

**CITY OF EL PASO, TEXAS**  
**DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Financial and Administrative Services Portfolio

**AGENDA DATE:** June 3, 2008

**CONTACT PERSON/PHONE:** William Studer (915-541-4215) and Carmen Arrieta-Candelaria (915-541-4293)

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

This item is to approve an Ordinance authorizing the issuance of City of El Paso Hotel Occupancy Tax Revenue Bonds, Series 2008, in the amount of \$5,550,000.

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action?

The purpose of these bonds is to provide funding for making the proposed improvements and renovations to the Convention Center. The rate for these bonds was priced at 4.21%. Attached is the bond schedule for these bonds which outlines the payment of principal and interest over the next 10 years. Payment of the bonds will come from HOT tax collections.

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one? If so, when?

Yes, City Council has issued HOT Certificates of Obligations in 1998 in the amount of \$18,250,000.

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

\$5,550,000 million to be funded from HOT revenues

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**OTHER:** Carmen Arrieta-Candelaria  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

CITY CLERK DEPT.  
09 MAY 30 PM 4:03

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

**\$ \_\_\_\_\_**

**CITY OF EL PASO, TEXAS  
HOTEL OCCUPANCY TAX REVENUE BONDS  
SERIES 2008**

**Adopted: June 3, 2008**

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## **ORDINANCE**

AN ORDINANCE by the City Council of the City of El Paso, Texas, authorizing the issuance of "CITY OF EL PASO, TEXAS, HOTEL OCCUPANCY TAX REVENUE BONDS, SERIES 2008"; making provision for the payment of said Bonds; enacting other provisions incident and related to the issuance, payment, sale and delivery of such Bonds including the approval and execution of a Paying Agent/Registrar Agreement and a Purchase Agreement; and enacting other provisions relating thereto.

WHEREAS, in accordance with the provisions of Chapter 351 of the Texas Tax Code, Vernon's Texas Code Annotated, as amended (the "Tax Act"), the City of El Paso, Texas (the "City") is authorized to impose a tax on certain persons occupying hotel rooms or similar accommodations (the "Hotel Occupancy Tax") and to pledge the receipts of such Hotel Occupancy Tax to the payment of obligations issued for the purpose of constructing, improving, enlarging, equipping and repairing convention center facilities; and

WHEREAS, the City hereby finds and determines hotel occupancy tax revenue bonds should be issued and sold at this time to provide financing for constructing, improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center, and such hotel occupancy tax revenue bonds should be payable from and secured in part by a lien on and pledge of a portion of the seven percent (7%) Hotel Occupancy Tax of the City levied pursuant to the Tax Act; and

WHEREAS, the City Council has found and determined that it is necessary and in the best interest of the City and its citizens that it authorize by this Ordinance the issuance and delivery of its bonds at this time;

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

### **ARTICLE 1 DEFINITIONS**

Section 1.01 Definitions. Unless otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section for all purposes of this Ordinance except Article Three hereof, and any ordinance amendatory or supplemental hereto shall have the respective meanings specified:

"Additional Bonds" means the additional Parity Bonds permitted to be issued by the City pursuant to Section 5.01 of this Ordinance.

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

“Bonds” means the City of El Paso, Texas, Hotel Occupancy Tax Revenue Bonds, Series 2008, authorized by this Ordinance.

“City” means the City of El Paso, Texas, and, where appropriate, the City Council thereof, or any successor thereto.

“Debt Service Fund” means the Fund so designated in Article Four of this Ordinance.

“Debt Service Requirements” means for any particular Bond Year, an amount equal to the sum of the principal of and interest and any redemption premium on any series of Parity Bonds or Subordinate Lien Bonds then Outstanding which will become due and owing during such Bond Year.

“Deputy City Manager” means the Deputy City Manager – Financial and Administrative Services of the City or such other officer of the City having primary responsibility for the financial affairs of the City as designated by the City Manager of the City.

“Fiscal Year” means the City’s fiscal year as from time to time designated by the City, which is currently September 1 to August 31.

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

“Legal Holiday” means a day on which a Paying Agent/Registrar for the Bonds is authorized by law to close.

“Net Pledged Hotel Occupancy Revenues” means all Pledged Hotel Occupancy Tax Revenues less all amounts required to provide for the payment of the Parity Bonds then Outstanding and provide any required reserves for such payment.

“Ordinance” means this Ordinance and all amendments hereof and supplements hereto.

“Outstanding” means when used with reference to any Parity Bonds or Subordinate Lien Bonds means, as of a particular date, all Parity Bonds or Subordinate Lien Bonds, or both, theretofore and thereupon delivered except: (a) any such Parity Bond and Subordinate Lien Bond paid, discharged or canceled by or on behalf of the City at or before said date; (b) any such Parity Bond and Subordinate Lien Bond defeased pursuant to the defeasance provisions of the ordinance authorizing its issuance, or otherwise defeased as permitted by applicable law; and (c) any such Parity Bond or Subordinate Lien Bonds in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinances authorizing the issuance of such Parity Bonds or Subordinate Lien Bonds.

“Owner or Holder” means when used with respect to any Bond shall mean the person or entity in whose name such Bond is registered in the Security 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 Bonds then Outstanding under this Ordinance.

“Parity Bonds” means the Previously Issued Senior Lien Bonds, the Bonds and each series of Additional Bonds from time to time hereafter issued pursuant to Section 5.01 of this Ordinance.

“Paying Agent/Registrar” means with respect to the Bonds, Wells Fargo Bank, National Association, Austin, Texas, and its successors in that capacity.

“Pledged Hotel Occupancy Tax Revenues” means that portion of the revenues received by the City from the Hotel Occupancy Tax which is allocated for bond debt service which is currently equal to 2.5% of the consideration paid by occupants of sleeping rooms furnished by hotels located within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day.

“Pledged Revenues” means collectively, (i) the Pledged Hotel Occupancy Tax Revenues, (ii) interest and other income realized from the investment of amounts on deposit in the funds and accounts to be maintained pursuant to Article Four of this Ordinance to the extent such interest and other income are required to be transferred or credited to the Tax Fund, and (iii) any additional revenue, receipts or income hereafter pledged to the Parity Bonds in accordance with Section 8.02 of this Ordinance.

“Previously Issued Senior Lien Bonds” means the outstanding “City of El Paso, Texas, Combination Tax and Hotel Occupancy Tax Certificates of Obligation, Series 1998A”, dated March 1, 1998, originally issued in the principal amount of \$18,250,000.

“Security Register” means 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.

“Subordinate Lien Bonds” means bonds, notes or other obligations secured in whole or in part by liens on the Pledged Revenues junior and subordinate to the liens on Pledged Revenues securing payment of the Parity Bonds.

“Tax Act” means Vernon’s Texas Codes Annotated, Tax Code, Chapter 351, as amended.

“Tax Fund” means the Fund so designated pursuant to Article Four of this Ordinance.

“Transfer Date” means each business day on or before February 14, May 14, August 14 and November 14, beginning \_\_\_\_\_, 200 \_\_\_\_.

Section 1.02 Interpretations. All terms defined herein 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 hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the Bonds and the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the Bonds.

**ARTICLE 2  
TERMS OF THE BONDS**

Section 2.01 Authorization-Designation-Principal Amount - Purpose. The Bonds shall be and are hereby authorized to be issued in the aggregate principal amount of \$ \_\_\_\_\_ and to be designated and bear the title “CITY OF EL PASO, TEXAS, HOTEL OCCUPANCY TAX REVENUE BONDS, SERIES 2008” for the purpose of providing funds for constructing, improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center and to pay costs of issuance of the Bonds, in accordance with the authority conferred by the Constitution and laws of the State of Texas, particularly Chapter 1504, Texas Government Code, as amended.

Section 2.02 Full Registration-Issue Date-Denomination-Maturities-Interest Rates. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated \_\_\_\_\_, 2008 (the “Issue Date”) and, other than the single fully registered Initial Bond referenced in Section 2.08 hereof, shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity), shall be numbered consecutively from One (1) upward and shall become due and payable on August 15 in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at per annum rates in accordance with the following schedule:

<u>Year of Maturity</u>	<u>Principal Amount</u>	<u>Interest Rates</u>
2009		
2010		
2011		
2012		
2013		
2014		
2015		
2016		
2017		
2018		

The Bonds shall bear interest on the unpaid principal amounts from the Issue Date at the rate(s) per annum shown in the above schedule and such interest (calculated on the basis of a 360-day year of twelve 30-day months) shall be payable on February 15 and August 15 in each year, commencing \_\_\_\_\_ 15, 200 \_\_\_\_.

Section 2.03 Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the Holders of the Bonds appearing on the Security Register maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders. A Security Register shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of a paying agent/registrars agreement.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturities or redemption thereof, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated office in Dallas, Texas (the "Designated Payment/Transfer Office"). Interest on the Bonds shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last business day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the City where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

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

#### Section 2.04 Redemption.

(a) Redemption. The Bonds may be redeemed prior to maturity, at the option of the City, in whole or in part on any business day at the redemption price of par plus accrued interest to the date of redemption; provided, however, that upon prepayment of all or part of the principal amount before the final maturity, the City will pay the Purchaser an additional fee, the "Prepayment Fee." The Prepayment Fee shall be equal to the greater of (i) zero, or (ii) the Mark-to-Market adjustment.

For the purposes of calculating the Prepayment Fee, the following definitions shall apply:

(1) **Mark-to-Market Adjustment:** The amount, calculated on any prepayment date, which is derived by subtracting: (i) the principal amount of the Bonds to be prepaid as of such prepayment date, from (ii) the Mark-to-Market Value of the Bonds to be prepaid on such prepayment date.

(2) **Mark-to-Market Value:** The amount, calculated on any prepayment date, which is derived by summing the present values of each prospective payment of principal and interest which without such full or partial prepayment, could otherwise have been received by the Purchaser over the remaining contractual life of the Bonds if the Purchaser had instead invested the proceeds of the Bonds on the issuance date at the Initial Blended Money Market Funds Rate. The individual discount rate used to evaluate each prospective payment of interest and/or principal shall be the Current Blended Money Market Funds Rate for the maturity matching that of each specific payment of principal and/or interest.

(3) **Initial Blended Money Market Funds Rate:** That borrowing rate, calculated on the issuance date and including costs incurred by the Purchaser or FDIC insurance, reserve requirements, and other such explicit or implicit cost levied upon the Purchaser by any regulatory agency, which would be attainable by the Purchaser if it borrowed funds with an interest payment frequency and principal repayment schedule matching that of the Bonds. Such funds would be borrowed in one or more wholesale funding markets available to the Purchaser, including negotiable certificates of deposits, federal funds and others. The City acknowledges that the Purchaser may not actually purchase the Bonds with any such specific matched set or mix of instruments, and that the Initial Blended Money Market Funds Rate is the Purchaser's reasonable estimate only.

(4) **Current Blended Money Market Funds Rate:** That rate, calculated on the prepayment date and including cost incurred by the Purchaser for FDIC insurance, reserve requirements, and other such explicit or implicit cost levied upon the Purchaser by any regulatory agency, which would be attainable by the Purchaser if it borrowed funds in a maturity matching a specific prospective Note payment date. Such funds would be borrowed in one or more wholesale funding markets available to the Purchaser, including negotiable certificates of deposit, federal funds, or others. A separate Current Blended Money Market Funds Rate will be calculated for each prospective interest and/or principal payment date. City acknowledges that the Current Blended Money Market Funds Rate is the Purchaser's reasonable estimate only, and that the Purchaser is under no obligation actually to purchase or match funds for any transaction.

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

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

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

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed (iii) state the redemption price (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder. If a Bond is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Bond (or the principal amount thereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys sufficient for the payment of such Bonds (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

Section 2.05 Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Bonds issued under and pursuant to the provisions of this Ordinance. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond (other than the Initial Bond(s) authorized in Section 2.08 hereof) at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the City of authorized denominations and having the same Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds (other than the Initial Bond(s) authorized in Section 2.08 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are

surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Bonds, executed on behalf of, and furnished by, the City, to the Holder requesting the exchange.

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

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

Bonds cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds", evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Section 2.09 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

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

Section 2.06 Reserved.

Section 2.07 Execution - Registration. The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Clerk or Deputy City Clerk. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Issue Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201, as amended.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 3.03, manually executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 3.04, manually executed by an authorized officer,

employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

Section 2.08 Initial Bond(s). The Bonds herein authorized shall be initially issued either (i) as a single fully registered bond in the total principal amount set forth in Section 2.01 hereof with principal installments to become due and payable as provided in Section 2.02 hereof and numbered T-1, or (ii) as multiple fully registered bonds, being one bond for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Bond(s)") and, in either case, the Initial Bond(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Bond(s) shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond(s) delivered hereunder and exchange therefor definitive Bonds of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

Section 2.09 Mutilated-Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like series, form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Holder of the Bond mutilated, or destroyed, lost or stolen.

Every replacement Bond issued pursuant to this Section shall be a valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Bonds.

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

**ARTICLE 3  
FORM OF BONDS AND CERTIFICATES**

Section 3.01 Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Article with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including legends reflecting the purchase of insurance for payment of the Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

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

Section 3.02 Form of Bond.

REGISTERED

REGISTERED

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

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF EL PASO, TEXAS  
HOTEL OCCUPANCY TAX REVENUE BOND  
SERIES 2008

Issue Date:

Interest Rate:

Stated Maturity:

CUSIP NO:

\_\_\_\_\_, 2008

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Registered Owner:

Principal Amount:

DOLLARS

The City of El Paso (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of El Paso, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, solely from the Pledged Revenues (hereinafter defined) and the special funds hereinafter specified and from no other source, on the Stated Maturity date specified above the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption),

and to pay interest on the unpaid Principal Amount hereof from the Issue Date at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year, commencing \_\_\_\_\_ 15, 200\_\_\_. Principal of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof, upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register on the Record Date or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the registered owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Bonds") for the purpose of providing funds for constructing, improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center and paying costs of issuance of the Bonds, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Chapter 1504, Texas Government Code, as amended, and pursuant to an Ordinance adopted by the governing body of the City (herein referred to as the "Ordinance").

The Bonds may be redeemed prior to maturity, at the option of the City, in whole or in part on any business day at the redemption price of par plus accrued interest to the date of redemption; provided, however, that upon prepayment of all or part of the principal amount before the final maturity, the City will pay the registered owner an additional fee, the "Prepayment Fee." The Prepayment Fee shall be equal to the greater of (i) zero, or (ii) the Mark-to-Market adjustment.

For the purposes of the above, the following definitions shall apply:

(1) Mark-to-Market Adjustment: The amount, calculated on any prepayment date, which is derived by subtracting: (i) the principal amount of the Bonds to be prepaid as of such prepayment date, from (ii) the Mark-to-Market Value of the Bonds to be prepaid on such prepayment date.

(2) Mark-to-Market Value: The amount, calculated on any prepayment date, which is derived by summing the present values of each prospective payment of principal and interest which without such full or partial prepayment, could otherwise have been received by the Purchaser over the remaining contractual life of the Bonds if the Purchaser had instead invested the proceeds of the Bonds on the issuance date at the Initial Blended Money Market Funds Rate. The individual discount rate used to evaluate each prospective payment of

interest and/or principal shall be the Current Blended Money Market Funds Rate for the maturity matching that of each specific payment of principal and/or interest.

(3) Initial Blended Money Market Funds Rate: That borrowing rate, calculated on the issuance date and including costs incurred by the Purchaser or FDIC insurance, reserve requirements, and other such explicit or implicit cost levied upon the Purchaser by any regulatory agency, which would be attainable by the Purchaser if it borrowed funds with an interest payment frequency and principal repayment schedule matching that of the Bonds. Such funds would be borrowed in one or more wholesale funding markets available to the Purchaser, including negotiable certificates of deposits, federal funds and others. The City acknowledges that the Purchaser may not actually purchase the Bonds with any such specific matched set or mix of instruments, and that the Initial Blended Money Market Funds Rate is the Purchaser's reasonable estimate only.

(4) Current Blended Money Market Funds Rate: That rate, calculated on the prepayment date and including cost incurred by the Purchaser for FDIC insurance, reserve requirements, and other such explicit or implicit cost levied upon the Purchaser by any regulatory agency, which would be attainable by the Purchaser if it borrowed funds in a maturity matching a specific prospective Note payment date. Such funds would be borrowed in one or more wholesale funding markets available to the Purchaser, including negotiable certificates of deposit, federal funds, or others. A separate Current Blended Money Market Funds Rate will be calculated for each prospective interest and/or principal payment date. City acknowledges that the Current Blended Money Market Funds Rate is the Purchaser's reasonable estimate only, and that the Purchaser is under no obligation actually to purchase or match funds for any transaction.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Bond to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

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

applicable to an exchange by the registered owner of the unredeemed balance of a Bond redeemed in part.

The Bonds are special obligations of the City and, together with the Outstanding Previously Issued Senior Lien Bonds (identified and defined in the Ordinance), are payable from and equally and ratably secured by a first lien on certain Pledged Revenues and special funds, all as more fully described and provided for in the Ordinance. The Bonds, together with the interest thereon, are payable solely from such Pledged Revenues and special funds and do not constitute an indebtedness or general obligation of the City. As used herein, "Pledged Revenues" means (i) that portion of the revenues derived by the City from the hotel occupancy tax levied by the City pursuant to Vernon's Texas Codes Annotated, Tax Code, Chapter 351, as amended, which is equal to at least 2.5% of the consideration paid by occupants of sleeping rooms furnished by hotels in which the cost of occupancy is \$2.00 or more a day, (ii) interest and other income realized from the investment of amounts on deposit in the special funds created in the Ordinance to the extent such interest and other income are required to be transferred to the tax fund created in the Ordinance, and (iii) any additional revenue, receipts or income hereafter pledged to the Outstanding "Parity Bonds" (collectively the Previously Issued Senior Lien Bonds, the Bonds and Additional Bonds hereafter issued on a parity therewith).

Subject to satisfying the terms and conditions prescribed therefor, the City has reserved the right to issue additional obligations payable from and equally and ratably secured in the same manner and to the same extent as the Previously Issued Senior Lien Bonds and the Bonds.

The Holder shall never have the right to demand payment of this Bond or the interest thereon out of any funds raised or to be raised by taxation, other than Pledged Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Bonds; the Pledged Revenues and special funds pledged to the payment of the Bonds; the nature and extent and manner of enforcement of the lien and pledge securing the payment of the Bonds; the terms and conditions for the issuance of additional revenue obligations; the terms and conditions relating to the transfer or exchange of this Bond; the conditions upon which the Ordinance may be amended or supplemented; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the liens, pledges, charges and covenants made therein may be discharged at or prior to the maturity or redemption of this Bond, and this Bond deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein have the same meanings assigned in the Ordinance.

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

of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

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

It is hereby certified, recited, represented and covenanted that the City is a duly organized and legally existing municipal corporation under and pursuant to the Constitution and laws of the State of Texas; that the issuance of the Bonds is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Bonds do not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the Bonds by a pledge of the Pledged Revenues and special funds as aforesated. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

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

CITY OF EL PASO, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Clerk  
(Seal)

Section 3.03 Form of Registration Certificate of Comptroller of Public Accounts. To Appear on Initial Bonds only.

*REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS*

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

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

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

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

(SEAL)

Section 3.04 Form of Certificate of Paying Agent/Registrar. To Appear on Definitive Bonds only.

*REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR*

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

The designated office of the Paying Agent/Registrar in Dallas, Texas is the Designated Payment/Transfer Office” for this Bond.

Wells Fargo Bank, National Association  
Austin, Texas,  
as Paying Agent/Registrar

Registration date:

\_\_\_\_\_

By \_\_\_\_\_  
Authorized Signature

Section 3.05 Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

\_\_\_\_\_  
(Social Security or other identifying number \_\_\_\_\_ : \_\_\_\_\_) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

\_\_\_\_\_  
Signature guaranteed:

\_\_\_\_\_  
NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Section 3.06 Form of Initial Bond.

The Initial Bonds shall be in the form set forth in Section 3.02, except that the form of a single fully registered Initial Bond shall be modified as follows:

(i) immediately under the name of the bond the headings "Interest Rate \_\_\_\_", "Stated Maturity \_\_\_\_", and "CUSIP NO: \_\_\_\_" shall be omitted;

(ii) Paragraph one shall read as follows:

The City of El Paso (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of El Paso, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, solely from the Pledged Revenues (hereinafter defined) and special funds hereinafter specified and from no other source, the Principal Amount hereinabove stated on August 15 in each of the years and in principal installments in accordance with the following schedule:

<u>YEAR OF MATURITY</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
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(Information to be inserted from Section 2.02 hereof).

(or so much thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the Issue Date at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 of each year, commencing \_\_\_\_\_ 15, 200\_\_.

Principal installments of this Bond are payable in the year of maturity or on a prepayment date to the registered owner hereof, by Wells Fargo Bank, National Association (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated office in Austin, Texas (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of registered owner recorded in the Security Register on the Record Date or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner or holder hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 3.07 CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

#### **ARTICLE 4 SECURITY AND SOURCE OF PAYMENT FOR ALL BONDS**

Section 4.01 Pledge and Source of Payment. The Bonds shall constitute special obligations of the City and shall be payable from, and, together with the Previously Issued Senior Lien Bonds, equally and ratably secured by a first lien on, the Pledged Revenues. Such Pledged Revenues or other lawfully available funds of the City shall, in the manner herein provided, be set aside for and pledged to the payment of the Parity Bonds, and all expenses of providing for their full and timely payment in accordance with their terms, in the Debt Service Fund as hereinafter provided. The City hereby grants a first lien on the Pledged Revenues and further grants a first lien on the Tax Fund and the Debt Service Fund to secure the payment of principal of and premium, if any, and interest on the Parity Bonds. All Parity Bonds shall be in all respects on a parity with and of equal dignity with one another. The owners of the Parity Bonds shall never have the right to demand payment of the principal of, interest on or any redemption premium from funds raised or to be raised by taxation, other than the Pledged Hotel Occupancy Tax Revenues.

Vernon's Texas Codes Annotated, Government Code, Section 1208.001, et seq. applies to the issuance of the Bonds and the pledge of the Pledged Hotel Occupancy Tax Revenues granted by the City under this Section 4.01, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Hotel Tax Revenues granted by the City under this Section 4.01 is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary

under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

Section 4.02 Levy of Hotel Occupancy Tax. The City has levied, and while any Bonds remain Outstanding the City hereby levies and covenants that it shall continue to levy, a Hotel Occupancy Tax on the cost of occupancy of any sleeping room furnished by any hotel within the corporate limits of the City, in which the cost of occupancy is \$2.00 or more a day, at a rate of at least 7% of the consideration paid by the occupant of the sleeping room to the hotel, all as authorized by the Tax Act. The City further covenants that it shall enforce the provisions of this Ordinance, or any other ordinance levying a Hotel Occupancy Tax, concerning the collection, remittance and payment of the Hotel Occupancy Tax.

Section 4.03 Special Funds. The following special funds and accounts are hereby created, established and shall be maintained while any of the Bonds remain Outstanding. Such funds and accounts may also include any additional accounts or subaccounts as may from time to time be designated by the City, including specifically rebate accounts or subaccounts for accumulating rebatable arbitrage payable to the federal government, provided such accounts or subaccounts are not inconsistent with this Ordinance:

- (1) Convention Center Hotel Occupancy Tax Fund (“Tax Fund”); and
- (2) Convention Center Hotel Occupancy Tax Bond Debt Service Fund (“Debt Service Fund”).

The Tax Fund shall be maintained as a separate fund or account on the books of the City. The Debt Service 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 shall constitute trust funds which shall be held in trust for the Owners of the Parity Bonds and the persons entitled to the payment of the fees and expenses described in Section 4.05 hereof and the proceeds of which (other than the interest income thereon, which may be transferred as herein provided) shall be pledged, as herein provided, to the payment of the Parity Bonds and the above-referenced fees and expenses.

Section 4.04 Flow of Funds. The City covenants and agrees all Pledged Hotel Occupancy Tax Revenues, together with other Pledged Revenues, shall be deposited as received into the Tax Fund. Moneys from time to time credited to the Tax Fund shall be applied as follows in the following order of priority:

First, to transfer all amounts to the Debt Service Fund required by ordinances authorizing the issuance of the Parity Bonds.

Second, to transfer all amounts necessary to provide for the payment of Subordinate Lien Bonds, or to provide reserves for such payment, as may be required by any ordinance authorizing the issuance of Subordinate Lien Bonds.

Third, for any lawful purpose under the Tax Act.

Section 4.05 Debt Service Fund. In addition to any deposits associated with the payment of the Previously Issued Senior Lien Bonds, the City covenants and agrees that prior to each interest payment date, stated maturity date and mandatory redemption date, if any, for the Bonds there shall be deposited into the Debt Service Fund from the Tax Fund an amount equal to one hundred percentum (100%) of the amount required to fully pay the amount then due and payable on the Bonds, and such deposits to pay the Bonds at maturity or redemption, as the case may be, and accrued interest thereon shall be made in substantially equal installments (based on the total annual Debt Service Requirements to be paid on the Bonds divided by the number of Transfer Dates to occur during the period covered by such calculation) on or before each Transfer Date, beginning on the first Transfer Date to occur after the delivery of the Bonds.

In addition, on each Transfer Date, the City covenants and agrees to cause to be deposited into the Debt Service Fund from the Tax Fund an amount calculated to pay all expenses of providing for the full and timely payment of the principal of, premium, if any, and interest on the Parity Bonds in accordance with their terms, including without limitation, all fees charged or incurred by the Paying Agent/Registrar and for trustee services rendered in connection with the Parity Bonds.

Moneys credited to the Debt Service Fund shall be used solely for the purpose of paying principal (at maturity or prior redemption or to purchase Parity Bonds issued as term bonds in the open market to be credited against mandatory redemption requirements), interest and redemption premiums on the Parity Bonds, plus all Paying Agent/Registrar charges and other costs and expenses relating to such payment, including those described above. On or before each principal and/or interest payment date on the Parity Bonds, the City shall transfer from the Debt Service Fund to the appropriate paying agent/registrar amounts equal to the principal, interest and redemption premiums payable on the Parity Bonds on such date.

Section 4.06 Funds and Accounts for Subordinate Lien Bonds. On or before each Transfer Date, after making all required transfers to the Debt Service Fund, there shall be transferred into such funds and accounts as shall be established for such purpose pursuant to the ordinances authorizing the issuance of any Subordinate Lien Bonds, such amounts as shall be required pursuant to such ordinances to provide for the payment, or to provide reserves for the payment, of any principal of and interest and any premium on Subordinate Lien Bonds, including all costs of paying same.

Section 4.07 Deficiencies in Funds or Accounts. If on any Transfer Date there shall not be transferred into any fund or account maintained pursuant to this Article the full amounts required herein, amounts equivalent to such deficiency shall be set apart and transferred to such fund or account from the first available and unallocated moneys in the Tax Fund, and such transfer shall be in addition to the amounts otherwise required to be transferred to such fund or account on any succeeding Transfer Date or Dates.

Section 4.08 Construction Fund. From the proceeds of each series of Parity Bonds issued for authorized projects there shall be deposited into a construction fund such amounts as shall be provided in the ordinance authorizing such series of Additional Bonds. Such amounts may be applied to pay costs of establishing, improving, enlarging, extending and repairing an authorized project, to reimburse advances made by the City for such costs, to pay costs of

issuance of the Parity Bonds and to pay any other capital costs of authorized projects as provided in the ordinance authorizing such series of Additional Bonds. Any surplus amounts not required for the foregoing purposes shall, at the direction of the City, be transferred to the Debt Service Fund.

Section 4.09 Investment of Funds; Transfer of Investment Income.

(a) Money in all funds required to be maintained by this Ordinance shall, at the option of the City, be invested in the manner provided by Texas law; provided that all such deposits and investments shall be made in such manner that the money required to be expended from any fund will be available at the proper time or times. Moneys in such funds may be subjected to further investment restrictions imposed from time to time by ordinances authorizing the issuance of Additional Bonds and Subordinate Lien Bonds. All such investments shall be valued no less frequently than the last business day of the City's Fiscal Year at market value, except that any direct obligations of the United States of America - State and Local Government Series shall be continuously valued at their par value or principal face amount. For purposes of maximizing investment returns, money in such funds may be invested, together with money in other funds or with other money of the City, in common investments or in a common pool of such investments maintained by the City at an official depository of the City or in any fund or investment vehicle permitted by Texas law, which shall not be deemed to be a loss of the segregation of such money or funds provided that safekeeping receipts, certificates of participation or other documents clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such funds are held by or on behalf of each such fund. If and to the extent necessary, such investments or participations therein shall be promptly sold to prevent any default.

(b) All interest and income derived from deposits and investments credited to any funds and accounts shall be transferred to the Tax Fund not less frequently than monthly, except as provided in (c) below.

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

Section 4.10 Security for Uninvested Funds. While any Bonds remain Outstanding, all uninvested moneys on deposit in, or credited to, the above described funds and accounts shall be secured by the pledge of security, as provided by Texas law.

**ARTICLE 5  
ADDITIONAL BONDS**

Section 5.01 Parity Bonds. The City reserves the right to issue, for any lawful purpose, one or more installments of Additional Bonds payable from and, together with the Previously

Issued Senior Lien Bonds and the Bonds, equally and ratably secured by a parity lien on and pledge of the Pledged Revenues and special funds; provided, however, that no such Additional Bonds shall be issued unless:

(a) No Default; Fund Balances. The Deputy City Manager shall certify that, upon the issuance of such Additional Bonds, (i) the City will not be in default under any term or provision of any Parity Bonds then Outstanding or any ordinance pursuant to which any of such Parity Bonds were issued and (ii) the Debt Service Fund will have the required amounts on deposit therein.

(b) Coverage for Additional Bonds. The Deputy City Manager shall provide a certificate showing that, for the City's most recent complete Fiscal Year or for any consecutive 12-month period out of the most recent 18 months, the Pledged Revenues for the above period are equal to at least 200% of the maximum annual Debt Service Requirements on all Parity Bonds scheduled to occur in the then current or any future Fiscal Year after taking into consideration the issuance of the Additional Bonds proposed to be issued. In making a determination of the Pledged Revenues, the City may take into consideration an increase in the portion of the Hotel Occupancy Tax pledged and dedicated to the payment of Parity Bonds that became effective during the period for which Pledged Hotel Occupancy Tax Revenues are determined and, for purposes of satisfying the above coverage test, make a pro forma determination of the Pledged Hotel Occupancy Tax Revenues for the period of time covered by such certification based on such increased portion of the Hotel Occupancy Tax pledged and dedicated to the payment of the Parity Bonds being in effect for the entire period covered by the certificate.

(c) Refunding Bonds. If Additional Bonds are issued for the purpose of refunding less than all Parity Bonds then Outstanding, the certification described in (b) above shall not be required if the maximum annual and the average annual Debt Service Requirements for all Parity Bonds to be Outstanding in any Fiscal Year after the issuance of such Additional Bonds will not exceed the maximum annual and the average annual Debt Service Requirements for all Parity Bonds Outstanding in any Fiscal Year prior to the issuance of such Additional Bonds with respect to the maximum annual Debt Service Requirements and in the prior Fiscal Year with respect to the average annual Debt Service Requirements.

(d) Bond Ordinance Requirements. Provision shall be made in the ordinances authorizing the issuance of the Additional Bonds for additional payments into the Debt Service Fund sufficient to provide for increased Debt Service Requirements resulting from the issuance of the Additional Bonds including, in the event that interest on the Additional Bonds is capitalized and/or to be paid from investment earnings, a requirement for the transfer from any 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 Bonds during the period specified in the ordinance.

Section 5.02 Subordinate Lien Bonds. The City reserves the right to issue or incur, for any lawful purpose, bonds, notes or other obligations secured in whole or in part by liens on the Pledged Revenues junior and subordinate to the liens on Pledged Revenues securing payment of the Parity Bonds; provided, however, no such Subordinate Lien Bonds shall be issued unless (i)

the Deputy City Manager shall provide a certificate showing that, for the City's most recent complete Fiscal Year or any consecutive 12-month period out of the most recent 18 months, the Net Pledged Hotel Occupancy Revenues plus any other revenues that are pledged or to be pledged, in whole or in part, to the payment of such Subordinate Lien Bonds were equal to at least 150% of the combined maximum annual principal and interest requirement for all Parity Bonds and Subordinate Lien Bonds to be outstanding after giving effect to the issuance of the Subordinate Lien Bonds then being issued, and (ii) provision is made in the ordinance authorizing issuance of the Subordinate Lien Bonds for the complete funding of any reserves for payment of principal of and interest on such Subordinate Lien Bonds as of the initial delivery thereof. Although herein referred to as "Subordinate Lien Bonds", such bonds, notes or other obligations may bear any name or designation provided by the ordinance authorizing their issuance. Such Subordinate Lien Bonds may be further secured by any other source of payment lawfully available for such purposes. No default with respect to a Subordinate Lien Bond shall constitute a default hereunder.

## **ARTICLE 6 COVENANTS AND PROVISIONS RELATING TO ALL BONDS**

Section 6.01 Punctual Payment of Bonds. The City covenants it will punctually pay or cause to be paid the interest and any premium on and principal of all Bonds according to the terms thereof and will faithfully do and perform, and at all times fully observe, any and all covenants, undertakings, stipulations and provisions contained in this Ordinance and in any other ordinance authorizing the issuance of such Bonds.

Section 6.02 Pledge and Encumbrance of Revenues. The City covenants and represents that it has the lawful power to create a lien on and to pledge the Pledged Revenues to secure the payment of the Bonds and has lawfully exercised such power under the Constitution and laws of the State of Texas. The City further covenants and represents that, other than to the payment of the Parity Bonds, the Pledged Revenues are not and will not be made subject to any other lien, pledge or encumbrance to secure the payment of any debt or obligation of the City, unless such lien, pledge or encumbrance is junior and subordinate to the lien and pledge securing payment of the Parity Bonds.

Section 6.03 Bondholders Remedies. This Ordinance shall constitute a contract between the City and the Owners of the Bonds from time to time Outstanding and this Ordinance shall be and remain irrevocable until the Bonds and the interest and any premium thereon shall be fully paid or discharged or provision therefor shall have been made as provided herein. In the event of a default in the payment of the principal of or interest or any premium on any of the Bonds or a default in the performance of any duty or covenant provided by law or in this Ordinance, the Owner or Owners of any of the Bonds 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 Bonds may at law or in equity, by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required to be performed by the City under this Ordinance, including the application of Pledged Revenues in the manner required in this Ordinance; provided, however, that the Owners of the Bonds shall never have the right to demand payment of the principal of, interest on or any redemption

premium on the Bonds out of any funds raised or to be raised by taxation, other than the Pledged Hotel Occupancy Tax Revenues.

Section 6.04 Discharge by Deposit. The City may discharge its obligation to the Owners of any or all of the Bonds to pay principal, interest and redemption premium (if any) thereon by depositing with the Paying Agent/Registrar cash in an amount equal to the principal amount and redemption premium, if any, of such Bonds plus interest thereon to the date of maturity or redemption, 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 to which the Paying Agent/Registrar is a party, cash and/or Government Obligations (as defined below) in principal amounts and maturities and bearing interest at rates sufficient to provide for the timely payment of the principal amount and redemption premium, if any, of such Bonds plus interest thereon to the date of maturity or redemption. Upon such deposit, such Bonds shall no longer be regarded to be Outstanding. 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 the ordinance or ordinances authorizing such Bonds. For any Bonds not to be redeemed or paid in full within the next succeeding sixty (60) days from the date of deposit provided for in this Section 6.04, the City shall give the Paying Agent/Registrar in form satisfactory to it irrevocable instructions to mail, by United States mail, first class, postage prepaid, a notice to the Owner of each such Bond that the deposit required by this Section 6.04 has been made and that said Bonds are deemed paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal amount and redemption premium if any on such Bonds plus interest thereon to the date of maturity or redemption. Any failure, error or delay in giving such notices shall not affect the defeasance of such Bonds.

The term "Government Obligations", as used herein, means (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

Section 6.05 Legal Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Legal Holiday, then payment of interest, premium or principal need not be made on such date but may be made on the next succeeding day which is not a Legal Holiday with the same force and effect as if made on the date of maturity or the date fixed for redemption and no interest shall accrue for the period from the date of maturity or redemption to the date of actual payment. In case any Transfer Date shall be a Legal Holiday, then the transfer otherwise required to be made on such

date pursuant to Section 4.05 hereof shall be made on the next preceding date which is not a Legal Holiday.

## **ARTICLE 7 CONCERNING THE PAYING AGENT/REGISTRAR**

Section 7.01 Paying Agent/Registrar Agreement. The execution and delivery of the Paying Agent/Registrar Agreement between the City and the Paying Agent/Registrar, substantially in the form presented at this meeting, is hereby approved, and the City Manager is hereby authorized and directed to execute and deliver said Agreement on behalf of the City, and the City Clerk or Deputy City Clerk is authorized to attest said agreement and to affix the seal of the City thereto. The Paying Agent/Registrar, by undertaking the performance of the duties of the Paying Agent/Registrar hereunder and under said agreement, and in consideration of the payment of fees and/or deposits of money pursuant to this Ordinance and said agreement, accepts and agrees to abide by the terms of this Ordinance and said agreement.

Section 7.02 Trust Funds. All money transferred by the City to the Paying Agent/Registrar under this Ordinance (except sums representing the Paying Agent/Registrar's fees) shall be held in trust for the benefit of the City, shall be the property of the City, and shall be disbursed in accordance with this Ordinance.

Section 7.03 Bonds Presented. Subject to the provisions of Section 7.04, all matured Bonds presented to the Paying Agent/Registrar for payment shall be paid without the necessity of further instructions from the City. Such Bonds shall be canceled as provided herein.

Section 7.04 Unclaimed Funds Held by the Paying Agent/Registrar. Funds held by the Paying Agent/Registrar which represent principal of and interest and any premium on the Bonds remaining unclaimed by the owner after the expiration of three years from the date such funds have become due and payable shall be reported and disposed of by the Paying Agent/Registrar in accordance with the provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended.

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

Section 7.05 Paying Agent/Registrar May Own Bonds. The Paying Agent/Registrar in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights it would have if it were not the Paying Agent/Registrar.

Section 7.06 Successor Paying Agent/Registrars. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Bonds, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

**ARTICLE 8**  
**ALTERATION OF RIGHTS AND DUTIES; AMENDMENT OF ORDINANCE**

Section 8.01 Alteration of Rights and Duties. The rights, duties, and obligations of the City and the Owners of the Bonds are subject in all respects to all applicable federal and state laws including, without limitation, the provisions of federal law regarding the composition of indebtedness of political subdivisions, as the same now exist or may hereafter be amended.

Section 8.02 Amendment of Ordinance Without Consent. The City may, without the consent of or notice to any of the Owners of the Bonds, amend this Ordinance for any one or more of the following purposes:

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

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

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

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

(5) to amend any provisions hereof relating to the issuance of Subordinate Lien Bonds, provided such amendment does not cause any reduction in any rating assigned to the Bonds by any major municipal securities evaluation service then rating the Bonds; and

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

Section 8.03 Amendments of Ordinance Requiring Consent. The City may at any time adopt one or more ordinances amending, modifying, adding to or eliminating any of the provisions of this Ordinance but, if such amendment is not of the character described in Section 8.02 hereof, only with the consent given in accordance with Section 8.04 hereof of the Owner or Owners of not less than 51% of the aggregate unpaid principal amount of the Parity Bonds then Outstanding and affected by such amendment, modification, addition, or elimination; provided, however, that nothing in this Section shall permit (1) an extension of the maturity of the principal of or interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any

Bond or the rate of interest on any Bond, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of the Bonds required for consent to such amendment.

Section 8.04 Consent of Owners. Any consent required by Section 8.03 hereof by any Owner shall be in writing, may be in any number of concurrent writings of similar tenor, and may be signed by such Owner or his duly authorized attorney. Proof of the execution of any such consent or of the writing appointing any such attorney and of the ownership of Parity Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted to be taken by the City under such instrument, namely:

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

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

In lieu of the foregoing the City may accept such other proofs of the foregoing as it shall deem appropriate.

Consents required pursuant to Section 8.03 shall be valid only if given following the mailing of notice by or on behalf of the City requesting such consent and setting forth the substance of the amendment of this Ordinance in respect of which such consent is sought and stating that copies thereof are available at the office of the City Clerk for inspection. Such notice shall be mailed by certified mail to each Owner of the Parity Bonds affected at the address shown on the Security Register.

Section 8.05 Revocation of Consent. Any consent by any Owner of a Parity Bond pursuant to the provisions of this Article shall be irrevocable for a period of six 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 Parity Bond and any Parity Bond delivered on transfer thereof or in exchange for or replacement thereof during such period. Such consent may be revoked at any time after six months from the date of the first mailing of such notice by the owner who gave such consent or by a successor in title, by filing notice thereof with the Paying Agent/Registrar, but such revocation shall not be effective if the Owners of a majority in aggregate principal amount of the Parity Bonds Outstanding as in this Ordinance defined have, prior to the attempted revocation, consented to and approved the amendment.

**ARTICLE 9  
PROVISIONS CONCERNING SALE AND APPLICATION  
OF PROCEEDS OF BONDS**

Section 9.01 Sale of Bonds. The Bonds authorized by this Ordinance are hereby sold by the City to Bank of America, N.A. (herein referred to as the "Purchaser") in accordance with the Purchase and Investment Letter, dated June 3, 2008 (the "Purchase Letter"), attached hereto as Exhibit A and incorporated herein by reference as a part of this Ordinance for all purposes. The form and content of the Purchase Letter are hereby approved, and the Mayor, City Manager or Deputy City Manager of the City is each hereby authorized and directed to execute the Purchase Letter for and on behalf of the City and as the act and deed of this City Council. In regard to the approval and execution of the Purchase Letter, the City Council hereby finds, determines and declares that the representations, warranties and agreements of the City contained therein are true and correct in all material respects and shall be honored and performed by the City. Pursuant to the terms of the Purchase Letter, the Purchaser agrees to purchase the Bonds at the price of 100% of par and no accrued interest. The Bonds shall be initially registered in the name of Bank of America, N.A. or its designee.

All officers of the City are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Bonds in accordance with this Ordinance.

The obligation of the Purchaser to accept delivery of the Bonds is subject to such Purchaser being furnished with the final, approving opinion of Fulbright & Jaworski L.L.P., Bond Counsel for the City, which opinion shall be dated and delivered the Issue Date. The engagement of such firm as Bond Counsel to the City in connection with the issuance, sale and delivery of the Bonds is hereby approved and confirmed.

Section 9.02 Control and Custody of Bonds. The City Manager and the Deputy City Manager of the City are hereby authorized to have control and custody of the Initial Bond and all necessary records and proceedings pertaining thereto pending their delivery, and the Mayor, City Manager, Deputy City Manager, City Clerk and Deputy City Clerk, are hereby authorized and instructed to make such certifications and to execute such instruments and agreements as may be necessary to accomplish the initial delivery of the Initial Bond and to assure the investigation, examination, and approval thereof 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 him) shall be requested to sign manually the Comptroller's Registration Certificate prescribed herein to be attached or affixed to the Initial Bond and the seal of the Comptroller of Public Accounts of the State of Texas shall be impressed or printed or lithographed thereon.

Section 9.03 Proceeds of Sale. Immediately following the delivery of the Bonds, the proceeds of sale of the Bonds (less accrued interest, if any, and costs of issuance) shall be deposited in a fund maintained at a City depository bank, all in accordance with written instructions to the Paying Agent/Registrar. Any accrued interest received from the Purchaser shall be deposited to the credit of the Debt Service Fund.

**ARTICLE 10  
CONTINUING DISCLOSURE OF INFORMATION**

Section 10.01 No Continuing Disclosure Undertaking. The City has not made a continuing disclosure undertaking with respect to the Bonds because Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") does not apply to the offering of the Bonds and/or the offering is otherwise exempt from the Rule.

**ARTICLE 11  
PROVISIONS CONCERNING FEDERAL INCOME TAX EXCLUSION**

Section 11.01 Definitions. When used in this Section, the following terms shall have the following meanings:

"Closing Date" means the date on which the Bonds are first authenticated and delivered to the initial purchaser(s) against payment therefor.

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

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

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

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

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

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

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

"Yield" of (i) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and (ii) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

Section 11.02 Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the

owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

Section 11.03 No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Bonds), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

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

Section 11.04 No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

Section 11.05 Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

Section 11.06 Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

Section 11.07 Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

Section 11.08 Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

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

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

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

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

Section 11.09 Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Section 11.08 because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

Section 11.10 Elections. The City hereby directs and authorizes the Mayor, City Manager and Deputy City Manager of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

Section 11.11 Bonds Not Hedge Bonds. The City covenants and agrees not to take any action, or knowingly omit to take any action, and has not knowingly omitted and will not knowingly omit to take any action, within its control, that, if taken or omitted, respectively, would cause the Bonds to be "hedge bonds" within the meaning of section 149(g) of the Code and the Regulations.

## **ARTICLE 12 MISCELLANEOUS**

Section 12.01 Further Procedures. The Mayor, the City Clerk, the Deputy City Clerk, the Deputy City Manager and/or the City Manager of the City and all other officers, employees and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the seal of the City and on behalf of the City all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement and the Purchase Letter. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Clerk, the Deputy City Clerk, the Deputy City Manager and/or the City Manager of the City, and its Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance: (i) in order to cure any technical ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery..

Section 12.02 Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason 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.

Section 12.03 Meeting. It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the City Council 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 V.T.C.A., Government Code, Chapter 551, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 12.04 Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

Section 12.05 Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

Section 12.06 Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

*[Remainder of page intentionally left blank]*

PASSED, APPROVED AND EFFECTIVE this 3rd day of June, 2008.

\_\_\_\_\_  
John F. Cook  
Mayor, City of El Paso, Texas

ATTEST:

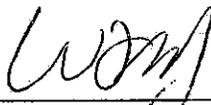
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Richarda Duffy Momsen  
City Clerk, City of El Paso, Texas

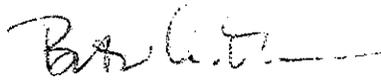
[SEAL]

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Paul A. Braden  
Attorney for the City

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
William F. Studer, Deputy City Manager  
Financial and Administrative Services

  
\_\_\_\_\_  
Bertha Ontiveros  
Assistant City Attorney

**EXHIBIT A**

**Purchase and Investment Letter**

## PURCHASE AND INVESTMENT LETTER

June 3, 2008

City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

First Southwest Company  
221 N. Kansas, Suite 1200  
El Paso, Texas 79901

Fulbright & Jaworski L.L.P.  
221 N. Kansas, Suite 1209  
El Paso, Texas 79901

**Re:** \$\_\_\_\_\_ City of El Paso, Texas, Hotel Occupancy Tax Revenue Bonds,  
Series 2008 (the "Bonds")

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Ladies and Gentlemen:

We have agreed to purchase, and the City of El Paso, Texas (the "City"), has agreed to sell to us, the captioned Bonds at the purchase price of \$\_\_\_\_\_. Such Bonds shall bear interest at such rates, mature on such dates and in such amounts, and have such other terms and conditions as are set forth in the Ordinance authorizing the same adopted by the Board of Trustees of the City on the date hereof, all subject to receipt by you and by us of such opinions, certificates, and other documents as you or we may reasonably require to establish the validity and legality of the Bonds.

We hereby represent and warrant that:

(1) we acknowledge that no official statement or other disclosure or offering document has been prepared in connection with the issuance of the Bonds;

(2) we are: (i) an "accredited investor" within the meaning of Regulation D promulgated under the Securities Act of 1933; or (ii) a state or national bank organized under the laws of the United States, and we have sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt municipal obligations, to be able to evaluate the economic risks and merits of the investment represented by the purchase of the Bonds;

(3) we have made our own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds, and we have not relied upon any statement by you, your officers, directors, or employees, or your financial consultants or legal advisors in connection with such inquiry or analysis or in connection with the offer and sale of the Bonds; except: (i) with respect to the City, the City's representations and warranties that it has the authority to issue, and has properly and validly issued, the Bonds; and (ii) with respect to Fulbright & Jaworski L.L.P. ("Bond Counsel"), the written opinions of Bond Counsel with respect to the Bonds;

(4) we have either been furnished with or have had access to all information that we as a reasonable investor have requested as a result of our having attached significance thereto making an informed investment decision concerning investment in the Bonds, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the purpose for which the proceeds of the Bonds will be utilized, and the security therefor, so that we have been able to make an informed decision to purchase the Bonds;

(5) we are purchasing the Bonds for our own account as evidence of a loan and not with a view to, and with no present intention of, selling, pledging, transferring, conveying, hypothecating, mortgaging, disposing, reoffering, distributing, or reselling the Bonds, or any part or interest thereof, except to persons who are able to and do confirm in writing to us and to you the representations contained in paragraphs (2) through (4) and this paragraph to the same extent as if such paragraphs referred to such persons;

(6) we further acknowledge that we are responsible for consulting with our advisors concerning any obligations, including, but not limited to, any obligations pursuant to federal and state securities and income tax laws, we may have with respect to subsequent purchasers of the Bonds if and when any such future disposition of the Bonds may occur;

(7) we understand that the Bonds: (a) are not being registered under the Securities Act of 1933 and are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state due to exemptions from registration provided for therein; (b) will not be listed on any stock or other securities exchange; (c) will carry no rating from any rating service; and (d) will not be readily marketable;

(8) we acknowledge that the Bonds are transferable only by notation on the registration books maintained by the paying agent/registrar and are transferable provided that the transferring holder thereof shall first have complied with all applicable state and federal securities laws and regulations;

(9) we understand and agree that the City shall, and the City by its execution of this letter hereby covenants to, deliver to us by United States mail, first-class postage prepaid, within 180 days after the end of each fiscal year ending in or after 2008 while the Bonds are outstanding, its audited financial statements and any other information reasonably requested by us. We further understand and agree that failure by the City to comply with such covenant within the specified time frame, or that the failure by us to receive such information, or any defect therein or in the sending or mailing thereof, will not constitute an event of default under the Ordinance authorizing the issuance of the Bonds; and

(10) we understand and agree that the foregoing representations and warranties will be relied upon by Bond Counsel in rendering certain of its opinions in connection with the sale of the Bonds.

City of El Paso, Texas  
First Southwest Company  
Fulbright & Jaworski L.L.P.  
June 3, 2008  
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Very truly yours,

**BANK OF AMERICA, N.A.**

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Signature of Authorized Representative

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Printed Name

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Title

City of El Paso, Texas  
First Southwest Company  
Fulbright & Jaworski L.L.P.  
June 3, 2008  
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AGREED TO AND ACCEPTED this 3<sup>rd</sup> day of June, 2008.

**CITY OF EL PASO, TEXAS**

By: \_\_\_\_\_  
City Manager

Final

**City of El Paso, Texas**

\$5,550,000 Hotel Occupancy Tax Revenue Bonds, Series 2008

Final Pricing

**Sources & Uses**

Dated 07/01/2008 | Delivered 07/01/2008

**Sources Of Funds**

Par Amount of Bonds	\$5,550,000.00
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<b>Total Sources</b>	<b>\$5,550,000.00</b>
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**Uses Of Funds**

Costs of Issuance	50,000.00
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Deposit to Project Construction Fund	5,500,000.00
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<b>Total Uses</b>	<b>\$5,550,000.00</b>
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Final

**City of El Paso, Texas**

\$5,550,000 Hotel Occupancy Tax Revenue Bonds, Series 2008

Final Pricing

**Debt Service Schedule**

Part 1 of 2

<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Total P+I</b>	<b>Fiscal Total</b>
07/01/2008	-	-	-	-	-
02/15/2009	-	-	145,385.33	145,385.33	-
08/15/2009	435,000.00	4.210%	116,827.50	551,827.50	-
08/31/2009	-	-	-	-	697,212.83
02/15/2010	-	-	107,670.75	107,670.75	-
08/15/2010	480,000.00	4.210%	107,670.75	587,670.75	-
08/31/2010	-	-	-	-	695,341.50
02/15/2011	-	-	97,566.75	97,566.75	-
08/15/2011	500,000.00	4.210%	97,566.75	597,566.75	-
08/31/2011	-	-	-	-	695,133.50
02/15/2012	-	-	87,041.75	87,041.75	-
08/15/2012	520,000.00	4.210%	87,041.75	607,041.75	-
08/31/2012	-	-	-	-	694,083.50
02/15/2013	-	-	76,095.75	76,095.75	-
08/15/2013	540,000.00	4.210%	76,095.75	616,095.75	-
08/31/2013	-	-	-	-	692,191.50
02/15/2014	-	-	64,728.75	64,728.75	-
08/15/2014	565,000.00	4.210%	64,728.75	629,728.75	-
08/31/2014	-	-	-	-	694,457.50
02/15/2015	-	-	52,835.50	52,835.50	-
08/15/2015	590,000.00	4.210%	52,835.50	642,835.50	-
08/31/2015	-	-	-	-	695,671.00
02/15/2016	-	-	40,416.00	40,416.00	-
08/15/2016	615,000.00	4.210%	40,416.00	655,416.00	-
08/31/2016	-	-	-	-	695,832.00
02/15/2017	-	-	27,470.25	27,470.25	-
08/15/2017	640,000.00	4.210%	27,470.25	667,470.25	-
08/31/2017	-	-	-	-	694,940.50
02/15/2018	-	-	13,998.25	13,998.25	-
08/15/2018	665,000.00	4.210%	13,998.25	678,998.25	-
08/31/2018	-	-	-	-	692,996.50
<b>Total</b>	<b>\$5,550,000.00</b>	<b>-</b>	<b>\$1,397,860.33</b>	<b>\$6,947,860.33</b>	<b>-</b>

Final

**City of El Paso, Texas**

\$5,550,000 Hotel Occupancy Tax Revenue Bonds, Series 2008

Final Pricing

**Debt Service Schedule**

Part 2 of 2

**Yield Statistics**

Bond Year Dollars	\$33,203.33
Average Life	5.983 Years
Average Coupon	4.2100000%
Net Interest Cost (NIC)	4.2100000%
True Interest Cost (TIC)	4.2087218%
Bond Yield for Arbitrage Purposes	4.2087218%
All Inclusive Cost (AIC)	4.3861145%

**IRS Form 8038**

Net Interest Cost	4.2100000%
Weighted Average Maturity	5.983 Years

Final

**City of El Paso, Texas**

**\$5,550,000 Hotel Occupancy Tax Revenue Bonds, Series 2008**

**Final Pricing**

**Pricing Summary**

<b>Maturity</b>	<b>Type of Bond</b>	<b>Coupon</b>	<b>Yield</b>	<b>Maturity Value</b>	<b>Price</b>	<b>Dollar Price</b>
08/15/2009	Serial Coupon	4.210%	4.210%	435,000.00	100.000%	435,000.00
08/15/2010	Serial Coupon	4.210%	4.210%	480,000.00	100.000%	480,000.00
08/15/2011	Serial Coupon	4.210%	4.210%	500,000.00	100.000%	500,000.00
08/15/2012	Serial Coupon	4.210%	4.210%	520,000.00	100.000%	520,000.00
08/15/2013	Serial Coupon	4.210%	4.210%	540,000.00	100.000%	540,000.00
08/15/2014	Serial Coupon	4.210%	4.210%	565,000.00	100.000%	565,000.00
08/15/2015	Serial Coupon	4.210%	4.210%	590,000.00	100.000%	590,000.00
08/15/2016	Serial Coupon	4.210%	4.210%	615,000.00	100.000%	615,000.00
08/15/2017	Serial Coupon	4.210%	4.210%	640,000.00	100.000%	640,000.00
08/15/2018	Serial Coupon	4.210%	4.210%	665,000.00	100.000%	665,000.00
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$5,550,000.00</b>	<b>-</b>	<b>\$5,550,000.00</b>

**Bid Information**

Par Amount of Bonds	\$5,550,000.00
Gross Production	\$5,550,000.00
Bid (100.000%)	5,550,000.00
Total Purchase Price	\$5,550,000.00
Bond Year Dollars	\$33,203.33
Average Life	5.983 Years
Average Coupon	4.2100000%
Net Interest Cost (NIC)	4.2100000%
True Interest Cost (TIC)	4.2087218%

Final

## City of El Paso, Texas

\$5,550,000 Hotel Occupancy Tax Revenue Bonds, Series 2008

Final Pricing

### Proof Of Bond Yield @ 4.2087218%

Date	Cashflow	PV Factor	Present Value	Cumulative PV
07/01/2008	-	1.000000x	-	-
02/15/2009	145,385.33	0.9744171x	141,665.95	141,665.95
08/15/2009	551,827.50	0.9543344x	526,627.98	668,293.93
02/15/2010	107,670.75	0.9346657x	100,636.16	768,930.08
08/15/2010	587,670.75	0.9154023x	537,955.17	1,306,885.25
02/15/2011	97,566.75	0.8965360x	87,472.10	1,394,357.35
08/15/2011	597,566.75	0.8780584x	524,698.53	1,919,055.88
02/15/2012	87,041.75	0.8599617x	74,852.58	1,993,908.46
08/15/2012	607,041.75	0.8422380x	511,273.64	2,505,182.10
02/15/2013	76,095.75	0.8248796x	62,769.83	2,567,951.93
08/15/2013	616,095.75	0.8078789x	497,730.75	3,065,682.68
02/15/2014	64,728.75	0.7912286x	51,215.24	3,116,897.92
08/15/2014	629,728.75	0.7749214x	487,990.31	3,604,888.23
02/15/2015	52,835.50	0.7589504x	40,099.52	3,644,987.76
08/15/2015	642,835.50	0.7433085x	477,825.09	4,122,812.84
02/15/2016	40,416.00	0.7279890x	29,422.40	4,152,235.25
08/15/2016	655,416.00	0.7129852x	467,301.91	4,619,537.15
02/15/2017	27,470.25	0.6982906x	19,182.22	4,638,719.37
08/15/2017	667,470.25	0.6838989x	456,482.20	5,095,201.57
02/15/2018	13,998.25	0.6698039x	9,376.08	5,104,577.65
08/15/2018	678,998.25	0.6559993x	445,422.35	5,550,000.00
<b>Total</b>	<b>\$6,947,860.33</b>	<b>-</b>	<b>\$5,550,000.00</b>	<b>-</b>

#### Derivation Of Target Amount

Par Amount of Bonds	\$5,550,000.00
Original Issue Proceeds	\$5,550,000.00