior and subordinate to the lien  
613 on Net Revenues securing Prior Lien Bonds. The Administrative Expenses shall constitute special  
614 obligations of the City that shall be payable from and secured by a lien on the Net Revenues  
615 subordinate only to the payment of Debt Service on the Revenue Bonds and the Prior Lien Bonds.  
616 Net Revenues shall, in the manner provided in this Ordinance, be set aside for and pledged to the  
617 payment of the Revenue Bonds in the Debt Service Fund and the Debt Service Reserve Fund as



provided in this Ordinance. The City grants a lien on the Net Revenues and the Debt Service Fund and the Debt Service Reserve Fund to secure the payment of Debt Service on the Revenue Bonds and related Credit Agreement Obligations in accordance with their terms, and to pay Administrative Expenses to the Persons entitled to payment. All Revenue Bonds and related Credit Agreement Obligations related shall be in all respects on a parity with and of equal dignity with one another; provided, however, that a Termination Payment shall be a Subordinate Obligation. Neither the Owners nor the Credit Providers shall ever have the right to demand payment of Debt Service out of any funds raised or to be raised by taxation.

Chapter 1208, Texas Government Code, applies to the authorization and issuance of the Revenue Bonds and to the pledge of and lien on the Net Revenues granted by the City under this Ordinance, and the pledge of and lien on the Net Revenues are valid and effective in accordance with the terms of this Ordinance and are perfected from the date of adoption of this Ordinance without the filing of any document or other act. To the extent Texas law is amended at any time while the Revenue Bonds are Outstanding and unpaid such that the pledge of and lien on the Net Revenues granted by the City under this Ordinance are to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, the City agrees to take all actions and make, or cause to be made, all filings as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code.

**Section 5.02 ANNUAL BUDGET.** So long as any Revenue Bond or Credit Agreement Obligation remains Outstanding, the Aviation Director shall, prior to the commencement of each Fiscal Year, prepare and deliver to the chief budget officer of the City, for submission to Council, a recommended annual budget for the Airport System for that Fiscal Year. The City shall adopt annual budgets for the Airport System for each Fiscal Year, containing an estimate of Gross Revenues and only those budgeted expenditures as will produce Net Revenues in an amount that, after making all deposits and payments required by the Prior Lien Ordinance, is not less than the amount necessary to pay the Debt Service and Administrative Expenses when due and make the required deposits to the Debt Service Reserve Fund. After the adoption of the annual Airport System budget by the City, the total expenditures for Operation and Maintenance Expenses will not exceed the total expenditures authorized for the purposes described in the budget, as the budget may from time to time be amended.

**Section 5.03 RATE COVENANT.** The City covenants that it will at all times fix, charge, impose and collect rentals, rates, fees and other charges for the use of the Airport System, and, to the extent it legally may do so, revise the same as may be necessary or appropriate, in order that in each Fiscal Year the Net Revenues will be at least sufficient to equal the larger of either:

- (a) all amounts required to be deposited in the Fiscal Year to the credit of the Prior Lien Debt Service Fund, the Prior Lien Debt Service Reserve Fund, the Debt Service Fund, the Debt Service Reserve Fund, and the Administrative Expense Fund and to any debt service or debt service reserve fund or account for Subordinate Obligations, or
- (b) an amount, together with Other Available Funds, not less than 125% of the Debt Service Requirements for Prior Lien Bonds and Revenue Bonds for the Fiscal Year plus an amount equal to 100% of anticipated and budgeted Administrative Expenses for the Fiscal Year.

If the Net Revenues in any Fiscal Year are less than the amounts specified above, the City, promptly upon receipt of the annual audit for the Fiscal Year, must request an Airport Consultant to make any recommendations to revise the City's rentals, rates, fees and other charges, its Operation and Maintenance Expenses or the method of operation of the Airport System in order to satisfy as quickly as practicable the requirements of this Section. Copies of the request and the recommendations of the Airport Consultant shall be filed with the City Clerk. So long as the City substantially complies in a timely fashion with the recommendations of the Airport Consultant, the City will not have defaulted in the performance of its duties under this Ordinance even if the resulting Net Revenues plus Other Available Funds are not sufficient to be in compliance with the rate covenant, so long as Debt Service is paid when due.

Section 5.04 **SPECIAL FUNDS.** The following special funds and accounts previously have been established and are confirmed, and shall be maintained and accounted for so long as any Revenue Bond and related Credit Agreement Obligation remains Outstanding and Administrative Expenses remain unpaid; provided, that the City shall not be required to maintain and account for the Prior Lien Debt Service Fund and Prior Lien Debt Service Reserve Fund after the payment in full of all Outstanding Prior Lien Bonds. The 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, so long as they are not inconsistent with this Ordinance:

- (a) Airport System Revenue Fund ("Revenue Fund"), including an Operation and Maintenance Reserve Fund therein ("Operation and Maintenance Reserve Fund");
- (b) Airport System Prior Lien Bond Debt Service Fund ("Prior Lien Debt Service Fund");
- (c) Airport System Prior Lien Bond Debt Service Reserve Fund ("Prior Lien Debt Service Reserve Fund");
- (d) Airport System Revenue Bond Debt Service Fund ("Debt Service Fund");
- (e) Airport System Revenue Bond Debt Service Reserve Fund ("Debt Service Reserve Fund");
- (f) Airport System Revenue Bond Administrative Expense Fund (the "Administrative Expense Fund");
- (g) Airport System Renewal and Replacement Fund ("Renewal and Replacement Fund");
- (h) Airport System Capital Fund ("Capital Fund"), including a Capital Improvement Account; and
- (i) Airport System Construction Fund ("Construction Fund").

The Revenue Fund, including the Operation and Maintenance Reserve Fund, the Renewal and Replacement Fund, the Capital Fund and the Construction Fund (other than any Capitalized Interest Accounts in the Construction Fund) shall be maintained as separate funds or accounts on the books of the City and all amounts credited to the Funds and Accounts shall be maintained in an official depository bank of the City. The Prior Lien Debt Service Fund, the Prior Lien Debt Service Reserve

Fund and all Capitalized Interest Accounts established in the Construction Fund for Prior Lien Bonds and the Bonds, and the Debt Service Fund, the Debt Service Reserve Fund and the Administrative Expense Fund shall be maintained at an official depository bank of the City or in a trustee bank designated by the City separate and apart from all other funds and accounts of the City. The Debt Service Fund and the Debt Service Reserve Fund shall constitute trust funds which shall be held in trust for the owners of the Revenue Bonds and the proceeds of which shall be pledged, as herein provided, to the payment of the Revenue Bonds. The Administrative Expense Fund shall constitute trust funds which shall be held in trust for the payment of Administrative Expenses to the Persons entitled thereto.

Section 5.05 **FLOW OF FUNDS.** Gross Revenues shall be deposited as received into the Revenue Fund. In addition, the City may deposit into the Revenue Fund any Federal Payments not restricted for capital purposes, provided that, so long as the Federal Payments are excluded from the definition of Gross Revenues, the Federal Payments shall be applied solely to the payment of Operation and Maintenance Expenses or capital expenditures and never constitute Net Revenues. Other Available Funds may also be deposited into the Revenue Fund. Moneys from time to time credited to the Revenue Fund shall be applied as follows in the following order of priority:

- (a) First, to provide for all payments of Operation and Maintenance Expenses required by the Prior Lien Ordinance or the Revenue Bond Ordinances.
- (b) Second, to transfer all amounts to the Prior Lien Debt Service Fund required by the Prior Lien Ordinance.
- (c) Third, to transfer all amounts to the Prior Lien Debt Service Reserve Fund required by the Prior Lien Ordinance.
- (d) Fourth, to transfer all amounts to the Debt Service Fund required by the Revenue Bond Ordinances necessary to pay Debt Service on the Revenue Bonds and any related Credit Agreement Obligations.
- (e) Fifth, to transfer all amounts to the Administrative Expense Fund required to pay Administrative Expenses to the Persons entitled to payment when due.
- (f) Sixth, to transfer all amounts to the Debt Service Reserve Fund required by the Revenue Bond Ordinances.
- (g) Seventh, to transfer all amounts necessary to provide for the payment of Subordinate Obligations, or to provide reserves for payment, as may be required by any ordinance authorizing Subordinate Obligations and related credit agreement obligations.
- (h) Eighth, to transfer all amounts necessary to provide for the payment of principal of and interest on General Obligation Airport Bonds.
- (i) Ninth, to transfer all amounts to the Operation and Maintenance Reserve Fund required by the Revenue Bond Ordinances.
- (j) Tenth, to transfer all amounts to the Renewal and Replacement Fund required by the Revenue Bond Ordinances.

(k) Eleventh, the balance shall be transferred to the Capital Fund.

Section 5.06 **DEBT SERVICE FUND.** (a) On or before the last Business Day of each month so long as any Revenue Bonds remain Outstanding, after making all required payments of Operation and Maintenance Expenses and all payments and transfers to the Prior Lien Debt Service Fund and the Prior Lien Debt Service Reserve Fund required by the Prior Lien Ordinance, there shall be transferred from the Revenue Fund to the Debt Service Fund the amount necessary to cause the balance in the Debt Service Fund to equal the Debt Service on all Revenue Bonds and Credit Agreement Obligations accrued, but unpaid, through the end of the current month and the Debt Service on all Revenue Bonds and Credit Agreement Obligations reasonably expected to accrue and be payable on or before the last Business Day of the next succeeding month.

(b) Moneys credited to the Debt Service Fund shall be used solely for the purpose of paying Debt Service on Revenue Bonds and Credit Agreement Obligations.

Section 5.07 **DEBT SERVICE RESERVE FUND.** (a) The City shall establish and maintain a balance in the Debt Service Reserve Fund equal to the Debt Service Reserve Fund Requirement. Each increase in the Debt Service Reserve Fund Requirement resulting from the issuance of Additional Revenue Bonds shall be funded at the time of issuance and delivery of the series of Additional Revenue Bonds by depositing to the credit of the Debt Service Reserve Fund either (A) proceeds of the Additional Revenue Bonds and/or other lawfully appropriated funds in not less than the amount which will be sufficient to fund fully the Debt Service Reserve Fund Requirement or (B) a Debt Service Reserve Fund Surety Bond sufficient to provide that portion of the Debt Service Reserve Fund Requirement. The City further expressly reserves the right to substitute at any time a Debt Service Reserve Fund Surety Bond for any funded amounts in the Debt Service Reserve Fund and to apply the funds released, to the greatest extent permitted by law, to any of the purposes for which the related Revenue Bonds were issued or to pay debt service on the related Revenue Bonds. The City shall not employ any Debt Service Reserve Fund Surety Bond unless (i) the City officially finds that the purchase of the Debt Service Reserve Fund Surety Bond is cost effective, (ii) the Debt Service Reserve Fund Surety Bond does not impose upon the City a repayment obligation (in the event the Debt Service Reserve Fund Surety Bond is drawn upon) greater than can be funded in eighteen (18) monthly installments as provided in subsection (b) below, payable out of Net Revenues on a parity with the monthly deposits that are otherwise required to be made to the Debt Service Reserve Fund, and (iii) that any interest due in connection with the repayment obligations does not exceed the highest lawful rate of interest which may be paid by the City at the time of delivery of the Debt Service Reserve Fund Surety Bond.

(b) In any month in which the Debt Service Reserve Fund contains less than the Debt Service Reserve Fund Requirement or in which the City is obligated to repay or reimburse any issuer of a Debt Service Reserve Fund Surety Bond (in the event such Debt Service Reserve Fund Surety Bond is drawn upon), then on or before the last Business Day of that month, after making all required transfers to the Debt Service Fund and the Administrative Expense Fund, there shall be transferred into the Debt Service Reserve Fund from the Revenue Fund, in approximately equal monthly installments, amounts sufficient to enable the City within an eighteen (18) month period to reestablish in the Debt Service Reserve Fund the Debt Service Reserve Fund Requirement and satisfy any repayment obligations to the issuer of any Debt Service Reserve Fund Surety Bond. After this amount has been accumulated in the Debt Service Reserve Fund and after satisfying any repayment

778 obligation to any Debt Service Reserve Fund Surety Bond issuer and so long thereafter as the Debt  
779 Service Reserve Fund contains this amount and all repayment obligations have been satisfied, no  
780 further transfers shall be required to be made, and any excess amounts in the Debt Service Reserve  
781 Fund shall be transferred to the Revenue Fund. But if and whenever the balance in the Debt Service  
782 Reserve Fund is reduced below this amount or any Debt Service Reserve Fund Surety Bond  
783 repayment obligations arise, monthly transfers to the Debt Service Reserve Fund shall be resumed  
784 and continued in amounts required to restore the Debt Service Reserve Fund to this amount and to  
785 pay reimbursement obligations within an eighteen (18) month period.

786 (c) The Debt Service Reserve Fund shall be used to pay Debt Service on the Revenue Bonds  
787 and the Credit Agreement Obligations at any time the amount available in the Debt Service Fund is  
788 insufficient for this purpose, and to make any payments required to satisfy repayment obligations to  
789 issuers of Debt Service Reserve Fund Surety Bonds, and may be used to make the final payments for  
790 the retirement or defeasance of Revenue Bonds, related Credit Agreement Obligations and  
791 Administrative Expenses.

792 Section 5.08 **FUNDS AND ACCOUNTS FOR SUBORDINATE OBLIGATIONS.** On  
793 or before the last Business Day of each month, after making all required transfers to the Debt Service  
794 Fund, the Debt Service Reserve Fund and the Administrative Expenses Fund there shall be  
795 transferred into the funds and accounts as shall be established pursuant to the ordinance authorizing  
796 the issuance or incurrence of Subordinate Obligations, the amounts required pursuant to the  
797 ordinance to provide for the payment, or to provide reserves for the payment, of the Subordinate  
798 Obligations.

799 Section 5.09 **ADMINISTRATIVE EXPENSE FUND.** On or before the last Business  
800 Day of each month, after making all required transfers to the Debt Service Fund, there shall be  
801 transferred to the Administrative Expense Fund an amount equal to the Administrative Expenses  
802 expected to be paid to the Persons entitled to payment in the next succeeding month. Amounts on  
803 deposit in the Administrative Expense Fund shall be applied solely to the payment of Administrative  
804 Expenses.

805 Section 5.10 **GENERAL OBLIGATION AIRPORT BONDS.** On or before the last  
806 Business Day of each month, so long as any General Obligation Airport Bond remains outstanding,  
807 after making all required transfers to the Debt Service Fund, the Debt Service Reserve Fund and any  
808 fund and account established by ordinance authorizing the issuance of Revenue Bonds and  
809 Subordinate Obligations, there shall be transferred from the Revenue Fund, to the extent there are  
810 funds available, the amounts necessary to provide for the payment, when due, of principal of and  
811 interest on General Obligation Airport Bonds.

812 Section 5.11 **OPERATION AND MAINTENANCE RESERVE FUND.** The City shall  
813 fund and maintain as hereinafter provided a balance of money and investments in the Operation and  
814 Maintenance Reserve Fund at least equal to two (2) months current Operation and Maintenance  
815 Expenses, which amount shall annually be re-determined by the Aviation Director at the time the  
816 recommended budget for the Airport System is submitted pursuant to Section 5.02, based upon either  
817 his recommended budget for Operation and Maintenance Expenses or his estimate of actual  
818 Operation and Maintenance Expenses for the then current Fiscal Year. On or before the last Business  
819 Day of each month, after making all required transfers to the Prior Lien Debt Service Fund, the Prior  
820 Lien Debt Service Reserve Fund, the Debt Service Fund, the Debt Service Reserve Fund and the

Administrative Expenses Fund, and any required transfers for Subordinate Obligations or General Obligation Airport Bonds as provided in this Ordinance, there shall be transferred from the Revenue Fund, to the extent there are funds available, to the Operation and Maintenance Reserve Fund an amount equal to one-twelfth (1/12th) of the deficiency, if any, in the Operation and Maintenance Reserve Fund as of the last day of the previous Fiscal Year until the required balance in the Operation and Maintenance Reserve Fund is established or reestablished. Amounts from time to time credited to the Operation and Maintenance Reserve Fund may be used at any time first, to pay for any Operation and Maintenance Expenses for which amounts are not otherwise available in the Operation and Maintenance Fund; second, to pay any costs or expenses payable from the Renewal and Replacement Fund for which there are insufficient amounts in the Renewal and Replacement Fund; and third, to the extent any amounts are remaining, to be transferred to the Prior Lien Debt Service Fund, the Prior Lien Debt Service Reserve Fund, the Debt Service Fund, the Debt Service Reserve Fund and the Administrative Expenses Fund or any similar fund created to provide for the payment, and reserves for the payment, of Subordinate Obligations and General Obligation Airport Bonds to the extent of any deficiency in any of these funds.

Section 5.12 **RENEWAL AND REPLACEMENT FUND.** The City has established the Renewal and Replacement Fund Requirement to be \$5,000,000. On or before the last Business Day of each month, if the Renewal and Replacement Fund contains less than the Renewal and Replacement Fund Requirement, then after making all required transfers to the Prior Lien Debt Service Fund, the Prior Lien Debt Service Reserve Fund, the Debt Service Fund, the Debt Service Reserve Fund and the Administrative Expense Fund and any required transfers for Subordinate Obligations or General Obligation Airport Bonds as provided in this Ordinance, and to the Operation and Maintenance Reserve Fund, there shall be transferred from the Revenue Fund, to the extent there are funds available, to the Renewal and Replacement Fund an amount equal to one-twelfth (1/12th) of the deficiency (being the amount by which the Renewal and Replacement Fund Requirement exceeded the unappropriated balance in the Renewal and Replacement Fund) as of the last day of the previous Fiscal Year and, at the discretion of the City, to pay directly from the Revenue Fund any other costs that could be paid from amounts on deposit in the Renewal and Replacement Fund. Such transfers shall be required to be made into the Renewal and Replacement Fund until such time as the Renewal and Replacement Fund Requirement has again been accumulated in the Renewal and Replacement Fund. Amounts from time to time credited to the Renewal and Replacement Fund may be used at any time first, to pay for any costs of replacing depreciable property and equipment of the Airport System and making repairs, replacements or renovations of the Airport System; second, to pay any Operation and Maintenance Expenses for which insufficient amounts are available in the Operation and Maintenance Fund; and third, to the extent any amounts are remaining, to be transferred to the Prior Lien Debt Service Fund, the Prior Lien Debt Service Reserve Fund, the Debt Service Fund, the Debt Service Reserve Fund and the Administrative Expense Fund or any similar fund created to provide for the payment, and reserves for the payment, of Subordinate Obligations and General Obligation Airport Bonds to the extent of any deficiency.

Section 5.13 **CAPITAL FUND.** After making all payments and transfers required by this Ordinance, not less frequently than annually all amounts remaining in the Revenue Fund shall be transferred to the Capital Fund; provided, however, that no transfers shall be made to the Capital Fund unless the Prior Lien Debt Service Reserve Fund contains the Prior Lien Debt Service Reserve Fund Requirement and the Debt Service Reserve Fund contains the Debt Service Reserve Requirement and all Administrative Expenses have been paid. Amounts credited to the Capital

Improvement Account may be used only for lawful purposes relating to the Airport System, including without limitation, to pay for any capital expenditures or to pay costs of replacing any depreciable property or equipment of the Airport System, to make any major or extraordinary repairs, replacements or renewals of the Airport System, to acquire land or any interest therein, to pay costs necessary or incident to the closing or disposition of any facility of the Airport System and, at the City's discretion, to be designated as Other Available Funds to be transferred to the Revenue Fund.

Section 5.14 **DEFICIENCIES IN FUNDS OR ACCOUNTS.** If in any month there shall not be transferred into any Fund or Account maintained pursuant to Sections 5.06 through 5.12, inclusive, the full amounts required by this Ordinance, amounts equivalent to the deficiency shall be set apart and transferred to the deficient Fund or Account from the first available and unallocated moneys in the Revenue Fund, and this transfer shall be in addition to the amounts otherwise required to be transferred to the Fund or Account during any succeeding month or months.

Section 5.15 **CONSTRUCTION FUND.** (a) From the proceeds of each series of Revenue Bonds (other than Refunding Revenue Bonds) there shall be deposited into the Capitalized Interest Account (if any) established in the Construction Fund for that series the amount of capitalized interest required by the ordinance authorizing issuance of the series of Revenue Bonds. The amounts may be applied to pay interest on the series of Revenue Bonds as provided in the authorizing ordinance.

(b) From the proceeds of each series of Revenue Bonds (other than Refunding Revenue Bonds) there shall be deposited into the applicable Project Account established in the Construction Fund the amounts as shall be provided in the ordinance authorizing the series of Revenue Bonds. The amounts may be applied to pay costs of establishing, improving, enlarging, extending and repairing the Airport System or any project to become part of the Airport System, to reimburse advances made by the City for these costs, to pay costs of issuance of Revenue Bonds and to pay any other capital costs of the Airport System as provided in the ordinance authorizing the series of Revenue Bonds.

Section 5.16 **MUELLER AIRPORT DISPOSITION FUND.** The Robert Mueller Municipal Airport was closed for aviation purposes and the Mueller Airport Property was transferred out of the Airport System and is no longer part of the Airport System. In connection with the transfer of the Mueller Airport Property, the City deposited certain funds into the Mueller Disposition Fund. These funds, together with any other amounts deposited into the Mueller Disposition Fund, may be used for the payment or reimbursement of all costs and expenses incurred by the City necessary or incident to the closing of Robert Mueller Municipal Airport to aviation purposes and the disposition of the Mueller Airport Property. Any remaining will be transferred to the City's aviation department.

Section 5.17 **INVESTMENT; TRANSFER OF INVESTMENT INCOME.** (a) Money in all Funds and Accounts shall, at the option of the City, be invested in the manner provided by Texas law; provided, that all deposits and investments shall be made in a manner that the money required to be expended from any Fund will be available at the proper time or times. Moneys in the Funds and Accounts may be subjected to further investment restrictions imposed from time to time by ordinance authorizing the issuance of Additional Revenue Bonds and Subordinate Obligations. All such investments shall be valued no less frequently than once per Fiscal Year at market value, except that (i) 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, and (ii) any investments which are subject to a Qualified Put may continuously be valued at the amount at which they can be

put or sold under the terms of such Qualified Put. For purposes of maximizing investment returns, money in the 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 deemed to be a loss of the segregation of the money or Funds provided that safekeeping receipts, certificates of participation or other documents clearly evidencing the investment or investment pool in which the money is invested and the share thereof purchased with such money or owned by the Fund are held by or on behalf of each Fund. If and to the extent necessary, the investments or participations shall be promptly sold to prevent any default.

(b) All interest and income derived from deposits and investments credited to any of the following funds and accounts shall be applied as follows, except as provided in subsection (c) below:

<u>Source of Interest or Income</u>	<u>Fund or Account to which such Interest or Income should be Credited</u>
Revenue Fund	Remains in Revenue Fund
Prior Lien Debt Service Fund and Debt Service Fund	Remains in the fund until the applicable Debt Service Reserve Fund Requirement is satisfied; thereafter to the Revenue Fund
Prior Lien Debt Service Reserve Fund and Debt Service Reserve Fund	Remains in the fund until the applicable Debt Service Reserve Fund Requirement is satisfied; thereafter to the Revenue Fund
Administrative Expense Fund	Revenue Fund
Operation and Maintenance Reserve Fund	Remains in the fund until fully funded; thereafter to the Revenue Fund
Renewal and Replacement Fund	Remains in the fund until Renewal and Replacement Fund Requirement is met; thereafter to the Revenue Fund
Capital Fund - Capital Improvement Account	Remains in the fund or in the appropriate fund or account therein

(c) Notwithstanding anything to the contrary, 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 the payment is required to comply with any covenant or required in order to prevent interest on any bonds payable from Net Revenues from being includable within the gross income of Owners for federal income tax purposes.



926           Section 5.18    **SECURITY FOR UNINVESTED FUNDS.** So long as any Revenue Bonds  
927 remain Outstanding, all uninvested moneys on deposit in, or credited to, the Funds and Accounts  
928 established or confirmed herein shall be secured by the pledge of security, as provided by Texas law.

929  
930                                   **ARTICLE SIX**

931                                   **ADDITIONAL BONDS**

932           Section 6.01    **ADDITIONAL REVENUE BONDS.** The City reserves the right to issue,  
933 for any lawful Airport System purpose, one or more installments of Additional Revenue Bonds  
934 payable from and secured by Net Revenues on a parity with the Outstanding Revenue Bonds;  
935 provided, however, that no series of Additional Revenue Bonds shall be issued unless:

936           (a) No Default. The City Manager and the Aviation Director certify that, upon the issuance  
937 of Additional Revenue Bonds, the City will not be in default under any term or provision of any Prior  
938 Lien Bonds or Revenue Bonds then Outstanding or any ordinance pursuant to which any Prior Lien  
939 Bonds or Revenue Bonds were issued unless the default will be cured by the issuance of the  
940 Additional Revenue Bonds.

941           (b) Proper Fund Balances. The City's Chief Financial Officer or trustee, if one has been  
942 appointed, shall certify that, upon the issuance of Additional Revenue Bonds, the Debt Service Fund  
943 and the Prior Lien Debt Service Fund will have the required amounts on deposit and that the Debt  
944 Service Reserve Fund and the Prior Lien Debt Service Reserve Fund will contain the applicable Debt  
945 Service Reserve Fund Requirement or the amount as is required to be funded at that time.

946           (c) Projected Coverage for Additional Revenue Bonds. An Airport Consultant provides a  
947 written report setting forth projections which indicate that the estimated Net Revenues, together with  
948 the estimated Other Available Funds, of the Airport System for each of three (3) consecutive Fiscal  
949 Years beginning in the earlier of

950                   (i)       the first Fiscal Year following the estimated date of completion and initial use of  
951 all revenue producing facilities to be financed with Additional Revenue Bonds, based upon a  
952 certified written estimated completion date by the consulting engineer for the facility or facilities,  
953 or

954                   (ii)      the first Fiscal Year in which the City will have scheduled payments of interest on  
955 or principal of the Additional Revenue Bonds to be issued for the payment of which provision  
956 has not been made as indicated in the report of the Airport Consultant from proceeds of the  
957 Additional Revenue Bonds, investment income thereon or from other appropriated sources (other  
958 than Net Revenues),

959 are equal to at least 125% of the Debt Service Requirements on all Outstanding Prior Lien Bonds and  
960 Revenue Bonds scheduled to occur during each respective Fiscal Year after taking into consideration  
961 the additional Debt Service Requirements for the Additional Revenue Bonds to be issued.

962           (d) Alternate Coverage for Additional Revenue Bonds. In lieu of the certification described  
963 in (c) above, the City's Chief Financial Officer may provide a certificate showing that, for either the

City's most recent complete Fiscal Year or for any consecutive 12 out of the most recent 18 months, the Net Revenues, together with Other Available Funds, of the Airport System were equal to at least 125% of the maximum Debt Service Requirements on all Prior Lien Bonds and Revenue Bonds scheduled to occur in the then current or any future Fiscal Year after taking into consideration the issuance of the Additional Revenue Bonds proposed to be issued.

(e) Refunding Bonds. If Additional Revenue Bonds are being issued for the purpose of refunding less than all previously issued Prior Lien Bonds or Revenue Bonds which are then Outstanding, neither of the certifications described in (c) or (d) above are required so long as the maximum annual Debt Service Requirements in any Fiscal Year after the issuance of the Additional Revenue Bonds will not exceed the maximum annual Debt Service Requirements in any Fiscal Year prior to the issuance of the Additional Revenue Bonds.

(f) Bond Ordinance Requirements. Provision is made in the Revenue Bond Ordinances authorizing the Additional Revenue Bonds proposed to be issued for (1) additional payments into the Debt Service Fund sufficient to provide for any principal and interest requirements resulting from the issuance of the Additional Revenue Bonds including, in the event that interest on the additional series of Revenue Bonds is capitalized and/or to be paid from investment earnings, a requirement for the transfer from the capitalized interest fund or account and/or from the construction fund to the Debt Service Fund of amounts fully sufficient to pay interest on such Additional Revenue Bonds during the period specified in the Revenue Bond Ordinances, and (2) satisfaction of the Debt Service Reserve Fund Requirement by not later than the date required by this Ordinance or any other Revenue Bond Ordinance authorizing Additional Revenue Bonds.

(g) Special Provisions for Completion Bonds. The provisions of paragraphs (c) and (d) above shall not apply to the issuance of Completion Bonds in accordance with Section 6.02.

Section 6.02 **COMPLETION BONDS**. The City reserves the right to issue one or more series of Revenue Bonds to pay the cost of completing any Project for which Revenue Bonds or Prior Lien Bonds have previously been issued.

Prior to the issuance of any series of Completion Bonds the City must provide, in addition to all of the applicable certificates required by Section 6.01, the following documents:

- (a) a certificate of the consulting engineer engaged by the City to design the Airport Project for which the Completion Bonds are to be issued stating that the Airport Project has not materially changed in scope since the issuance of the most recent series of Prior Lien Bonds or Revenue Bonds, as applicable, for the intended purpose (except as permitted in the applicable ordinance authorizing the Prior Lien Bonds or Revenue Bonds) and setting forth the aggregate cost of the Airport Project which, in the opinion of the consulting engineer, has been or will be incurred; and
- (b) a certificate of the Aviation Director: (i) stating that all amounts allocated to pay costs of the Airport Project from the proceeds of the most recent series of Prior Lien Bonds or Revenue Bonds, as applicable, issued in connection with the Airport Project for which the Completion Bonds are being issued were used or are still available to be used to pay costs of the Airport Project; (ii) containing a calculation of the amount by which the aggregate cost of that Airport Project (furnished in the consulting engineer's certificate

described above) exceeds the sum of the costs of the Airport Project paid to such date plus the moneys available at such date within any construction fund or other like account applicable to the Airport Project plus any other moneys which the Aviation Director, in his discretion, has determined are available to pay such costs in any other fund; and (iii) certifying that, in the opinion of the Aviation Director, the issuance of the Completion Bonds is necessary to provide funds for the completion of the Airport Project.

For purposes of this Section, the term "Airport Project" shall mean the Airport or any other Airport System facility or project which shall be defined as a Airport Project in any ordinance authorizing the issuance of Additional Prior Lien Bonds or Additional Revenue Bonds, as applicable, for the purpose of financing the Airport Project. Any such ordinance may contain further provisions as the City shall deem appropriate with regard to the use, completion, modification or abandonment of the Project.

**Section 6.03 SUBORDINATE OBLIGATIONS.** The City reserves the right to issue or incur, for any lawful Airport System purpose, Subordinate Obligations and credit agreement obligations related thereto, secured in whole or in part by liens on the Net Revenues that are junior and subordinate to the liens on Net Revenues securing payment of the Prior Lien Bonds and Revenue Bonds. Although referred to in this Ordinance as "Subordinate Obligations," the Subordinate Obligations may bear any name or designation provided by ordinance authorizing their issuance or incurrence. The Subordinate Obligations may be further secured by any other source of payment lawfully available. Unless expressly provided to the contrary in this Ordinance, no default with respect to a Subordinate Obligation shall constitute a default under this Ordinance.

**Section 6.04 SPECIAL FACILITIES BONDS.** The City reserves the right to issue from time to time, in one or more series, Special Facilities Bonds as provided in this Ordinance to finance and refinance the cost of any Special Facilities, including all required reserves, all related costs of issuance and other reasonably related amounts, provided that Special Facilities Bonds shall be payable solely from payments by lessees under Special Facilities Leases and/or other security not provided by the City. In no event shall Gross Revenues or any other amounts held in any other fund or account maintained by the City as security for the Prior Lien Bonds, the Revenue Bonds or for the construction, operation, maintenance or repair of the Airport System be pledged to the payment of Special Facilities Bonds. Unless expressly provided to the contrary in this Ordinance, no default with respect to a Special Facilities Bond shall constitute a default under this Ordinance.

**Section 6.05 CREDIT AGREEMENTS.** To the fullest extent permitted by applicable law, the City expressly reserves the right to enter into Credit Agreements in connection with any series of Revenue Bonds and to pledge to and secure the payment of related Credit Agreement Obligations from Net Revenues and the various funds and accounts established or referred to in this Ordinance to the extent permitted by this Ordinance, the Prior Lien Ordinance, and any of the City's other ordinances authorizing the issuance of Additional Revenue Bonds and to enter into credit agreements in connection with any series of Subordinate Obligations.

**Section 6.06 NO ADDITIONAL PRIOR LIEN BONDS TO BE ISSUED.** The City affirms the covenants made in the Series 2005 Bond Ordinance that the City will not issue Additional Prior Lien Bonds, as defined in the Prior Lien Ordinance.

1047 **ARTICLE SEVEN**

1048 **COVENANTS AND PROVISIONS RELATING TO ALL REVENUE BONDS**

1049 Section 7.01 **PUNCTUAL PAYMENT OF BONDS.** The City covenants that it will  
1050 punctually pay or cause to be paid the Debt Service on all Revenue Bonds and Credit Agreement  
1051 Obligations, according to their terms, and to pay all Administrative Expenses to the Persons entitled  
1052 to payment when due, and will faithfully do and perform, and at all times fully observe, any and all  
1053 covenants, undertakings, stipulations and provisions contained in this Ordinance and in any other  
1054 ordinance authorizing the issuance of Revenue Bonds.

1055 Section 7.02 **MAINTENANCE OF AIRPORT SYSTEM.** Except as provided in Section  
1056 7.04, the City covenants that it will at all times maintain and operate the Airport System, or within the  
1057 limits of its authority cause the Airport System to be maintained and operated, in good and  
1058 serviceable condition.

1059 Section 7.03 **LIMITATION ON CITY CHARGES FOR OPERATION AND**  
1060 **MAINTENANCE EXPENSES.** The City covenants that it will not charge the Airport System any  
1061 amounts for overhead expenses relating to the administration, operation and maintenance of the  
1062 Airport System except to the extent that the amounts charged are reasonably allocable to the Airport  
1063 System based upon a stated policy of allocation, reasonably applied to the Airport System. All  
1064 charges imposed by the City upon the Airport System shall be consistent with all applicable federal  
1065 laws, regulations and other requirements applicable to the Airport System or imposed upon the  
1066 Airport System in connection with the acceptance by the Airport System of any federal grants or aid.

1067 Section 7.04 **SALE OR ENCUMBRANCE OF AIRPORT SYSTEM.** Except for the use  
1068 of the Airport System or services pertaining to the Airport System in the normal course of business,  
1069 the City covenants that neither all nor a substantial part of the Airport System shall be sold, leased,  
1070 mortgaged, pledged, encumbered, alienated, or otherwise disposed of until all Revenue Bonds, Credit  
1071 Agreement Obligations and Administrative Expenses have been paid in full, or unless provision for  
1072 payment has been made, and the City shall not dispose of its title to the Airport System or to any  
1073 useful part of the Airport System, including, without limitation, any property necessary to the  
1074 operation and use of the Airport System, except for the execution of leases, licenses, easements, or  
1075 other agreements in connection with the operation of the Airport System by the City, or in connection  
1076 with any Special Facilities, except for any pledges of and liens on revenues derived from the  
1077 operation and use of all or any part of the Airport System, or any Special Facilities, for the payment  
1078 of Revenue Bonds, Credit Agreement Obligations, Administrative Expenses, Special Facilities Bonds  
1079 and any other obligations pertaining to the Airport System, and except as otherwise provided in the  
1080 next two paragraphs.

1081 The City may sell, exchange, lease, or otherwise dispose of, or exclude from the Airport  
1082 System, any property constituting a part of the Airport System which the Aviation Director certifies  
1083 (i) to be no longer useful in the construction or operation of the Airport System, (ii) to be no longer  
1084 necessary for the efficient operation of the Airport System, or (iii) to have been replaced by other  
1085 property of at least equal value. The net proceeds of the sale or disposition of any Airport System  
1086 property (or the fair market value of any property so excluded) pursuant to this paragraph shall be  
1087 used for the purpose of replacing properties at the Airport System, shall be paid into the Capital Fund

1088 - Capital Improvement Account or shall be applied to retire or pay principal of or interest on Revenue  
1089 Bonds.

1090 Nothing in this Ordinance prevents any transfer of all or a substantial part of the Airport  
1091 System to another body corporate and politic (including, but not necessarily limited to, a joint action  
1092 agency or an airport authority) which assumes the City's obligations under this Ordinance and in any  
1093 ordinance authorizing the issuance of Revenue Bonds, in whole or in part, if (i) in the written opinion  
1094 of the Airport Consultant, the ability to meet the rate covenant and other covenants under this  
1095 Ordinance and in any ordinance authorizing the issuance of Revenue Bonds, are not materially and  
1096 adversely affected and (ii) in the written opinion of nationally recognized bond counsel, the transfer  
1097 and assumption will not cause the interest on any Revenue Bonds that were issued as "tax-exempt  
1098 bonds" within the meaning of the regulations promulgated under the Code to be includable in gross  
1099 income of the Owners of the Revenue Bonds for federal income tax purposes. Following the transfer  
1100 and assumption, all references to the City, any City officials, City ordinance, City budgetary  
1101 procedures and any other officials, actions, powers or characteristics of the City will be references to  
1102 the transferee entity and comparable officials, actions, powers or characteristics of the entity. In the  
1103 event of any transfer and assumption, nothing in this Ordinance shall prevent the retention by the City  
1104 of any facility of the Airport System if, in the written opinion of the Airport Consultant, the retention  
1105 will not materially and adversely affect nor unreasonably restrict the transferee entity's ability to  
1106 comply with the requirements of the rate covenant and the other covenants of this Ordinance and any  
1107 other Revenue Bond Ordinance.

1108 Section 7.05 **INSURANCE.** The City covenants and agrees that it will keep the Airport  
1109 System insured with insurers of good standing against risks, accidents or casualties against which and  
1110 to the extent customarily insured against by political subdivisions of the State of Texas operating  
1111 similar properties, to the extent that the insurance is available; provided, however, that if any  
1112 insurance is not commercially available or not available on more favorable economic terms, the City  
1113 may elect to be self insured in whole or in part against the risk or loss that would otherwise be  
1114 covered by insurance, in which case the City will establish reserves for the risk or loss in amounts the  
1115 City determines to be appropriate. All net proceeds of property or casualty insurance shall be applied  
1116 to repair or replace the insured property that is damaged or destroyed or to make other capital  
1117 improvements to the Airport System or to redeem Prior Lien Bonds or Revenue Bonds. Proceeds of  
1118 business interruption insurance may be credited to the Revenue Fund.

1119 Section 7.06 **ACCOUNTS, RECORDS, AND AUDITS.** The City covenants and agrees  
1120 that it will maintain a proper and complete system of records and accounts pertaining to the Gross  
1121 Revenues and the operation of the Airport System in which full, true and proper entries will be made  
1122 of all dealings, transactions, business and affairs which in any way affect or pertain to the Gross  
1123 Revenues and the Airport System. After the close of each Fiscal Year, the City shall cause an audit  
1124 report of the records and accounts to be prepared by an independent certified public accountant or  
1125 independent firm of certified public accountants, which may be part of an overall audit report of the  
1126 City and/or other of its enterprise funds. All expenses of obtaining these reports shall constitute  
1127 Operation and Maintenance Expenses of the Airport System.

1128 Section 7.07 **PLEDGE AND ENCUMBRANCE OF REVENUES.** The City covenants  
1129 and represents that it has the lawful power to create a lien on and to pledge the Net Revenues to  
1130 secure the payment of the Revenue Bonds, the Credit Agreement Obligations and Administrative

Expenses, and has lawfully exercised this power under the Constitution and laws of the State of Texas, including specifically the Act. The City further covenants and represents that, other than to the payment of Operation and Maintenance Expenses, the Prior Lien Bonds, the Revenue Bonds, the Credit Agreement Obligations and Administrative Expenses, the Gross 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 the lien, pledge or encumbrance is junior and subordinate to the lien and pledge securing payment of the Revenue Bonds, the Credit Agreement Obligations and Administrative Expenses.

Section 7.08 **BONDHOLDERS REMEDIES.** This Ordinance is a contract between the City and the Owners of the Revenue Bonds and the holders of related Credit Agreement Obligations from time to time outstanding and this Ordinance shall be and remain irrevocable until the Revenue Bonds, the related Credit Agreement Obligations and Administrative Expenses shall be fully paid or discharged or provision for their payment shall have been made as provided in this Ordinance. In the event of a default in the payment of the Debt Service on any of the Revenue Bonds or Credit Agreement Obligations or a default in the performance of any duty or covenant provided by law or in this Ordinance, the Owner or Owners of any of the Revenue Bonds, and the holders of any Credit Agreement Obligations and the Persons to whom Administrative Expenses are owed 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 foregoing, it is expressly provided that any Owner of any of the Revenue Bonds or holder of Credit Agreement Obligations or Person to whom Administrative Expenses are owed, 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 making of reasonably required rates and charges for the use and services of the Airport System, the deposit of the Gross Revenues into the special funds provided in this Ordinance, and the application of such Gross Revenues in the manner required in this Ordinance.

Notwithstanding the provisions of the foregoing paragraph, (i) acceleration as a remedy is expressly denied, (ii) no grace period for a default in the performance of any duty or covenant shall exceed thirty (30) days, nor shall any grace period be extended for more than sixty (60) days without the written consent of the Bond Insurer (to the extent consent is required), (iii) no grace period is permitted with respect to a default in the payment of Debt Service or the payment of Administrative Expenses when due. For purposes of exercising the rights of Owners upon the occurrence of an event of default described in the immediately preceding paragraph, the Bond Insurer shall be deemed to be the sole holder of the Series 2005 Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners are entitled to take pursuant to this Ordinance.

Section 7.09 **DISCHARGE BY DEPOSIT.** (a) The City may discharge its obligation to the Owners of any or all of the Bonds to pay Debt Service, or any portion thereof, by depositing with the Paying Agent/Registrar cash in an amount equal to the Debt Service of the Bonds to the date of maturity or redemption, or any portion of the Bonds to be discharged, or by depositing either with the Paying Agent/Registrar or with any national banking association with capital and surplus in excess of \$100,000,000, pursuant to an escrow or trust agreement, cash and/or Defeasance Obligations in principal amounts and maturities and bearing interest at rates sufficient to provide for the timely payment of Debt Service on the Bonds to the date of maturity or redemption or any portion thereof to

be discharged. Upon such deposit, the Bonds, or any portion thereof, shall no longer be regarded to be Outstanding or unpaid. In case any Bonds are to be redeemed on any date prior to their maturity, the City shall give to the Paying Agent/Registrar irrevocable instructions to give notice of redemption of Bonds to be so redeemed in the manner required in this Ordinance. Any determination not to redeem Bonds that is made in conjunction with the payment arrangements described above shall not be irrevocable, provided that: (1) in the proceedings providing for the payment arrangements, the City expressly reserves the right to call the Bonds for redemption; (2) the City gives notice of the reservation of that right to the owners of the Bonds immediately following the making of the payment arrangements; and (3) the City directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Prior to the defeasance of the Bonds, (i) a report of an independent firm of nationally recognized certified public accountants ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the respective maturity or redemption date ("Verification") will be obtained by the City, (ii) an escrow agreement will be executed and delivered by the City, and (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Ordinance will be obtained by the City. Each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the City.

Section 7.10 **LEGAL HOLIDAYS.** If any date on which a payment of Debt Service is due is not a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of scheduled payment of Debt Service.

## **ARTICLE EIGHT**

### **CONCERNING THE PAYING AGENT/REGISTRAR**

Section 8.01 **APPOINTMENT OF INITIAL PAYING AGENT/REGISTRAR.** Prosperity Bank is appointed to serve as the initial Paying Agent/Registrar for the Bonds.

Section 8.02 **QUALIFICATIONS.** Each Paying Agent/Registrar shall be a commercial bank or a trust company organized under the laws of the State of Texas or the United States of America, or any other entity duly qualified and legally authorized to serve as and perform the duties and services of paying agent and registrar for the Bonds.

Section 8.03 **MAINTAINING PAYING AGENT/REGISTRAR.** (a) At all times while any Bond is outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 8.02. The City Manager is authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar in the substantially final form presented with this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve in this capacity, the City will promptly appoint a replacement.

1212           Section 8.04   **TERMINATION.** The City, upon not less than sixty (60) days notice,  
1213 reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the  
1214 entity whose appointment is to be terminated written notice of such termination.

1215           Section 8.05   **NOTICE OF CHANGE TO OWNERS.** Promptly upon each change in the  
1216 entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each  
1217 Owner by first class United States mail, postage prepaid, at the address in the Register, stating the  
1218 effective date of the change and the name and mailing address of the replacement Paying  
1219 Agent/Registrar.

1220           Section 8.06   **AGREEMENT TO PERFORM DUTIES AND FUNCTIONS.** By  
1221 accepting the appointment as Paying Agent/Registrar and executing the Paying Agent/Registrar  
1222 Agreement, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance  
1223 and that it will perform the prescribed duties and functions of Paying Agent/Registrar. The Paying  
1224 Agent/Registrar Agreement presented with this Ordinance is approved and the Authorized Officers  
1225 are directed to execute and deliver the Paying Agent/Registrar Agreement with any changes as may  
1226 be approved by the Authorized Officer.

1227           Section 8.07   **DELIVERY OF RECORDS TO SUCCESSOR.** If a Paying  
1228 Agent/Registrar is replaced, the Paying Agent/Registrar, promptly upon the appointment of the  
1229 successor, will deliver the Register (or a copy thereof) and all other pertinent books and records  
1230 relating to the Bonds to the successor Paying Agent/Registrar.

1231           Section 8.08   **TRUST FUNDS.** All money transferred to the Paying Agent/Registrar under  
1232 this Ordinance (except sums representing Paying Agent/Registrar's fees) shall be held in trust for the  
1233 benefit of the City, shall be the property of the City, and shall be disbursed in accordance with this  
1234 Ordinance.

1235           Section 8.09   **BONDS PRESENTED.** Subject to the provisions of Section 8.10, all  
1236 matured Bonds presented to the Paying Agent/Registrar for payment shall be paid without the  
1237 necessity of further instructions from the City. The Bonds shall be cancelled as provided in this  
1238 Ordinance.

1239           Section 8.10   **UNCLAIMED FUNDS HELD BY THE PAYING AGENT/REGISTRAR.**  
1240 Funds held by the Paying Agent/Registrar which represent principal of and interest on the Bonds  
1241 remaining unclaimed by the Owner after the expiration of three years from the date the funds have  
1242 become due and payable shall be reported and disposed of by the Paying Agent/Registrar in  
1243 accordance with the provisions of Texas law including, to the extent applicable, Title 6 of the Texas  
1244 Property Code.

1245           The Paying Agent/Registrar shall have no liability to the Owners of the Bonds by virtue of  
1246 actions taken in compliance with this Section.

1247           Section 8.11   **PAYING AGENT/REGISTRAR MAY OWN PRIOR LIEN BONDS.**  
1248 The Paying Agent/Registrar, in its individual or other capacity, may become the Owner or pledgee of  
1249 Prior Lien Bonds with the same rights it would have if it were not the Paying Agent/Registrar.



1251 **ARTICLE NINE**

1252 **ALTERATION OF RIGHTS AND AMENDMENT OF ORDINANCE**

1253 Section 9.01 **ALTERATION OF RIGHTS AND DUTIES.** The rights, duties, and  
1254 obligations of the City and the Owners of the Bonds and the holders of Credit Agreement Obligations  
1255 related to the Bonds, and Persons to whom Administrative Expenses are owed, are subject in all  
1256 respects to all applicable federal and state laws including, without limitation, the provisions of federal  
1257 law regarding the composition of indebtedness of political subdivisions, as the same now exist or as  
1258 may be amended in the future.

1259 Section 9.02 **AMENDMENT OF ORDINANCE WITHOUT CONSENT.** The City  
1260 may, without the consent of or notice to any of the Owners of the Bonds, amend this Ordinance for  
1261 any one or more of the following purposes:

- 1262 (a) to cure any ambiguity, defect, omission or inconsistent provision in the Revenue Bond  
1263 Ordinances or in the Revenue Bonds; or to comply with any applicable provision of law  
1264 or regulation of Federal agencies; provided, however, that such action shall not adversely  
1265 affect the interests of the Owners of the Revenue Bonds;
- 1266 (b) to change the terms or provisions of this Ordinance to the extent necessary to prevent the  
1267 interest on the Revenue Bonds from being includable within the gross income of the  
1268 Owners for federal income tax purposes;
- 1269 (c) to grant to or confer upon the Owners of the Revenue Bonds any additional rights,  
1270 remedies, powers or authority that may lawfully be granted to or conferred upon the  
1271 Owners of the Revenue Bonds;
- 1272 (d) to add to the covenants and agreements of the City contained in the Revenue Bond  
1273 Ordinances other covenants and agreements of, or conditions or restrictions upon, the  
1274 City or to surrender or eliminate any right or power reserved to or conferred upon the  
1275 City in this Ordinance;
- 1276 (e) to amend any provisions of this Ordinance relating to the issuance of Revenue Bonds and  
1277 Subordinate Obligations, or the incurrence of and security for reimbursement obligations  
1278 in connection with the issuance of Revenue Bonds and Subordinate Obligations, so long  
1279 as to do so does not cause any reduction in any rating assigned to the Outstanding  
1280 Revenue Bonds by any nationally recognized rating agency then rating any series of  
1281 Revenue Bonds (this provision does not apply to the Bonds so long as the Bonds are not  
1282 rated);
- 1283 (f) to subject to the lien and pledge of the Revenue Bond Ordinances additional Net  
1284 Revenues which may include revenues, properties or other collateral; and
- 1285 (g) to amend the provisions of Article Twelve to the extent permitted in Article Twelve.

1286 Section 9.03 **AMENDMENTS OF ORDINANCE REQUIRING CONSENT.** The City  
1287 may at any time adopt one or more ordinances amending, modifying, adding to or eliminating any of  
1288 the provisions of this Ordinance but, if the amendment is not of the character described in Section

9.02, only with the consent given in accordance with Section 9.04 of the Owner or Owners of not less than 66-2/3% of the aggregate unpaid principal amount of the Revenue Bonds then Outstanding and affected by the amendment, modification, addition, or elimination and with the consent of the Bond Insurer (to the extent the consent is required); provided, however, that nothing in this Section shall permit (a) an extension of the maturity of the principal of or interest on any Revenue Bond issued under this Ordinance, or (b) a reduction in the principal amount of any Revenue Bond or the rate of interest on any Revenue Bond, or (c) a privilege or priority of any Revenue Bond or Revenue Bonds over any other Revenue Bond or Revenue Bonds, or (d) a reduction in the percentage of aggregate principal amount of the Revenue Bonds required for consent to the amendment.

Section 9.04 **CONSENT OF OWNERS.** Any consent required by Section 9.03 by any Owner must be in writing, may be in any number of concurrent writings of similar tenor, and may be signed by the Owner or its duly authorized attorney. Proof of the execution of any consent or of the writing appointing any attorney and of the ownership of Revenue Bonds, if made in the following manner, shall be sufficient for any of the purposes of the Revenue Bond Ordinances, 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 the instrument, namely:

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

(b) The fact of the ownership by any person of any Revenue Bond and the date of the ownership may be proved by a certificate executed by an appropriate officer of the Paying Agent/Registrar, stating that on that date the Revenue Bond was registered in the name of that party in the Register.

In lieu of the foregoing the City may accept any other proof as it finds appropriate.

Consents required pursuant to Section 9.03 shall be valid only if given following the giving of notice by or on behalf of the City requesting the 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 given by certified mail to each Registered Owner of the Revenue Bonds affected at the address shown on the Register.

Copies of all amendments and supplements to this Ordinance or to any Related Document shall be sent to Standard & Poor's and Moody's at least ten (10) days prior to its effective date.

Section 9.05 **REVOCATION OF CONSENT.** Any consent by any Owner of a Revenue Bond pursuant to the provisions of this Article shall be irrevocable for a period of eighteen (18) months from the date of mailing of the notice provided for in this Article, and shall be conclusive and binding upon all future Owners of the same Revenue Bond and any Revenue Bond delivered on transfer thereof or in exchange for or replacement of the Revenue Bond during this period. The consent may be revoked at any time after eighteen (18) months from the date of the first mailing of the notice by the Owner who gave the consent or by a successor in title, by filing notice with the Paying Agent/Registrar, but the revocation shall not be effective if the Owners of a majority in

aggregate principal amount of the Revenue Bonds Outstanding as in this Ordinance defined have, prior to the attempted revocation, consented to and approved the amendment.

Section 9.06 **CONSENT TO CERTAIN AMENDMENTS GIVEN THROUGH OWNERSHIP OF BONDS.** By acceptance of the Bonds, each Owner of a Bond (including specifically the Purchaser) (i) irrevocably and specifically consents to and approves the amendments described in (1) and (2) below, (ii) irrevocably appoints the Aviation Director as its true and lawful attorney-in-fact for the limited purpose of executing the written instrument required by Section 9.04 of this Ordinance to evidence the Owner's specific consent to and approval of the amendments described in (1) and (2) below, and (iii) confirms all actions taken by the Aviation Director as attorney-in-fact for the Owner, it being specifically provided that the Aviation Director need not consult with, or provide notice to, an Owner in connection with the actions taken by the Aviation Director under this Section. The power of attorney granted to the Aviation Director shall be limited to effecting the below amendments and is irrevocable for so long as any Bond remains Outstanding.

The amendments are:

(1) Amend Section 6.01(e) of this Ordinance and the Series 2005 Bond Ordinance to read:

"Refunding Bonds. If Additional Revenue Bonds are being issued for the purpose of refunding less than all previously issued Prior Lien Bonds or Revenue Bonds which are then Outstanding, neither of the certifications described in (c) or (d) above are required so long as the aggregate Debt Service Requirements after the issuance of the Additional Revenue Bonds do not exceed the aggregate Debt Service Requirements prior to the issuance of the Additional Revenue Bonds; provided, that the annual debt service on the refunding bonds in any Fiscal Year will not be more than 10% higher than it is in any other Fiscal Year."

(2) Amend Section 9.03 of this Ordinance and the Series 2005 Bond Ordinance by changing the phrase "66-2/3% of the aggregate unpaid principal amount of the Revenue Bonds then Outstanding" to "a majority of the aggregate unpaid principal amount of the Revenue Bonds then Outstanding".

These amendments will become effective once the consent of 66-2/3% of the aggregate unpaid principal amount of the Revenue Bonds then Outstanding is received.

## **ARTICLE TEN**

### ***SALE OF THE BONDS; APPROVAL OF BOND PURCHASE AGREEMENT; APPLICATION OF PROCEEDS OF THE BONDS***

Section 10.01 **SALE OF THE BONDS; BOND PURCHASE AGREEMENT.** The Bonds shall be sold at private sale to the Purchaser in accordance with the terms of this Ordinance. The sale of the Bonds to the Purchaser is on terms that are most advantageous to the City reasonably obtained and, upon the advice of the City's financial advisor, is in the best interests of the City

An Authorized Officer is authorized and directed to execute and deliver the Bond Purchase Agreement. Council approves the Bond Purchase Agreement. The Authorized Officer and other

appropriate officials of the City are directed to execute the Bond Purchase Agreement on behalf of the City. The Authorized Officer and other appropriate officers, employees, and agents of the City shall carry out and comply with the terms and provisions of the Bond Purchase Agreement.

Section 10.02 **APPROVAL, REGISTRATION AND INITIAL DELIVERY.** The Authorized Officer shall have control and custody of the Bonds and all necessary records and proceedings pertaining to the Bonds pending their delivery, and the Authorized Officer and other officers and employees of the City are instructed to make certifications and to execute instruments as may be necessary to accomplish the initial delivery of the Initial Bonds and to assure the investigation, examination, and approval of the Bonds by the Attorney General of the State of Texas and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Bonds, the Comptroller of Public Accounts of the State of Texas (or a deputy designated in writing to act for her) shall be requested to sign manually the Comptroller's Registration Certificate set forth in the FORM OF BONDS and the seal of the Comptroller of Public Accounts of the State of Texas shall be impressed or printed or lithographed on the Initial Bonds. The Bonds will be delivered to the Purchaser in accordance with the terms of the Bond Purchase Agreement.

Section 10.03 **APPLICATION OF PROCEEDS OF THE BONDS.** On the closing date for the Bonds, proceeds from the sale of the Bonds shall be applied as follows:

(a) A portion of the proceeds from the sale of the Bonds as set forth in the letter of instructions executed by the City shall be deposited to the [Capitalized Interest Account and the] Project Account within the Construction Fund and the Debt Service Reserve Fund described in the letter of instructions; and

(b) The balance of the proceeds of the Bonds shall be applied to pay all costs of issuance of the Bonds, and, to the extent not so used, shall be deposited into the Debt Service Fund.

Section 10.04 **USE OF PASSENGER FACILITY CHARGES.** The City covenants and agrees, for the benefit of the Owners of the Revenue Bonds, that during each Fiscal Year the City will set aside from any passenger facility charges imposed by the City on enplaned passengers the lesser of (i) such passenger facility charges imposed and collected by the City or (ii) \$4.50 derived from each passenger facility charge so imposed and collected by the City for the payment of debt service on the Prior Lien Bonds and the Revenue Bonds in the following Fiscal Year, unless the City receives a report from an Airport Consultant showing that an alternative use of all or a portion of the passenger facility charges will not reduce the forecast coverage of Debt Service Requirements with respect to the Prior Lien Bonds and the Revenue Bonds by forecast Net Revenues during the following Fiscal Year (or such longer forecast period as may be covered in the Airport Consultant's Report) to less than 125%. Consistent with the definitions of Debt Service Requirements and Gross Revenues, the City represents that debt service with respect to the Revenue Bonds paid from passenger facility charges is not included in the calculation of Debt Service Requirements.

1405 **ARTICLE ELEVEN**

1406 **FEDERAL INCOME TAX COVENANTS**

1407 Section 11.01 **GENERAL TAX COVENANTS.** The City covenants to take any action to  
1408 assure, or refrain from any action which would adversely affect, the treatment of the Bonds as  
1409 obligations described in section 103 of the Code, the interest on which is not includable in the "gross  
1410 income" of the holder for purposes of federal income taxation. The City covenants as follows:

1411  
1412 (a) to take such action or refrain from such action which would result in the Bonds  
1413 not being "exempt facility bonds", as defined in section 142(a) of the Code, at least 95 percent of  
1414 the proceeds of which are used to provide airport facilities (within the meaning of section 142(a)  
1415 of the Code);

1416  
1417 (b) to take such action to assure at all times while the Bonds remain outstanding, the  
1418 facilities, directly or indirectly, financed with the proceeds thereof will be owned by a  
1419 governmental unit;

1420  
1421 (c) that no part of the facilities, directly or indirectly, financed with the proceeds of  
1422 the Bonds will constitute (A) any lodging facility, (B) any retail facility (including food or  
1423 beverage facilities) in excess of a size necessary to serve passengers and employees at the  
1424 exempt facility, (C) any retail facility (other than parking) for passengers or the general public  
1425 located outside the exempt facility terminal, (D) any office building for individuals who are not  
1426 employees of a governmental unit or of the operating authority for the exempt facility, (E) any  
1427 industrial park or manufacturing facility, or (F) any residential real property for family units;

1428  
1429 (d) that the maturity of the Bonds does not exceed 120 percent of the economic life of  
1430 the facilities, directly or indirectly, financed with the proceeds of the Bonds, as more specifically  
1431 set forth in section 147(b) of the Code;

1432  
1433 (e) that fewer than 25 percent of the proceeds of the Bonds will be used for the  
1434 acquisition of land or an interest therein, unless such land is acquired for noise abatement or  
1435 wetland preservation or the future use of the Airport, and there is no other significant use of such  
1436 land;

1437  
1438 (f) to refrain from using any portion of the proceeds of the Bonds, directly or indi-  
1439 rectly, to acquire or to replace funds which were used, directly or indirectly, to acquire  
1440 investment property (as defined in section 148(b)(2) of the Code) which produces a materially  
1441 higher yield over the term of the Bonds, other than investment property acquired with --

1442  
1443 (1) proceeds of the Bonds invested for a reasonable temporary period until the  
1444 proceeds are needed for the purpose for which the Bonds are issued,

1445 (2) amounts invested in a bona fide debt service fund, within the meaning of  
1446 section 1.148-1(b) of the Treasury Regulations, and  
1447

1448 (3) amounts deposited in any reasonably required reserve or replacement fund  
1449 to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

1450  
1451 (g) that any property acquired, directly or indirectly, with the proceeds of the Bonds  
1452 was not placed-in-service prior to its acquisition unless the provisions of section 147(d) of the  
1453 Code, relating to rehabilitation, are satisfied;

1454  
1455 (h) that the costs of issuance to be financed with the proceeds of the Bonds do not  
1456 exceed two (2) percent of the proceeds of the Bonds;

1457  
1458 (i) to refrain from taking any action that would result in the Bonds being "federally  
1459 guaranteed" within the meaning of section 149(b) of the Code;

1460  
1461 (j) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as  
1462 proceeds of the Bonds, as may be necessary, to satisfy the requirements of section 148 of the  
1463 Code (relating to arbitrage);

1464  
1465 (k) to create and maintain a Rebate Fund, as required below, to pay to the United  
1466 States of America at least once during each five-year period (beginning on the date of delivery of  
1467 the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the  
1468 meaning of section 148(f) of the Code and to pay to the United States of America, not later than  
1469 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be  
1470 paid as a result of Excess Earnings under section 148(f) of the Code; and

1471 (l) to maintain records that will enable the City to fulfill its responsibilities under this  
1472 Section and section 148 of the Code and to retain the records for at least six (6) years following  
1473 the final payment of principal and interest on the Bonds.

1474 The City understands that the term "proceeds" includes "disposition proceeds" as defined in  
1475 the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and  
1476 proceeds of the refunded bonds expended prior to the date of the issuance of the Bonds. It is the  
1477 understanding of the City that the covenants contained in this Ordinance are intended to assure  
1478 compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the  
1479 Treasury pursuant to the Code. In the event that regulations or rulings are hereafter promulgated  
1480 which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be  
1481 required to comply with any covenant contained herein to the extent that such failure to comply, in  
1482 the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from  
1483 federal income taxation of interest on the Bonds under section 103 of the Code. In the event that  
1484 regulations or rulings are hereafter promulgated which impose additional requirements which are  
1485 applicable to the Bonds, the City agrees to comply with the additional requirements to the extent  
1486 necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from  
1487 federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of the  
1488 foregoing, the Mayor, the City Manager, any Assistant City Manager, the Chief Financial Officer of  
1489 the City, any Deputy Chief Financial Officer of the City and the City Treasurer may execute any  
1490 documents, certificates or other reports required by the Code and to make such elections, on behalf of  
1491 the City, which may be permitted by the Code as are consistent with the purpose for the issuance of  
1492 the Bonds.

1493  
1494 In order to facilitate compliance with clause (h) above, a "Rebate Fund" is established and  
1495 held by the City for the sole benefit of the United States of America, and such Rebate Fund shall not  
1496 be subject to the claim of any other person, including without limitation the Registered Owners of the  
1497 Bonds. The Rebate Fund is established for the additional purpose of compliance with section 148 of  
1498 the Code.  
1499

1500 Section 11.02 **ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR**  
1501 **THE PROJECTS.** The City covenants to account for the expenditure of proceeds from the sale of  
1502 the Bonds and any investment earnings on these proceeds to be used for a Project on its books and  
1503 records by allocating proceeds to expenditures within 18 months of the later of the date that (a) the  
1504 expenditure on a Project is made or (b) each Project is completed. The City shall not expend such  
1505 proceeds or investment earnings more than 60 days after the later of (a) the fifth anniversary of the  
1506 date of delivery of the Bonds or (b) the date the Bonds are retired, unless the City obtains an opinion  
1507 of nationally-recognized bond counsel substantially to the effect that the expenditure will not  
1508 adversely affect the tax-exempt status of the Bonds. The City shall not be obligated to comply with  
1509 this covenant if it obtains an opinion of nationally-recognized bond counsel to the effect that such  
1510 failure to comply will not adversely affect the excludability for federal income tax purposes from  
1511 gross income of the interest. This Ordinance is intended to satisfy the official intent requirements set  
1512 forth in section 1.150-2 of the Treasury Regulations.

1513 Section 11.03 **DISPOSITION OF PROJECT.** The City covenants that the property  
1514 constituting a Project will not be sold or otherwise disposed in a transaction resulting in the receipt by  
1515 the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized  
1516 bond counsel substantially to the effect that such sale or other disposition will not adversely affect the  
1517 tax-exempt status of the Obligations. The portion of the property comprising personal property and  
1518 disposed of in the ordinary course of business shall not be treated as a transaction resulting in the  
1519 receipt of cash or other compensation. The City shall not be obligated to comply with this covenant  
1520 if it obtains an opinion of nationally-recognized bond counsel to the effect that such failure to comply  
1521 will not adversely affect the excludability for federal income tax purposes from gross income of the  
1522 interest.

1523 Section 11.04 **CONTINUING OBLIGATION.** Notwithstanding any other provision of  
1524 this Ordinance, the City's obligations under the covenants and provisions of this Article Eleven shall  
1525 survive the defeasance and discharge of the Bonds.

## 1526 **ARTICLE TWELVE**

### 1527 **CONTINUING DISCLOSURE**

1528 Section 12.01 **ANNUAL REPORTS.** The City shall provide annually to the MSRB, within  
1529 six months after the end of each Fiscal Year ending in or after 2013, financial information and  
1530 operating data with respect to the Airport System of the general type described in Section 12.04. Any  
1531 financial statements to be provided shall be (1) prepared in accordance with the accounting principles  
1532 described in Section 12.04, or other accounting principles as the City may be required to employ  
1533 from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an

audit of such statements and the audit is completed within the period during which they must be provided. If the audit of the financial statements is not complete within this period, then the City shall provide unaudited financial statements by the required time, and shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on the statements becomes available. While the Bonds are Outstanding, the City will deliver this information to the Purchaser.

If the City changes its Fiscal Year, it will notify the MSRB of the change (and of the date of the new Fiscal Year end) before the next date the City would be required to provide financial information and operating data pursuant to this Article. The financial information and operating data to be provided pursuant to this Article may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that has been provided to the MSRB or filed with the SEC. Filings shall be made electronically, in the format prescribed by the MSRB.

Section 12.02 **DISCLOSURE EVENT NOTICES.** The City shall notify the MSRB, in a timely manner not in excess of ten Business Days after the occurrence of the event, of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, 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;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of the City;
13. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into 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
14. Appointment of a successor Paying Agent/Registrar or change in the name of the Paying Agent/Registrar, if material.

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 subsection (b) of this Section by the time required by subsection (a). As used in clause 12 above, the phrase "bankruptcy, insolvency, receivership or similar event" means the appointment of a receiver, fiscal agent or similar officer for



the City in a proceeding under the U.S. 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 jurisdiction has been assumed by leaving Council and official or officers of the City 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.

Section 12.03 **LIMITATIONS, DISCLAIMERS, AND AMENDMENTS.** The City shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, 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 Section 12.02 of any Bond calls and defeasance that cause the Airport System to be no longer an "obligated person."

The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds, and nothing in this Article, 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 Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or to update any information provided in accordance with this Article or otherwise, except as expressly provided in this Ordinance. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

**UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BONDS 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 ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY 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 Article shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

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

Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City agrees to undertake the obligation in accordance with the Rule, as amended.

The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Airport System, but only if (1) the provisions

of this Article, as so amended, would have permitted an underwriter to purchase or sell the 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 Owners of a majority in aggregate principal 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 Owners and beneficial owners of the Bonds. If the City amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 12.01 an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that the provisions of the Rule are invalid, but only and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

Section 12.04 **DESCRIPTION OF ANNUAL FINANCIAL INFORMATION.** The following information is referred to in Section 12.01:

(a) Annual Financial Statements and Operating Data. The financial information and operating data with respect to the City to be provided annually are (i) the portions of the financial statements of the City appended to the Series 2005 Official Statement as Appendix B, but for the most recently concluded Fiscal Year, and (ii) all quantitative financial information and operating data with respect to the Airport System of the general type included in the main text of the Series 2005 Official Statement within the numbered tables only.

(b) Accounting Principles. The accounting principles referred to in Section 12.01 are the accounting principles described in the notes to the financial statements referred to clause (a)(i) above, as the principles may be changed from time to time to comply with state law or regulation.

## **ARTICLE THIRTEEN**

### **MISCELLANEOUS**

Section 13.01 **FURTHER PROCEDURES.** The Mayor, the City Manager, the Aviation Director, the Chief Financial Officer, the City Treasurer and the City Clerk and other appropriate officials of the City are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Ordinance.

Section 13.02 **SEVERABILITY.** If any article, section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of the article, section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13.03 **OPEN MEETING.** It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the Council meeting at which this

Ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Ordinance has been discussed, considered and formally acted upon. Council further ratifies, approves and confirms the written notice and the contents and posting thereof.

Section 13.04 **EFFECTIVE IMMEDIATELY.** Notwithstanding the provisions of the City Charter, this Ordinance shall become effective immediately upon its adoption at this meeting pursuant to Section 1201.028, Texas Government Code as amended.

Section 13.05 **REPEALER.** All orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

PASSED AND APPROVED this 9th day of May, 2013.

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Lee Leffingwell, Mayor

ATTEST:

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Jannette S. Goodall, City Clerk

(SEAL)

APPROVED:

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Karen M. Kennard, City Attorney