

ORDINANCE NO.

AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE OF A REFUNDING BOND FOR THE PURPOSE OF REFINANCING NOTES ISSUED IN 1996 TO SECURE A HUD 108 LOAN, DELEGATING AUTHORITY TO THE CITY MANAGER TO APPROVE CERTAIN TERMS OF THE BOND, AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

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

PART 1. FINDINGS: Council finds that:

- (A) the City of Austin, Texas (City, or Issuer), is a political subdivision of the state of Texas and is a home-rule city operating pursuant to the Texas Local Government Code and its Charter; and
- (B) in 1996, the City secured a loan in the principal amount of \$8,785,000 (the 1996 HUD 108 Loan) from the United States Department of Housing and Urban Development (HUD) under Section 108 of title 1 of the Housing and Community Development Act of 1974 (HUD Act) to assist in financing construction of the Millennium Youth Center in east Austin; and
- (C) the 1996 HUD 108 Loan was evidenced and secured by twenty City of Austin Promissory Notes B-94-MC-48-0500, in the aggregate principal amount of \$8,785,000 (the 1996 Notes), the issuance of which was approved by council on July 18, 1996 pursuant to Ordinance No. 960718-G; and
- (D) the 1996 Notes are currently outstanding in the aggregate principal amount of \$3,930,000 and mature on August 1 in each of the years 2010 through 2019; and
- (E) the City committed _____ of federal Community Development Block Grant funds to secure the 1996 Notes, with the remaining balance of the annual payment being paid through available funds of the City's Neighborhood Housing and Community Development Department; and
- (F) on April 20, 2010, a representative of HUD contacted the City and offered the opportunity to refinance the existing 1996 Notes maturing in the years 2011 through 2019 (the Refunded Notes) at historically low interest

rates as a result of a public offering being conducted by HUD on or about July 21, 2010; and

(G) the Refunded Notes mature on August 1 in the years and in the principal amounts, and bear interest at the rates set forth below:

Current Interest Rate on remaining Payments and Projected Rates:

CHART TO BE PLACED HERE

(H) HUD projected that the interest rates on a new obligation issued by the City to refund the Refunded Notes could range from approximately 0.43% to 3.15%, which would result in an average expected rate of approximately 1.92% and could result in approximately \$447,460 in total projected savings, but the final interest rates and actual savings will not be known until HUD conducts its public offering; and

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

(J) all of the Refunded Notes mature or are subject to redemption prior to maturity within 20 years of the date of the bond authorized by this Ordinance; and

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

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

(M) Section 1207.004 further provides that a refunding bond may be secured by and made payable from taxes, revenue, or both, another source, or a combination of sources to the extent the City is otherwise authorized to secure of pay any type of bond by or from that source or those sources; and

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

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

(P) the City Council further finds that issuing the Bond authorized by this Ordinance for the purposes described in these findings is in the best interests of the City since it is reasonably expected and highly likely that since the interest rates on the bond (as projected by HUD) are expected to be between 4% and 4% less than the current rates on the Refunded Notes, the City will achieve significant interest cost savings; nevertheless, the manner in which the refunding is being executed does not make it practicable for the City Council to make a determination at this time as to the actual interest cost savings that will be achieved upon issuance of the Bond; and

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

(R) the City Council now finds it necessary and appropriate to approve the form and content of the Contract and the Bond, including the pledge of funds and revenues described in the Contract and the Bond, and to authorize certain City officials to execute the Contract and the Bond and all other

documents related to this issuance, and to take all other actions deemed necessary, in connection with obtaining the 2010 HUD 108 Loan; and

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

PART 2. CONTRACT APPROVAL: The City Council approves the Contract in substantially the form attached to this Ordinance as Exhibit A and further authorizes the Mayor, the City Manager, Assistant City Manager, the Director of Finance of the City, the City Clerk, the Director of the City's Neighborhood Housing and Community Affairs Department, and the City Treasurer to execute the Contract and all other documents related to the 2010 HUD 108 Loan and to approve any and all changes to the Contract from the form approved by this Ordinance, and such approval shall be evidence by the signature of such official of the City and the delivery of the executed Contract concurrent with the initial delivery of the Contract to HUD; and further

PART 3. BOND APPROVAL: A bond of the City, in substantially the form attached to this Ordinance as Exhibit B (the Bond) is authorized by the City Council to be issued and delivered in the aggregate principal amount of \$3,930,000 for the purpose of refunding all outstanding City of Austin, Texas, Promissory Notes B-94-MC-48-0500, maturing in the years 2011 through 2019 inclusive. The Bond shall be (i) payable in principal installments on the dates and in the amounts set forth in the Bond, (ii) be secured as provided in the Bond and the Contract (and as further described below); (iii) bear interest from August 1, 2010 at the rates approved by the City Manager (as further described below); (iv) be delivered in exchange for the Refunded Notes in the manner set forth in the Contract; and (v) contain all other terms and provisions as set forth in the Bond and the Contract. The Mayor and the City Manager and the City Clerk are hereby authorized to execute the Bond on behalf of the City and to approve any and all changes to the Bond from the form approved by this Ordinance and such approval shall be evidenced by the signature of the official of the City on the Bond and the delivery of the executed Bond concurrent with the initial delivery of the Bond to HUD in accordance with the requirements set forth in the Bond and the Contract.

PART 4. DELEGATION OF CERTAIN TERMS As authorized by Section 1207.007, the City Manager is authorized, appointed, and designated as the officer of the City to act on behalf of the City to effect the sale and delivery of the Bond in the manner set forth in the Contract and to establish and approve the respective rate of interest to be borne on each principal installment (but in no event to exceed 6.83% for any principal installment date, which is the lowest rate of interest currently being born by the Refunded Notes), and to approve all other matters relating to the issuance, sale, and delivery of the Bonds. The City Manager, acting on behalf of the City, is further authorized to complete the "Interest Rate" column under "Schedule P&I" attached to the Bond to be issued and delivered pursuant to this Ordinance and pursuant to the Contract with the final interest determined following public offering by HUD.

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

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

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

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

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

PART 6. EFFECTIVE DATE: Pursuant to Section 1201.028 of the Texas Government Code this Ordinance shall be effective immediately upon adoption.

PASSED AND APPROVED

_____, 2010

§
§
§ _____

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
Acting City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk