

AN ORDINANCE

2012-06-14-0443

AUTHORIZING AN AMENDMENT TO THE “AMENDED AND RESTATED REIMBURSEMENT AND SECURITY AGREEMENT” BETWEEN THE CITY OF SAN ANTONIO AND WELLS FARGO BANK IN CONNECTION WITH A LETTER OF CREDIT SECURING THE “CITY OF SAN ANTONIO, TEXAS HOTEL OCCUPANCY TAX SUBORDINATE LIEN VARIABLE RATE DEMAND REVENUE AND REFUNDING BONDS, SERIES 2008”; AND PROVIDING FOR AN EFFECTIVE DATE

* * * * *

WHEREAS, the CITY OF SAN ANTONIO, TEXAS (the "*City*") has issued and delivered its **HOTEL OCCUPANCY TAX SUBORDINATE LIEN VARIABLE RATE DEMAND REVENUE AND REFUNDING BONDS, SERIES 2008** (the "*Bonds*"), which are currently outstanding in the aggregate principal amount of \$129,105,000; and

WHEREAS, the Bonds are secured, in part, by an irrevocable, direct pay letter of credit (the "*Letter of Credit*") provided by Wells Fargo Bank, National Association (the "*Bank*"); and

WHEREAS, the Letter of Credit has been provided in accordance with the terms of an Amended and Restated Reimbursement Agreement and Security Agreement, dated as July 24, 2010 (the "*Reimbursement Agreement*") between the City and the Bank; and

WHEREAS, in accordance with the terms of the Reimbursement Agreement, the Letter of Credit will expire on July 11, 2012 (the "*Expiration Date*"), unless the Expiration Date is extended in the manner permitted by the Reimbursement Agreement; and

WHEREAS, in compliance with Section 2.2(b) of the Reimbursement Agreement, the City notified the Bank of its desire to have the Expiration Date extended to July 11, 2013 at least 120 days prior to the Expiration Date, and the Bank has agreed to extend the Expiration Date to July 11, 2013 by having the City and the Bank enter into the amendment to the Reimbursement Agreement in substantially the form attached to this Ordinance; and

WHEREAS, it is hereby further 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 the Amendment to Reimbursement Agreement. The “First Amendment to Amended and Restated Reimbursement and Security Agreement” is hereby approved in substantially the form attached hereto as Exhibit A (the “Amendment”), with such final approval to be evidenced by the signature of the City Manager, a Deputy City Manager, or an Assistant City Manager of the City thereon. The City Manager, any Deputy City Manager or any Assistant City Manager of the City is authorized to execute and deliver the Amendment on behalf of the City.

Section 2. Effective Date. This Ordinance shall take effect immediately upon passage by at least (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

purpose of the Meeting, and each of the officers and members consented, in advance, to the holding of the Meeting for such purpose; and the Meeting was open to the public, and public notice of the time, place, and purpose of the Meeting was given all as required by Chapter 551, Texas Government Code.

The Mayor and the City Clerk of the City hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of the Ordinance for all purposes.

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PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS AT A REGULAR MEETING ON THIS 14TH DAY OF JUNE, 2012.

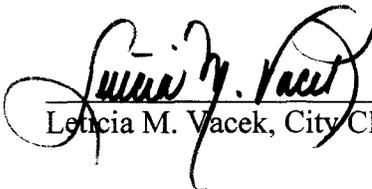


M A Y O R

Julián Castro

ATTEST:

APPROVED AS TO FORM:



Leticia M. Vacek, City Clerk



Michael D. Bernard, City Attorney

(CITY SEAL)



** ** * ** ** *

[Signature Page to Ordinance Authorizing an Amendment to the “Amended and Restated Reimbursement and Security Agreement” Between the City of San Antonio and Wells Fargo Bank in Connection with a Letter of Credit Securing the “City of San Antonio, Texas Hotel Occupancy Tax Subordinate Lien Variable Rate Demand Revenue and Refunding Bonds, Series 2008”]

EXHIBIT A

**FIRST AMENDMENT TO AMENDED AND RESTATED
REIMBURSEMENT AND SECURITY AGREEMENT**

This First Amendment to the Amended and Restated Reimbursement and Security Agreement (the "Amendment") dated as of June __, 2012 (the "Effective Date") is made and entered into by and between CITY OF SAN ANTONIO, TEXAS (the "City") and WELLS FARGO BANK, NATIONAL ASSOCIATION, as legal successor in interest by merger with Wachovia Bank, National Association, a national banking association with its main office in San Francisco, California (the "Bank").

WITNESSETH:

WHEREAS, the City and the Bank have previously executed and delivered that certain Amended and Restated Reimbursement and Security Agreement, dated as July 24, 2010 (the "Reimbursement Agreement"), pursuant to which the Bank extended its irrevocable letter of credit No. SM231997W (the "Letter of Credit") issued in connection with the City's \$135,000,000 Hotel Occupancy Tax Subordinate Lien Variable Rate Demand Revenue and Refunding Bonds, Series 2008 (the "Bonds"); and

WHEREAS, the City and the Bank now desire to amend the Reimbursement Agreement to extend the expiration date of the Letter of Credit and to amend certain other terms of the Reimbursement Agreement;

WHEREAS, the expiration date of the Letter of Credit is being extended by the Bank to July 11, 2013, simultaneously with the execution of this Amendment;

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties do hereby agree as follows:

Section 1. Amendments to definitions in Section 1.1. The definitions of "Date of Extension," "Expiration Date," "Extension Ordinance," and "Fee Percentage" in Section 1.1 of the Reimbursement Agreement are hereby deleted and replaced with the following:

"Date of Extension" means July 11, 2012.

"Expiration Date" means July 11, 2013 or, if the stated term of the Letter of Credit is extended as contemplated in the Letter of Credit and in Section 2.2(b) hereof, the last day of each Successive Extension Period.

"Extension Ordinance" means Ordinance No. 2012-06-14-_____ authorizing the extension of the Letter of Credit adopted by the City Council on June 14, 2012.

“Fee Percentage” means (i) on or prior to July 11, 2012, 1.10% (110 basis points) per annum, (ii) from the Date of Extension to the Expiration Date, 0.55% (55 basis points) per annum; and (iii) after the Expiration Date, the figure to which the Fee Percentage has been adjusted by the Bank pursuant to **Section 2.4(d)** hereof; *provided, however*, the Fee Percentage may be increased at any time as described in Section 2.4(c) hereof.

Section 2. Amendments to Section 2.2.

a. Section 2.2(c)(iv) is hereby deleted and replaced with the following:

if cancelled or replaced prior to January 11, 2013, the City shall pay to the Bank on the effective date of such cancellation or replacement the Termination Fee as provided in **Section 2.4(b)** of this Agreement.

b. The last paragraph of Section 2.2 is hereby deleted and replaced with the following:

Upon the cancellation or replacement of the Letter of Credit prior to the Expiration Date, in addition to the Termination Fee, the City will, on the effective date of such cancellation or replacement, pay to the Bank any earned portion of the letter of credit fee, determined pro-rata based on the actual number of days that the Letter of Credit is in effect from the immediately previous Fee Payment Date to the date of such cancellation or replacement pursuant to **Section 2.4** hereof.

Section 3. Amendment to Section 2.4(b).

Section 2.4(b) is hereby deleted and replaced with the following:

In the event that the Letter of Credit is terminated by the City pursuant to the terms hereof prior to the Expiration Date, the City hereby agrees to pay to the Bank, on the date of such termination, the letter of credit fee that would accrue for the period from July 11, 2012 through and including January 11, 2013, minus the amount of such letter of credit fee already paid by the City to the Bank prior to such date of termination (the "Termination Fee") and any other obligations due and payable to the Bank on the date of termination of the Letter of Credit. In calculating the Termination Fee, the City hereby agrees to pay the Bank an amount equal to (i) the Letter of Credit Amount on the Date of Extension, multiplied by (ii) Fee Percentage, multiplied by (iii) the number of days between the date of termination and January 11, 2013, divided by 360; provided, however, that no Termination Fee shall be payable by the City to the Bank if such termination is solely a result of the reduction of the rating assigned to the senior unsecured short-term debt obligations of the Bank below "A-1" by S&P or "P-1" by Moody's. Such Termination Fee shall be in addition to all fees, expenses and other amounts due to the Bank pursuant to the terms of this Agreement.

Section 4. Conditions Precedent. As condition to the effectiveness of this Amendment (i) the City shall have paid all legal fees of legal counsel to the Bank related to the preparation of this Amendment (not to exceed \$ _____), (ii) the City shall have paid to the Bank the amendment fee of \$2,500 pursuant to Section 2.4(f) of the Reimbursement Agreement, and (iii) all conditions precedent set forth in Section 4.1 of the Reimbursement Agreement shall have been met or otherwise waived by the Bank.

Section 5. Ratification. Except as expressly amended hereby, the Reimbursement Agreement shall remain in full force and effect.

Section 6. Definitions and References. Any term used herein which is defined in the Reimbursement Agreement shall have the meaning therein ascribed to it unless otherwise indicated herein. The term "Reimbursement Agreement" as used in the Reimbursement Agreement or any other instrument, document or writing furnished to the Bank by the City and referring to the Reimbursement Agreement shall mean the Reimbursement Agreement as hereby amended.

Section 7. Governing Law. **THIS AMENDMENT SHALL BE GOVERNED BY, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAWS PROVISIONS) OF THE STATE OF TEXAS.**

Section 8. Miscellaneous. This Amendment (a) may be executed in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original agreement, and all such separate counterparts shall constitute but one and the same agreement, and (b) together with the Reimbursement Agreement, embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, consents and understandings relating to such subject matter. The headings herein shall be accorded no significance in interpreting this Amendment. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

THE REIMBURSEMENT AGREEMENT, AS AMENDED BY THIS AMENDMENT, REPRESENTS THE FINAL AGREEMENT OF THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITY OF SAN ANTONIO, TEXAS

By: _____
Name: _____
Title: _____

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**

By: _____
Name: _____
Title: _____

CERTIFICATE FOR ORDINANCE

We, the undersigned officers of the City Council of the City of San Antonio, Texas (the "City"), hereby certify as follows:

1. The City Council of the City (the "Council") convened in REGULAR SESSION on the 14th day of June, 2012, at the regular designated meeting place (the "Meeting"), and the roll was called on the duly constituted officers and members of the Council, to-wit:

Julián Castro, Mayor
Diego M. Bernal, Councilmember
Elisa Chan, Councilmember
Ray Lopez, Councilmember
Cris Medina, Councilmember
David Medina, Councilmember
Leticia Ozuna, Councilmember
Rey A. Saldaña, Councilmember
Carlton Soules, Councilmember
Ivy R. Taylor, Councilmember
W. Reed Williams, Councilmember

and all of said persons were present, except the following absentees: REY SALDANA, thus constituting a quorum. Whereupon, among other business the following was transacted at the Meeting: a written Ordinance No. 2012-06-14- 0443

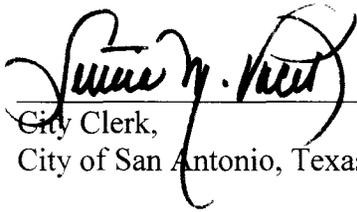
Ordinance Authorizing an Amendment to the "Amended and Restated Reimbursement and Security Agreement" Between the City of San Antonio and Wells Fargo Bank in Connection with a Letter of Credit Securing the "City of San Antonio, Texas Hotel Occupancy Tax Subordinate Lien Variable Rate Demand Revenue and Refunding Bonds, Series 2008"; and providing for an effective date

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

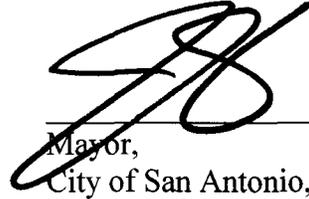
AYES: 10 NOES: 0 ABSTENTIONS: 0

2. A true, full, and correct copy of the Ordinance passed at the Meeting is attached to and follows this Certificate; the Ordinance has been duly recorded in the Council's minutes of the Meeting; the above and foregoing paragraph is a true, full, and correct excerpt from the Council's minutes of the Meeting pertaining to the passage of the Ordinance; the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of the Council as indicated therein; each of the officers and members of the Council was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the Meeting, and each of the officers and members consented, in advance, to the holding of the Meeting for such purpose; and the Meeting was open to the public, and public

SIGNED AND SEALED on this the 14th day of June, 2012.



City Clerk,
City of San Antonio, Texas



Mayor,
City of San Antonio, Texas

(CITY SEAL)

