

ORDINANCE NO. 100686

APPROVING AND AUTHORIZING THE EXECUTION OF ALL AGREEMENTS AND INSTRUMENTS TO WHICH THE CITY IS A PARTY RELATED TO LEASING OR LICENSING REAL PROPERTY TO HOTEL INVESTMENTS, L.P., A DELAWARE LIMITED PARTNERSHIP (THE "DEVELOPER") AND DEVELOPING, CONSTRUCTING, EQUIPPING, FURNISHING, OPERATING AND FINANCING A CONVENTION CENTER HOTEL PROJECT, INCLUDING BUT NOT LIMITED TO A GROUND LEASE AND LICENSE AGREEMENT, PROJECT AGREEMENT, SITE ACCESS AGREEMENT, ROOM BLOCKING AGREEMENT, ECONOMIC DEVELOPMENT AGREEMENT, AND CONTINUING DISCLOSURE AGREEMENT, APPROVING THE FORM AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT RELATED TO THE ISSUANCE OF CONTRACT REVENUE BONDS BEING ISSUED BY THE CITY OF SAN ANTONIO, TEXAS CONVENTION CENTER HOTEL FINANCE CORPORATION TO FINANCE A PORTION OF THE COSTS OF THE CONVENTION CENTER HOTEL PROJECT, AUTHORIZING THE CLOSURE, VACATION AND ABANDONMENT OF A PORTION OF BOWIE STREET PUBLIC RIGHT OF WAY ADJACENT TO THE PROJECT SUBJECT TO THE DEDICATION BY PLAT AND CONSTRUCTION OF AN APPROVED REALIGNMENT OF BOWIE STREET; AND AUTHORIZING CITY OFFICIALS, CITY STAFF, CO-FINANCIAL ADVISORS AND CO-BOND COUNSEL TO TAKE ALL OTHER ACTIONS DEEMED NECESSARY IN CONNECTION WITH DEVELOPING, CONSTRUCTING, OPERATING AND FINANCING THE CONVENTION CENTER HOTEL PROJECT

WHEREAS, the City of San Antonio, Texas (the "City") owns and operates a convention center known as the *Henry B. Gonzales Convention Center* (the "Convention Center"); and

WHEREAS, the City desires to enter into a *Project Agreement*, to be dated on or about May 26, 2005 (the "Project Agreement") with Hotel Investments, L.P., a Delaware limited partnership (the "Developer") for the purpose of the Developer's designing, developing, constructing, equipping, furnishing and opening a full-service headquarters hotel and related parking (the "Convention Center Hotel Project") that will be initially owned by the Developer and located adjacent to the Convention Center on land owned by, and initially leased or licensed from, the City, and also desires to enter into a *Ground Lease and License Agreement* with the Developer, to be dated on or about May 26, 2005, (the "Ground Lease") pursuant to which the property owned by the City on which the Convention Center Hotel Project will be built will be leased or licensed to the Developer for an initial term of approximately 75 years; and

WHEREAS, the City has determined that the construction and operation of the Convention Center Hotel Project will promote economic development and will stimulate business and commercial activity in the City; and

WHEREAS, pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended, the City created the *City of San Antonio, Texas Convention Center Hotel Finance Corporation* (the "Issuer"), a Texas nonprofit local government corporation, "for the purpose of financing a portion of the costs required to construct, furnish and equip a privately-owned hotel to be located on land owned by the City that is adjacent to the City's Convention Center in order to promote economic development and to stimulate business and commercial activity in the City, all at the request of the City Council of the City"; and

WHEREAS, the Convention Center Hotel Project is to be financed with a combination of funds provided by various entities including (i) up to \$130,000,000 in principal amount of *City of San Antonio, Texas Convention Center Hotel Finance Corporation Contract Revenue Empowerment Zone Bonds, Series 2005A* (the "Tax-Exempt Bonds"), (ii) up to \$100,000,000 in principal amount of *City of San Antonio, Texas Convention Center Hotel Finance Corporation Contract Revenue Bonds, Taxable Series 2005B* (the "Taxable Bonds" and collectively with the Tax-Exempt Bonds, the "Bonds"), and approximately (iii) \$77,300,000 of funds or capital asset contributions provided by the Developer and other equity investors identified and arranged by the Developer; and

WHEREAS, in lieu of the City issuing revenue bonds to finance the Convention Center Hotel Project as permitted by Chapter 1504, Texas Government Code, particularly Section 1504.002 thereof, the City has requested the Issuer to issue the Bonds on behalf of the City and in so doing will aid and act on behalf of the City to accomplish the governmental purpose of issuing revenue bonds to finance a portion of the Convention Center Hotel Project as permitted by Section 431.101(a), Texas Transportation Code; and

WHEREAS, pursuant to Section 351.003(b), Texas Tax Code, as amended, the City, as an eligible central municipality, imposes a hotel occupancy tax at a rate not to exceed nine percent (9%) of the price paid for a room, of which a rate equal to seven percent (7%) that is levied and collected by the City is herein referred to as the "7% Local HOT", and the remaining rate of two percent that is levied and collected by the City is herein referred to as the "2% Expansion HOT"; and

WHEREAS, pursuant to Chapter 156, Texas Tax Code, the State of Texas currently imposes a tax for the use or possession or for the right to the use or possession of a room or space in a hotel costing \$15 or more each day at a rate equal to six percent (6%) of the price paid for a room at such hotel (hereinafter referred to, together with any higher rate that may be imposed in the future, as the "6% State HOT"); and

WHEREAS, pursuant to Chapter 151, Texas Tax Code, the State of Texas currently imposes a sales and use tax on taxable items at a rate equal to six and one quarter percent (6.25%) of the sale of such taxable items (hereinafter referred to, together with any higher rate that may be imposed in the future, as the "6.25% State Sales Tax"); and

WHEREAS, Section 151.429(h), Texas Tax Code, as amended, provides that the owner of a "qualified hotel project" (as defined in Section 2303.003(8), Texas Tax Code) shall receive a rebate, refund, or payment of (i) 100% of the sales and use taxes paid or collected by the qualified hotel project or businesses located in the qualified hotel project during the first 10 years after such qualified hotel project is open for initial occupancy, and (ii) 100% of the state hotel occupancy taxes levied pursuant to Chapter 156, Texas Tax Code, and paid by persons for the use or possession of or for the right to the use or possession of a room or space at the qualified hotel project during the first 10 years after such qualified hotel project is open for initial occupancy; and

WHEREAS, Section 351.102(c), Texas Tax Code, as amended, provides that an eligible central municipality is entitled to receive all funds that the owner of a project would otherwise be entitled to receive pursuant to Section 151.429(h), Texas Tax Code, as amended; and

WHEREAS, in accordance with the rules of code construction set forth in the Code Construction Act (Chapter 311, Texas Government Code, particularly Sections 311.025 and 311.026 thereof), the Convention Center Hotel Project is a "qualified hotel project" within the meaning of Section 151.429(h), Texas Tax Code; consequently, the City, as an eligible central municipality, is entitled to receive all revenues derived from the 6% State HOT collected at the Convention Center Hotel Project during the first ten years after the Convention Center Hotel Project is open for initial occupancy and all revenues derived from the 6.25% State Sales Tax collected at the Convention Center Hotel Project, including from all businesses located in the Convention Center Hotel Project, during the first ten years after the Convention Center Hotel Project is open for initial occupancy; and

WHEREAS, the City desires to enter into an agreement, to be dated on or about May 15, 2005, (the "Economic Development Agreement") with the Issuer wherein the City, pursuant to the authority cited in the Economic Development Agreement, shall pledge (1) all revenues derived from the 6% State HOT collected at the Convention Center Hotel Project during the first ten years after the Convention Center Hotel Project is open for initial occupancy; (2) all revenues derived from the 6.25% State Sales Tax collected at the Convention Center Hotel Project, including from all businesses located in the Convention Center Hotel Project, during the first ten years after the Convention Center Hotel Project is open for initial occupancy; (3), all revenues, on a subordinate basis, derived from the 7% Local HOT collected at the Convention Center Hotel Project as long as any Bonds (or Refunding Bonds) are outstanding; and (4) all revenues, on a subordinate basis, derived from the 2% Expansion HOT collected at all hotels in the City as long as any Bonds (or Refunding Bonds) are outstanding (collectively, the "City Tax Revenues") to the Issuer for the purpose of providing additional security for the payment of the debt service on the Bonds; and

WHEREAS, in connection with designing, developing, constructing, equipping, furnishing, opening, operating and financing the Convention Center Hotel Project, the City has negotiated, in addition to the Project Agreement, the Ground Lease and the Economic Development Agreement described above, numerous additional agreements including the following:

- (i) Site Access Agreement, dated on or about May 26, 2005, between the City and the Developer (the "Site Access Agreement");

- (ii) Room Blocking Agreement for the Convention Center Hotel to be Developed in the City of San Antonio, Texas, dated on or about May 26, 2005, between the City and the Developer (the "Room Blocking Agreement"); and
- (iii) Continuing Disclosure Agreement, dated as of May 15, 2005, by and among the City, the Issuer and the Developer (the "Continuing Disclosure Agreement");

WHEREAS, the Project Agreement, Ground Lease, Economic Development Agreement, Site Access Agreement, Room Blocking Agreement and Continuing Disclosure Agreement have been presented to the City Council in substantially final form and are hereby referred to collectively as the "City Agreements"; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS:

SECTION 1. APPROVAL OF CITY AGREEMENTS. Each of the City Agreements described in the recitals of this Ordinance is hereby approved in substantially the form presented at this meeting. The Interim City Manager or any Assistant City Manager designated by the Interim City Manager is authorized to approve any and all changes to all City Agreements from the forms presented and approved at this meeting, and such approval shall be evidenced by the signature of the Interim City Manager or an Assistant City Manager of the City thereon and the delivery of such executed City Agreement concurrent with the initial delivery of the Bonds. The Interim City Manager and any Assistant City Manager of the City is authorized to execute and deliver each of the City Agreements on behalf of the City, and, if required in any City Agreement, the City Clerk of the City is authorized to attest the Interim City Manager's or any such Assistant City Manager's signature thereon.

SECTION 2. AUTHORIZATION OF OTHER NECESSARY ACTIONS; SIGNATURES.

(a) The Mayor, the Interim City Manager, any Assistant City Manager, the City Clerk, the Finance Director, and any other officer, employee, agent and official of the City designated by the Interim City Manager are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform and to take any and all action necessary to comply with the terms of the City Agreements and any other related documents in order to facilitate the design, development, construction, equipping, furnishing, opening, and operation of the Convention Center Hotel Project, and the issuance, sale and delivery of the Bonds by the Issuer, including the execution of certificates, opinions, and the other documents necessary in connection therewith.

(b) The Mayor, the Interim City Manager, any Assistant City Manager, the City Clerk, the Finance Director, and any other officer, employee, agent and official of the City designated by the Interim City Manager, and each of them shall be and they are 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 corporate seal and on behalf of the City all such instruments, documents and agreements, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the City Agreements. In addition, prior to the initial delivery of the Bonds, the Mayor, the Interim City Manager, any Assistant City Manager, the City Clerk, the Finance Director, and all other officers and employees designated by the Interim City Manager, and Co-Bond Counsel related to the Bonds are each hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments, documents and agreements authorized and approved by this Ordinance necessary in order to: (i) correct any ambiguity or mistake, or properly or more completely document the transactions contemplated and approved by this Ordinance; (ii) obtain the approval of the Bonds and the related financing documents by the Attorney General of Texas, as required by law; (iii) obtain municipal bond insurance for the Bonds from Ambac Assurance Corporation; or (iv) obtain the ratings contemplated in the Official Statement.

(c) The Mayor, the Interim City Manager, any Assistant City Manager, and the Finance Director are each hereby authorized and designated as an "Authorized City Representative" for the purposes of the City Agreements.

SECTION 3. CLOSURE OF BOWIE STREET. The City hereby conditionally closes, vacates and abandons a portion of Bowie Street Public Right of Way in an area that is adjacent to the Convention Center Hotel project, as more particularly described in a plat to be attached to this Ordinance, subject to the dedication by plat and construction by the Developer of an approved realignment of Bowie Street. The City Manager, or a designee, is authorized to execute and deliver all documents, to do all other things necessary to reflect this closure, abandonment, and vacation, and to otherwise carry out the intent of this action.

SECTION 4. ENFORCEABILITY OF ORDINANCE. If any section, paragraph, clause, or provision of this Ordinance shall be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance. In case any obligation of the City authorized or established by this Ordinance or the City Agreements is held to be in violation of law as applied to any person or any circumstance, such obligation shall be deemed to be the obligation of the City to the fullest extent permitted by law.

SECTION 5. INCORPORATION OF RECITALS. The City Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City Council hereby incorporates such recitals as a part of this Ordinance.

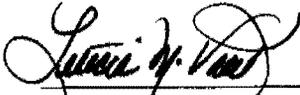
SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective on the tenth day from passage hereof.

PASSED AND APPROVED THIS 14TH DAY OF APRIL, 2005.



MAYOR

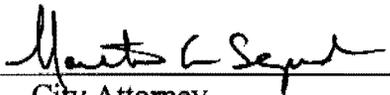
ATTEST:



City Clerk, City of San Antonio, Texas

(CITY SEAL)

APPROVED AS TO FORM:

By: _____
City Attorney

** ** * * * * *

[SIGNATURE PAGE FOR ORDINANCE APPROVING CITY AGREEMENTS]

Agenda Voting Results

Name: 4 E.
Date: 04/14/05
Time: 05:05:59 PM
Vote Type: Multiple selection

Description: An Ordinance approving and authorizing the execution of all agreements and instruments to which the City is a party related to leasing or licensing real property to Hotel Investments, L.P., a Delaware limited partnership (the "Developer") and developing, constructing, equipping, furnishing, operating and financing a Convention Center Hotel Project, including but not limited to a ground lease and license agreement, project agreement, site access agreement, room blocking agreement, economic development agreement, equity funding agreement, and continuing disclosure agreement, approving the form and distribution of a preliminary official statement related to the issuance of Contract Revenue Bonds being issued by the City of San Antonio, Texas Convention Center Hotel Finance Corporation to finance a portion of the costs of the Convention Center Hotel Project, authorizing the closure, vacation and abandonment of a portion of Bowie Street Public Right of Way adjacent to the Project subject to the dedication by plat and construction of an approved realignment of Bowie Street; and authorizing City officials, City staff, co-financial advisors and co-bond counsel to take all other actions deemed necessary in connection with developing, constructing, operating and financing the Convention Center Hotel Project.

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
JOEL WILLIAMS	DISTRICT 2		x		
RON H. SEGOVIA	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7	Not present			
ART A. HALL	DISTRICT 8			x	
CARROLL SCHUBERT	DISTRICT 9				x
CHIP HAASS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR		x		

CERTIFICATE FOR ORDINANCE

I, the undersigned City Clerk of the City of San Antonio, Texas (the "City"), hereby certify as follows:

1. The City Council of the City convened in regular meeting on the 14th day of April, 2005 at the designated meeting place, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Ed Garza, Mayor
Roger O. Flores
Joel Williams
Ron H. Segovia
Richard Perez
Patti Radle

Enrique M. Barrera
Julián Castro
Art A. Hall
Carroll Schubert
Christopher "Chip" Haass

and all of said persons were present, except the following absentees: Castro, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written Ordinance No. _____, entitled:

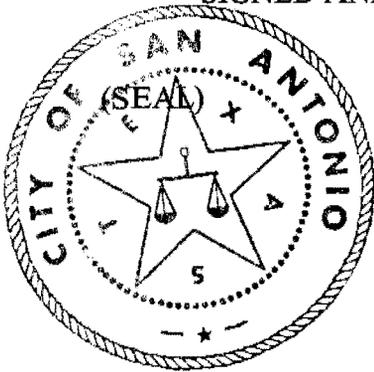
ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF ALL AGREEMENTS AND INSTRUMENTS TO WHICH THE CITY IS A PARTY RELATED TO LEASING OR LICENSING REAL PROPERTY TO HOTEL INVESTMENTS, L.P., A DELAWARE LIMITED PARTNERSHIP (THE "DEVELOPER") AND DEVELOPING, CONSTRUCTING, EQUIPPING, FURNISHING, OPERATING AND FINANCING A CONVENTION CENTER HOTEL PROJECT, INCLUDING BUT NOT LIMITED TO A GROUND LEASE AND LICENSE AGREEMENT, PROJECT AGREEMENT, SITE ACCESS AGREEMENT, ROOM BLOCKING AGREEMENT, ECONOMIC DEVELOPMENT AGREEMENT, AND CONTINUING DISCLOSURE AGREEMENT, APPROVING THE FORM AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT RELATED TO THE ISSUANCE OF CONTRACT REVENUE BONDS BEING ISSUED BY THE CITY OF SAN ANTONIO, TEXAS CONVENTION CENTER HOTEL FINANCE CORPORATION TO FINANCE A PORTION OF THE COSTS OF THE CONVENTION CENTER HOTEL PROJECT, AUTHORIZING THE CLOSURE, VACATION AND ABANDONMENT OF A PORTION OF BOWIE STREET PUBLIC RIGHT OF WAY ADJACENT TO THE PROJECT SUBJECT TO THE DEDICATION BY PLAT AND CONSTRUCTION OF AN APPROVED REALIGNMENT OF BOWIE STREET; AND AUTHORIZING CITY OFFICIALS, CITY STAFF, CO-FINANCIAL ADVISORS AND CO-BOND COUNSEL TO TAKE ALL OTHER ACTIONS DEEMED NECESSARY IN CONNECTION WITH DEVELOPING, CONSTRUCTING, OPERATING AND FINANCING THE CONVENTION CENTER HOTEL PROJECT

was duly introduced for the consideration of said City Council. It was then duly moved and seconded that said Ordinance be passed; and, after due discussion, said motion, carrying with it the passage of said Ordinance, prevailed and carried by the following vote:

AYES: 8 NOES: 1 ABSTENTIONS: 1

2. A true, full and correct copy of the aforesaid Ordinance passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; said Ordinance has been duly recorded in said City Council's minutes of said Meeting; the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said Meeting pertaining to the passage of said Ordinance; the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Ordinance would be introduced and considered for passage at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose; and said Meeting was open to the public and public notice of the time, place and purpose of said Meeting was given, all as required by Texas Government Code, Chapter 551.

SIGNED AND SEALED the 14th day of April, 2005.



Leticia Y. Reed

City Clerk, City of San Antonio, Texas