

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: City Manager

AGENDA DATE: August 26, 2008

CONTACT PERSON/PHONE: Paul A. Braden, Bond Counsel, 351-6053
William F. Studer, Jr., Deputy City Manager, 541-4252

DISTRICT(S) AFFECTED: All Districts

SUBJECT: An Ordinance authorizing the issuance of "City of El Paso, Texas, Hotel Occupancy Tax Revenue Bonds, Series 2008;" and resolve matters which are necessary to effectuate said issuance; enacting 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 the delegation of matters relating to the sale and issuance of the Bonds to an authorized City officer or employee within certain specified parameters.

BACKGROUND / DISCUSSION:

To provide financing for the repairs and improvements to the Convention Center Plaza area as first considered by the Council on August 19, 2008. The proposed ordinance will give the City Manager the ability within the parameters specified in the ordinance to determine the appropriate amount of bonds to be sold, the interest rate and the term of the bonds in accordance with the final cost of the project as negotiated with the vendor and approved by the Council.

PRIOR COUNCIL ACTION:

On August 19, 2008, the council designated a vendor for the City to negotiate a final price for completion of the Convention Center construction project .

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____

Paul A. Braden

FINANCE: (if required) _____

DEPARTMENT HEAD: _____

William F. Studer, Jr.

(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:** _____

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MEMORANDUM

TO: Joyce Wilson, City Manager
Richarda Duffy Momsen, City Clerk

FROM: Paul A. Braden

DATE: August 21, 2008

RE: An Ordinance authorizing the issuance of "City of El Paso, Texas, Hotel Occupancy Tax Revenue Bonds, Series 2008"; and resolve matters which are necessary to effectuate said issuance [Paul A. Braden, Bond Counsel (915) 351-6053] [Public Hearing Date: August 26, 2008]

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE – City Council Meeting, Tuesday, August 26, 2008

Please accept the enclosed Ordinance for introduction and public hearing by the City Council at its regular City Council meeting to be held on August 26, 2008. The proceeds from the sale of the bonds will be used to fund certain repairs and improvements to the El Paso Convention and Performing Arts Center. These bonds will be secured by a lien on and pledge of the revenues derived by the City from the hotel occupancy tax levied by the City which is allocated for bond debt service. **THE BONDS ARE NOT A GENERAL OBLIGATION OF THE CITY AND ARE NOT PAYABLE FROM PROPERTY TAXES.**

Pursuant to Chapter 1371 of the Texas Government Code, the Ordinance authorizes each of the City Manager or the Deputy City Manager for Financial and Administrative Services to finalize the terms of the Bonds within certain specified parameters. The parameters are set forth in Section 2.02 of the Ordinance. In addition, pursuant to Section 1201.028 of the Texas Government Code, this Ordinance is scheduled to be approved at a single meeting of City Council. Notice of this public hearing has been published as required by City Charter.

I will attend the City Council meeting to answer questions concerning this item. In the meantime, please do not hesitate to call me at 351-6053 if you need additional information.

Thank you for your attention to this matter.

Enclosures

cc: Elaine Hengen, Senior Assistant City Attorney *(via electronic mail)*
Bill Studer, Deputy City Manager *(via electronic mail)*
Carmen Arrieta Candelaria, Chief Financial Officer *(via electronic mail)*
Bertha A. Ontiveros, Assistant City Attorney *(via electronic mail)*
Steven A. Adams, First Southwest Company *(via electronic mail)*

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ORDINANCE NO. ____

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

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Adopted: August 26, 2008

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ORDINANCE

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AN ORDINANCE authorizing the issuance of "CITY OF EL PASO, TEXAS, HOTEL OCCUPANCY TAX REVENUE BONDS, SERIES 2008" and resolve matters which are necessary to effectual said issuance; enacting 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 the delegation of matters relating to the sale and issuance of the Bonds to an authorized City officer or employee within certain specified parameters

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 by this Ordinance and in accordance with the provisions of Chapter 1371, Texas Government Code, as amended ("Chapter 1371"), is delegating to the Pricing Officer (as defined below) the authority to establish the terms and details related to the issuance and sale of the City of El Paso, Texas, Hotel Occupancy Tax Revenue Bonds, Series 2008 (the "Bonds") including: (i) the form and designation of the Bonds; (ii) the principal amount of the Bonds and the amount of the Bonds to mature in each year; (iii) the dates, price, interest rates, interest payment dates, principal payment dates, and redemption features of the Bonds; and (iv) any other details relating to the issuance, sale, delivery, and/or exchange of the Bonds, all within certain specified parameters set forth herein; 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; and

WHEREAS, a public hearing was held, following proper publication of notice thereof, before City Council with respect to the Adoption of this Ordinance; and

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 clearly requires otherwise, the terms defined in this Section for all purposes of this Ordinance otherwise, 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.

“City Council” means the governing body of the City.

“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, including applicable regulations, published rulings and court decisions.

“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.

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“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.

“Issue Date” shall have the meaning set forth in Section 2.03 hereof.

“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 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, Bank of America, N.A., Dallas, Texas, or such other person as may be designated in the Pricing Certificate 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% (which portion may be increased but not decreased by the City from time to time) 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

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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.

“Pricing Certificate” means the pricing certificate that sets forth the terms of the Bonds in accordance with Section 2.02 of this Ordinance and is executed by the Pricing Officer, all in accordance with the provisions of Chapter 1371.

“Pricing Officer” shall mean the City Manager of the City, or in the absence thereof, the Deputy City Manager, each acting in such capacity severally and not jointly.

“Purchase Letter” means the letter or agreement with respect to the purchase of the Bonds approved in Section 9.01 of this Ordinance.

“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.

“Stated Maturities” shall have the meaning set forth in Section 2.03 hereof.

“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 on the date specified in the Pricing Certificate.

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 principal amount set forth in the Pricing Certificate (within the parameters set forth in Section 2.02 below) 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

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authority conferred by the Constitution and laws of the State of Texas, particularly Chapter 1504, Texas Government Code, as amended, and Chapter 1371. The Bonds shall be designated and bear the title "CITY OF EL PASO, TEXAS, HOTEL OCCUPANCY TAX REVENUE BONDS, SERIES 2008."

Section 2.02 Delegation of Authority to Pricing Officer.

(a) As authorized by the Chapter 1371, the Pricing Officer is hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Ordinance, including determining the Issue Date, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the years in which the Bonds will mature, the terms of any bond insurance applicable to the Bonds, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, and all other matters relating to the issuance, sale, and delivery of the Bonds all of which shall be specified in the Pricing Certificate; provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed \$8,205,000;

(ii) the price to be paid for the Bonds shall not be less than 90% of the aggregate original principal amount thereof plus accrued interest thereon, if any, from the Issue Date to the Closing Date;

(iii) none of the Bonds shall be sold at a price that produces a yield greater than 5.00% and the aggregate true interest cost for the Bonds shall not exceed 5.25%;

(iv) the Bonds shall mature on February 15 or August 15, or both in each year (other than the first year or such other period that may be permitted by applicable law), and interest shall be payable on February 15 and August 15 in each year (other than the first year); and

(v) the final maturity date of the Bonds shall not be greater than 20 years from the Issue Date.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not exceeding the amount authorized in Subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. Unless otherwise extended by an act of City Council, the delegation made hereby shall expire if not exercised by the Pricing Officer on or prior to October 31, 2008. The Bonds shall be sold by negotiated sale to the Purchaser, at such price and with and subject to such terms as set forth in the Pricing Certificate.

(c) The execution of the Pricing Certificate shall evidence the sale date of the Bonds by the City to the Purchaser.

(d) If the Pricing Officer determines that such insurance results in a net reduction of the City's interest costs associated with the Bonds, then the Pricing Officer is authorized, in

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connection with effecting the sale of the Bonds, to obtain from a municipal bond insurance company (the "Insurer") a municipal bond insurance policy in support of the Bonds. To that end, should the Pricing Officer exercise such authority and commit the City to obtain a municipal bond insurance policy, for so long as such policy is in effect, the requirements of the Insurer relating to the issuance of said policies are incorporated by reference into this Ordinance and made a part hereof for all purposes, notwithstanding any other provision of this Ordinance to the contrary. Each of the City Manager of the City, the Deputy City Manager and the Pricing Officer shall have the authority to execute any documents to effect the issuance of said policy by the Insurer.

Section 2.03 Full Registration-Issue Date-Denomination-Maturities-Interest Rates. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated as of an issue date specified in the Pricing Certificate (the "Issue Date") and, other than the single fully registered Initial Bond referenced in Section 2.08 hereof, shall be in denominations as specified in the Pricing Certificate or any integral multiple of \$5,000 thereafter (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 set forth in the Pricing Certificate. The Bonds shall bear interest on the unpaid principal amounts from the date of delivery to the initial purchasers at the rate(s) per annum shown in the Pricing Certificate 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 on the date specified in the Pricing Certificate.

Section 2.04 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/registrar 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 initially 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

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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 2.05 Redemption. The Bonds may be subject to redemption prior to scheduled maturity, at the option of the City, in whole or in part as set forth in the Pricing Certificate.

Section 2.06 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.

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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 2.07 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 date of adoption of this Ordinance 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

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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 and the Pricing Certificate with such appropriate insertions, omissions, substitutions, and other variations as are set forth in the Pricing Certificate 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, if any, and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Pricing Officer or determined by the officers executing such Bonds as evidenced by their

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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 Bonds shall be completed with the information set forth in the Pricing Certificate and the Pricing Certificate shall set forth the final and controlling forms of the Bonds.

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:

%

August 15, 20__

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 date of the delivery hereof to the initial purchasers 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 _____. 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

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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 are comprised of a series of Bonds, the terms of which are set forth in the Ordinance and the Pricing Certificate.

[The City has reserved the option to redeem the Bonds of this Series maturing on or after _____, 20__, in whole or in part before their respective scheduled maturity dates, on _____, 20__ or on any date thereafter, at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the date fixed for redemption. If less than all of the Bonds are to be redeemed pursuant to an optional redemption, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity and in such principal amounts, for redemption.

[The Bonds stated to mature on _____ 15, 20__ and _____ 15, 20__ (the "Term Bonds") are subject to scheduled mandatory redemption and will be redeemed by the City, in part at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Debt Service Fund, on the dates and in the respective principal amounts as set forth in the following schedule:

Term Bonds due _____ 15, 20__	Term Bonds Due _____ 15, 20__
<u>Redemption Date</u>	<u>Redemption Date</u>
_____, 20	_____, 20
<u>Principal Amount</u>	<u>Principal Amount</u>
\$ _____	\$ _____
Term Bonds Due _____ 15, 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20	\$ _____
_____, 20	\$ _____

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[The Paying Agent/Registrar will select by lot or by any other customary method that results in a random selection the specific Term Bonds (or with respect to Term Bonds having a denomination in excess of \$5,000, each \$5,000 portion thereof) to be redeemed by mandatory redemption. The principal amount of Term Bonds required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions hereof shall be reduced, at the option of the City, by the principal amount of any Term Bonds which, at least 45

days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund 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 registered owner an additional fee, the "Prepayment Fee."

[For purposes hereof, the Prepayment Fee will be the sum of fees calculated separately for each Prepaid Installment, as follows:

(1) The Purchaser will first determine the amount of interest which would have accrued each month at the Taxable Equivalent Rate for the Prepaid Installment had it remained outstanding until the applicable Original Payment Date, using the interest rate applicable to the Prepaid Installment under this Ordinance.

(2) The Purchaser will then subtract from each monthly interest amount determined in (1), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment through the Original Payment Date, using the Treasury Rate.

(3) If (1) minus (2) for the Prepaid Installment is greater than zero, the Purchaser will discount the monthly differences to the date of prepayment by the Treasury Rate. The Purchaser will then add together all of the discounted monthly differences for the Prepaid Installment.

The following definitions will apply to the calculation of the Prepayment Fee:

(1) "Original Payment Dates" mean the dates on which the prepaid principal would have been paid if there had been no prepayment. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment, then the Original Payment Date for that amount will be the last day of the interest period.

(2) "Prepaid Installment" means the amount of the prepaid principal which would have been paid on a single Original Payment Date.

(3) "Taxable Equivalent Rate" means the interest rate per annum derived from the following formula: interest rate on the Bond divided by the difference of (1 minus the Maximum Corporate Income Tax Rate). "Maximum Corporate Income Tax Rate" is the highest marginal federal income tax rate charged to US corporations in effect at the time of the prepayment calculation. The "Maximum Corporate Income Tax Rate" is currently 35% (or 0.35 in numerical terms).

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(4) "Treasury Rate" means the yield on the Treasury Constant Maturity Series with maturity equal in length to the Original Payment Date of the Prepaid Installment which are principal payments (calculated as of the date of redemption in accordance with accepted financial practice and rounded to the nearest quarter-year), as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the Board of Governors of the Federal Reserve System, or any successor publication. If no maturity exactly corresponding to such Original Payment Date appears in Release H.15, the Treasury Rate will be determined by linear interpolation between the yields reported in Release H.15. If for any reason Release H.15 is no longer published, the Bondholder shall select a comparable publication to determine the Treasury Rate.]

[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 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 allocated for bond debt service and which is equal to at least 2.5% (which may be increased by the City) 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,

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and (iii) any additional revenue, receipts or income hereafter pledged to the Outstanding "Parity Bonds" (collectively the Bonds and Additional Bonds hereafter issued on a parity therewith).

Subject to satisfying the terms and conditions prescribed therefor in the Ordinance, 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 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 and the Pricing Certificate, copies of which are 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

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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 aforestated. 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.

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

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)

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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.

Bank of America, N.A.
Dallas, 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:

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YEAR OF
MATURITY

PRINCIPAL
INSTALLMENTS

INTEREST
RATE

(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 date of its delivery to the initial purchasers 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 on the date specified in the Pricing Certificate. Principal installments of this Bond are payable in the year of maturity or on a prepayment date to the registered owner hereof, by the initial Paying Agent/registrar for the Bonds Bank of America, N.A. (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated office in Dallas, 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 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.

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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. To pay the debt service coming due on the Bonds, if any (as determined by the Pricing Certificate) prior to receipt of Pledged Revenues to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

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

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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. 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 which together with other funds available in the Debt Service Fund shall be sufficient to pay 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 a minimum of 25% of 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.

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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

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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 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

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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 irrepealable until the Bonds and the interest and any premium thereon shall

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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

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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.

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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 Alternation 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.

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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

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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 are to be sold by the City to the purchaser or purchasers identified in the Pricing Certificate (herein referred to as the "Purchaser") in accordance with a purchase agreement or letter (the "Purchase Letter"), the terms and provisions of which Purchase Letter are to be determined by the Pricing Officer, in accordance with Section 2.02 hereof. With regard to such terms and provisions of the Purchase Letter, the Pricing Officer is hereby authorized to come to an agreement with the Purchaser on the following, among other, matters:

- (i) the details of the purchase and sale of the Bonds;
- (ii) any representations and warranties of the City to the Purchaser;
- (iii) the details of the delivery of, and payment for, the Bonds;
- (iv) the Purchaser' obligations under the Purchase Letter;
- (v) termination of the Purchase Letter;
- (iv) particular covenants of the City;
- (vii) the survival of representations made in the Purchase Letter;
- (viii) the payment of any expenses relating to the Purchase Letter;
- (ix) notices; and

(x) Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Bonds.

(b) The Pricing Officer is 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. 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.

(c) 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.

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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, Pricing Officer, 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. Unless otherwise set forth in the Pricing Certificate, the City has not made a continuing disclosure undertaking with respect to the Bonds because it is anticipated that the Bonds shall be sold by private placement and/or otherwise structured such that 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:

"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.

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“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, 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, 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.

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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

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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 Debt Service 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.

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**ARTICLE 12
MISCELLANEOUS**

Section 12.01 Further Procedures. The Mayor, the Pricing Officer, 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 Pricing Officer, the City Clerk, the Deputy City Clerk, the Deputy City Manager and/or the City Manager of the City, or the City's Bond Counsel are each 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.

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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.

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PASSED, APPROVED AND EFFECTIVE this 26th day of August, 2008.

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

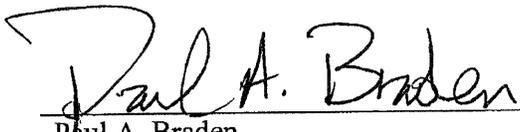
ATTEST:

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

[SEAL]

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Paul A. Braden
Attorney for the City



William F. Studer, Deputy City Manager
Financial And Administrative Services



Bertha Ontiveros
Assistant City Attorney

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