

---

---

**ORDINANCE NO. 19-\_\_\_\_**

**ORDINANCE  
AUTHORIZING THE ISSUANCE OF**

**CITY OF KILLEEN, TEXAS  
WATERWORKS AND SEWER SYSTEM REVENUE REFUNDING BONDS  
IN ONE OR MORE SERIES**

**Adopted on September 24, 2019**

---

---

**ORDINANCE NO. 19-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KILLEEN, TEXAS, AUTHORIZING THE ISSUANCE AND SALE OF CITY OF KILLEEN, TEXAS, WATERWORKS AND SEWER SYSTEM REVENUE REFUNDING BONDS; PROVIDING FOR THE SECURITY FOR AND PAYMENT OF SAID BONDS; PRESCRIBING THE FORM OF SAID BONDS; APPROVING THE OFFICIAL STATEMENT, BOND PURCHASE AGREEMENT, PAYING AGENT/REGISTRAR AGREEMENT AND ESCROW AGREEMENT; ESTABLISHING THE PROCEDURES FOR SELLING AND DELIVERING THE BONDS; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT**

---

WHEREAS, Tex. Gov't Code Ann. Ch. 1502 provides that the governing body of a municipality may issue public securities for the purposes hereinafter provided, and the City Council (the "City Council") of the City of Killeen, Texas (the "City") finds and determines that it is necessary, useful and appropriate for the City's public purposes to authorize and provide for the issuance and sale of revenue bonds of the City for such purposes, as hereinafter provided; and

WHEREAS, the City of Killeen, Texas (the "City") has paid in full its "Prior Obligations", which included, collectively, City of Killeen, Texas Waterworks and Sewer System Revenue Bonds, Series 2004, the City of Killeen, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2005, and the City of Killeen, Texas Waterworks and Sewer System Revenue Bonds, Series 2007; and

WHEREAS, such Prior Obligations were secured by a first lien on the Net Revenues, as hereinafter defined, superior to the lien on the Net Revenues securing the Parity Revenue Obligations, as hereinafter defined; and

WHEREAS, the City covenanted against issuing any additional obligations on parity with the Prior Obligations, therefore as a result of the Prior Obligations no longer being outstanding, the lien on the Net Revenues securing the Parity Revenue Obligations is no longer junior and subordinate to the lien securing the Prior Obligations and is therefor now a first lien on such Net Revenues; and

WHEREAS, as described above, the City has previously issued and has outstanding several series of obligations payable from and secured by a first lien on the Net Revenues, as hereinafter defined, of the City's waterworks and sewer system; and

WHEREAS, Section 9.01 of the ordinances authorizing the Parity Revenue Obligations, as hereinafter defined, and State law, including Section 1502.061, Texas Government Code, as amended, authorize the City to issue obligations with a lien on parity with the lien on the Net Revenues securing the Parity Revenue Obligations; and

WHEREAS, in order to reduce costs, increase borrowing capacity and provide the City with greater financial flexibility, the City now desires to issue waterworks and sewer system revenue refunding bonds secured by and payable from a pledge of and lien on the Net Revenues of the System which pledge and lien is on parity with the pledge and lien of Net Revenues for the Parity Revenue Obligations; and

WHEREAS, the Bonds authorized by this Ordinance, together with the Series 2010 Bonds, the Series 2011 Bonds, the Series 2012 Bonds, the Series 2013 Bonds and any Additional Parity Obligations, shall be secured by a first lien upon the Net Revenues of the System; and

WHEREAS, the City Council of the City deems it advisable and in the best interest of the City to refund the Refunded Obligations, as hereinafter defined, in order to achieve a net present value debt service savings of not less than 3.5% of the principal amount of the Refunded Obligations net of any City contribution with such savings, among other information and terms to be included in a pricing certificate to be executed by the City Manager, acting as the designated pricing officer of the City, or, in the absence of the City Manager, the Mayor as the Pricing Officer, all in accordance with the provisions of Chapter 1207, including 1207.007, and Chapter 1371 of the Texas Government Code thereof; and

WHEREAS, Chapter 1207, Texas Government Code, as amended ("Chapter 1207") authorizes the City to issue refunding bonds and to deposit the proceeds from the sale thereof together with any other available funds or resources, directly with a place of payment (paying agent) for the Refunded Obligations or a trust company or commercial bank other than a depository of the City, and such deposit, if made before such payment dates, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, Chapter 1207 further authorizes the City to enter into an agreement with a paying agent for the Refunded Obligations or a trust company or commercial bank that does not act as a depository for the City with respect to the safekeeping, investment, reinvestment, administration and disposition of any such deposit, upon such terms and conditions as the City and such paying agent may agree, provided that such deposits may be invested and reinvested in Defeasance Securities, as defined herein; and

WHEREAS, the Escrow Agreement hereinafter authorized, constitutes an agreement of the kind authorized and permitted by said Chapter 1207; and

WHEREAS, all the Refunded Obligations mature or are subject to redemption prior to maturity within 20 years of the date of the bonds hereinafter authorized; and

WHEREAS, the Bonds authorized by this Ordinance are being issued and delivered pursuant to the City Charter, and Chapters 1207, 1371 and 1502 of the Texas Government Code; as amended, and other applicable laws; and

WHEREAS, it is officially found, determined and declared that the meeting at which this Ordinance has been adopted was open to the public, and public notice of the date, hour, place and subject of said meeting, including this Ordinance, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended; Now, Therefore

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

## ARTICLE I

### DEFINITIONS AND OTHER PRELIMINARY MATTERS

#### Section 1.01. Definitions.

Unless otherwise expressly provided or unless the context clearly requires otherwise, in this Ordinance the following terms shall have the meanings specified below:

"Accretion Table" means the exhibit attached to the Pricing Certificate that sets forth the rounded original principal amounts at the Original Issue Date for the Premium Compound Interest Bonds and the Accreted Values and maturity amounts thereof as of each Compounding Date until final maturity.

"Accreted Value" means, with respect to a Premium Compound Interest Bond, as of any particular date of calculation, the original principal amount thereof, plus all interest accrued and compounded to the particular date of calculation, as determined in accordance with the Pricing Certificate and the Accretion Table attached as an exhibit to the Pricing Certificate relating to the respective Bonds that shows the Accreted Value per \$5,000 maturity amount on the calculation date of maturity to its maturity.

"Additional Parity Obligations" means those obligations the City reserves the right to issue on a parity with the Bonds, herein authorized in accordance with the terms and conditions prescribed in Section 9.01 hereof.

"Authorized Denominations" means the denomination of \$5,000 or any integral multiple thereof with respect to the Current Interest Bonds and in the denomination of \$5,000 in maturity amount or any integral multiple thereof with respect to the Premium Compound Interest Bonds.

"Bond" means any of the Bonds.

"Bonds" means one or more series of the City's bonds entitled "City of Killeen, Texas, Waterworks and Sewer System Revenue Refunding Bonds," or such other name as determined by the Pricing Officer for a series of Bonds authorized to be issued by Section 3.01 of this Ordinance and each Pricing Certificate and including any of the Tax-Exempt Bonds and Taxable Bonds as designated by the Pricing Officer in each Pricing Certificate for a series of Bonds.

"Closing Date" means the date of the initial delivery of and payment for each series of the

Bonds.

"Code" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions relating thereto.

"Compounding Dates" means, with respect to a Premium Compound Interest Bond, as of any particular date of calculation, the original principal amount thereof plus all interest accrued and compounded to the particular date of calculation.

"Current Interest Bonds" means the Bonds paying current interest and maturing in each of the years and in the aggregate principal amounts set forth in each Pricing Certificate.

"Defeasance Securities" means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the City Council adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (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 that, on the date the City Council adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Bonds.

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named herein, its designated office in Dallas, Texas, and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"DTC" means the Depository Trust Company of New York, New York, or any successor securities depository.

"DTC Participant" means any broker, dealer, bank, trust company, clearing corporation or certain other organizations with Bonds credited to an account maintained on its behalf by DTC.

"Escrow Agent" means \_\_\_\_\_.

"Escrow Agreement" means each escrow agreement, by and between the City and the Escrow Agent.

"Escrow Fund" means the fund referred to in Article VIII of this Ordinance and established by each Escrow Agreement to hold cash and securities for the payment of principal of and interest

on the Refunded Obligations.

"Event of Default" means any Event of Default as defined in Section 11.01 of this Ordinance.

"Federal Securities" as used herein means direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

"Fiscal Year" means twelve months' period beginning October 1 of each year and ending September 30 of the succeeding year.

"Initial Bond" means the Bond described in Section 3.04(d) and 6.02(d).

"Insurance Policy" means any insurance policy issued by any insurer guaranteeing the scheduled principal of and interest on any series of the Bonds when due.

"Interest and Sinking Fund" means the interest and sinking fund provided by Section 8.01(b) of this Ordinance.

"Interest Payment Date" means the date or dates upon which interest on the Bonds is scheduled to be paid until the maturity or prior redemption of the Bonds as provided in each Pricing Certificate.

"MSRB" means the Municipal Securities Rulemaking Board.

"Net Revenues" means the gross revenues of the System less the expense of operation and maintenance, including all salaries, labor, materials, repairs and extensions necessary to render efficient service, provided, however, that only such repairs and extensions as in the judgment of the City Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any special obligations payable from and secured by a lien on the net revenues of the System shall be deducted in determining "Net Revenues".

"Ordinance" means this Ordinance.

"Original Issue Date" means the date of the Bonds designated in each Pricing Certificate.

"Owner" means the person who is the registered owner of a Bond or Bonds, as shown in the Register.

"Parity Revenue Obligations" means the Bonds the Series 2010 Bonds, the Series 2011 Bonds, the Series 2012 Bonds, the Series 2013 Bonds and Additional Parity Obligations.

"Paying Agent/Registrar" means \_\_\_\_\_, any successor thereto or an entity which

is appointed as and assumes the duties of paying agent/registrant as provided in this Ordinance and the Pricing Certificate.

"Policy" means any Insurance Policy and the Reserve Policy.

"Premium Compound Interest Bonds" means the Bonds on which no interest is paid prior to maturity, maturing in various amounts and in the aggregate principal amount as set forth in each Pricing Certificate.

"Pricing Certificate" means each Pricing Certificate of the City's Pricing Officer to be executed and delivered pursuant to Section 3.02 hereof in connection with the issuance of each series of the Bonds.

"Pricing Officer" means the City Manager, including any interim or acting City Manager responsible for the duties of the City Manager, or in his absence, the Mayor, acting as the designated Pricing Officer of the City to execute each Pricing Certificate.

"Purchaser" means the person, firm or entity (whether one or more) initially purchasing a series of the Bonds from the City as set forth in each Pricing Certificate.

"Record Date" means the date specified in each Pricing Certificate.

"Redemption Date" means a date fixed for redemption of any Bond pursuant to the terms of each Pricing Certificate.

"Refundable Obligations" means all or a portion of the City's outstanding Waterworks and Sewer System obligations.

"Refunded Obligations" means those Refundable Obligations designated by the Pricing Officer in each Pricing Certificate to be refunded.

"Register" means the Register specified in Section 3.06(a) of this Ordinance.

"Representation Letter" means the Blanket Issuer Letter of Representations with respect to each series of the Bonds and other obligations of the City, between the City and DTC.

"Reserve Fund" means the reserve fund provided by Section 8.01(c) of this Ordinance.

"Reserve Fund Obligation" means a surety bond, insurance policy, letter of credit or other agreement or instrument, including any related reimbursement or financial guaranty agreement, by which the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument, provided that the issuer of any Reserve Fund Obligation shall be rated, at the time of issuance of such Reserve Fund Obligation, at least the rating carried on the Bonds by Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"Reserve Policy" means any reserve fund insurance policy issued by an Insurer.

"Revenue Fund" means the revenue fund provided by Section 8.01(a) of this Ordinance.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"Series 2010 Bonds" means the "City of Killeen, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2010."

"Series 2011 Bonds" means the "City of Killeen, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2011."

"Series 2012 Bonds" means the "City of Killeen, Texas Waterworks and Sewer System Revenue Refunding Bonds, Series 2012."

"Series 2013 Bonds" means "City of Killeen, Texas Waterworks and Sewer System Revenue Refunding and Improvement Bonds, Series 2013."

"Special Payment Date" means the Special Payment Date prescribed by Section 3.03(b) of this Ordinance.

"Special Record Date" means the Special Record Date prescribed by Section 3.03(b) of this Ordinance.

"System" means the City's combined waterworks and sewer (waste water) system, including all present and future extensions, enlargements, additions, replacements and improvements thereto.

"Taxable Bonds" means any Bonds designated by the Pricing Officer in the Pricing Certificate as Taxable Bonds, the interest on which is includable in the gross income of the owner thereof for federal income tax purposes.

"Tax-Exempt Bonds" means any of the Bonds designated by the Pricing officer as Tax-Exempt Bonds, the interest on which is excludable from the gross income of the owner thereof for federal income tax purposes pursuant to Section 103 of the Code.

"Term Bonds" means the Bonds, if any, subject to mandatory sinking fund redemption as described in Section 4.02 and as set forth in each Pricing Certificate.

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of principal, redemption premium, if any, or interest on the Bonds as the same become due

and payable or money set aside for the payment of Bonds duly called for redemption prior to maturity, and remaining unclaimed for 90 days after the applicable payment or redemption date.

Section 1.02. Other Definitions.

The terms "City Council" and "City" shall have the respective meanings assigned in the preamble to this Ordinance.

Section 1.03. Findings.

The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.04. Table of Contents, Titles and Headings.

The table of contents, 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 and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.05. Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

(b) This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Ordinance.

## ARTICLE II

### SECURITY FOR THE BONDS

Section 2.01. Pledge of Revenues for Payment of the Bonds.

(a) The Net Revenues (with the exception of those in excess of the amounts required to establish and maintain the Funds as hereinafter provided) are hereby irrevocably pledged for the payment of the principal of and interest on the Parity Revenue Obligations, including the establishment and maintenance of the Reserve Fund hereinafter provided.

(b) The City hereby covenants not to issue obligations payable from the Net Revenues with a lien superior to the lien created by the Parity Revenue Obligations and this Ordinance.

Section 2.02. Special Obligations.

The Bonds are special obligations of the City payable from the Net Revenues, and the Holders thereof are not entitled to demand payment thereof out of any money raised by taxation.

Section 2.03. Perfection of Security Interest.

Chapter 1208, Government Code applies to the issuance of the Bonds and the pledge of the revenues granted by the City under Section 2.01 of this Ordinance, and such pledge, therefore, is valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the revenues granted by the City under Section 2.01 of this Ordinance is to be subject to the filing requirements of Chapter 9, Texas Business and 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 and Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

ARTICLE III

AUTHORIZATION; GENERAL TERMS AND PROVISIONS  
REGARDING THE BONDS

Section 3.01. Authorization.

The City's bonds to be designated "City of Killeen, Texas, Waterworks and Sewer System Revenue Refunding Bonds," are hereby authorized to be issued in one or more series and delivered in accordance with the Constitution and laws of the State of Texas, including particularly Chapters 1207 or 1371, Texas Government Code, as amended, in the aggregate principal amount not to exceed \$7,500,000 for the purpose of (i) refunding the Refunded Obligations and (ii) paying the costs of issuing the Bonds, all as determined by the Pricing Officer for each series of Bonds issued pursuant to this Ordinance. The title of any Bonds may be revised by the Pricing Officer as reflected in the Pricing Certificate to reflect the appropriate series designation, purpose and the tax status of the Bonds as either Taxable Bonds or Tax-Exempt Bonds, as applicable.

Section 3.02. Date, Denomination, Maturities, Numbers and Interest.

(a) Initially there shall be issued, sold, and delivered hereunder fully registered bonds, without interest coupons, which may be in the form of Current Interest Bonds or Premium Compound Interest Bonds, numbered consecutively from R-1 upward, in the case of Current Interest Bonds, and from PC-1 upward, in the case of Premium Compound Interest Bonds (except the Initial Bond delivered to the Attorney General of the State of Texas which shall be numbered T-1 and TPC-1 respectively) payable to the respective initial Registered Owners thereof, or to the registered assignee or assignees of said Bonds or any portion or portions thereof, in Authorized Denominations, maturing not later than August 15, 2027, serially or otherwise on the dates, in the years and in the principal amounts, respectively, and dated, as all set forth in each Pricing Certificate

to be executed and delivered by the Pricing Officer pursuant to subsection (b) of this section. Each Pricing Certificate is hereby incorporated in and made a part of this Ordinance. Each series of the Bonds shall be designated by the year in which they are awarded with a letter as necessary to designate each series as provided in each Pricing Certificate. The authority of the Pricing Officer to execute a Pricing Certificate shall expire at 5:00 p.m. C.D.T. on September 24, 2020. Bonds priced on or before September 24, 2020 may be delivered to the Purchasers after such date.

(b) As authorized by Chapters 1207, 1371 and 1502, Texas Government Code, as amended, the Pricing Officer is hereby authorized to act on behalf of the City in selling and delivering one or more series of the Bonds, determining which of the Refundable Obligations, if any, shall be refunded and constitute Refunded Obligations under this Ordinance, determining whether any series of Bonds shall be issued as Tax-Exempt Bonds or Taxable Bonds, and carrying out the other procedures specified in this Ordinance, including determining the date of the Bonds, any additional or different designation or title by which a series of the Bonds shall be known, the price at which each series of the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the aggregate principal amount of Current Interest Bonds and Premium Compound Interest Bonds, the rate or rates of interest to be borne by each such maturity, the interest payment periods, the dates, 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 and the refunding of the Refunded Obligations, all of which shall be specified in the Pricing Certificate; provided that (i) the price to be paid for each series of the Bonds shall not be less than 90% of the aggregate original principal amount thereof plus accrued interest thereon from its date to its delivery, (ii) none of the Bonds of a series shall bear interest at a rate, or yield in the case of Premium Compound Interest Bonds, greater than the maximum authorized by law, (iii) the refunding must produce a net present value debt service savings of at least 3.5% of the principal amount of the Refunded Obligations, net of any City contribution and (iv) each series of the Bonds shall be rated by a nationally recognized rating agency in one of the four higher rating categories, unless a series of Bonds is sold through a private placement as determined by the Pricing Officer in which case no rating will be required. In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not to exceed the amount authorized in Section 3.01, which shall be sufficient to provide for the purposes for which the Bonds are authorized and to pay the costs of issuing the Bonds.

(c) To achieve advantageous borrowing costs for the City, the Bonds shall be sold on a negotiated, placement or competitive basis as determined by the Pricing Officer in the Pricing Certificate, and such determination by the Pricing Officer will have the same force and effect as if made by the City Council in this Ordinance. In determining whether to sell the Bonds by negotiated, placement or competitive sale, the Pricing Officer shall take into account any material disclosure issues which might exist at the time, the market conditions expected at the time of the sale and any other matters which, in the judgment of the Pricing Officer, might affect the net borrowing costs on the Bonds.

If the Pricing Officer determines that a series of the Bonds should be sold at a competitive sale, the Pricing Officer shall cause to be prepared a notice of sale and official statement in such

manner as the Pricing Officer deems appropriate, to make the notice of sale and official statement available to those institutions and firms wishing to submit a bid for the Bonds, to receive such bids, and to award the sale of the Bonds to the bidder submitting the best bid in accordance with the provisions of the notice of sale.

If the Pricing Officer determines that a series of the Bonds should be sold by a negotiated sale or placement, the Pricing Officer shall designate the placement purchaser or the senior managing underwriter for the Bonds and such additional investment banking firms as the Pricing Officer deems appropriate to assure that the Bonds are sold on the most advantageous terms to the City. The Pricing Officer, acting for and on behalf of the City, is authorized to enter into and carry out a Bond Purchase Agreement or other agreement for the Bonds to be sold by negotiated sale or placement, with the underwriters or placement purchasers at such price, with and subject to such terms as determined by the Pricing Officer pursuant to Section 4(b) above. Each Bond Purchase Agreement or other agreement shall be substantially in the form and substance previously approved by the City in connection with the authorization of waterworks and sewer system debt with such changes as are acceptable to the Pricing Officer.

In satisfaction of Section 1201.022(a)(3), Texas Government Code, the City hereby determines that the delegation of the authority to the Pricing Officer to approve the final terms and conditions of each series of the Bonds as set forth in this Ordinance and the decisions made by the Pricing Officer pursuant to such delegated authority and incorporated in each Pricing Certificate will be, in the best interests and shall have the same force and effect as if such determination were made by the City Council herein and the Pricing Officer is hereby authorized to make and include in each Pricing Certificate an appropriate finding to that effect.

(d) The Current Interest Bonds shall bear interest calculated on the basis of a 360-day year composed of twelve 30-day months from the dates specified in the FORM OF BONDS set forth in this Ordinance to their respective dates of maturity or redemption at the rates per annum set forth in the Pricing Certificate.

The Premium Compound Interest Bonds shall bear interest from the Original Issue Date, calculated on the basis of a 360-day year composed of twelve 30-day months (subject to rounding to the Compounded Amounts thereof), compounded on the Compounding Dates as set forth in the Pricing Certificate, and payable, together with the principal amount thereof, in the manner provided in the Form of Bonds at the rates set forth in the Pricing Certificate. Attached to the Pricing Certificate, if Premium Compound Interest Bonds are to be issued, shall be the Accretion Table. The Accreted Value with respect to any date other than a Compounding Date is the amount set forth on the Accretion Table with respect to the last preceding Compounding Date, plus the portion of the difference between such amount and the amount set forth on the Accretion Table with respect to the next succeeding Compounding Date that the number of days (based on 30-day months) from such last preceding Compounding Date to the date for which such determination is being calculated bears to the total number of days (based on 30-day months) from such last preceding Compounding Date to the next succeeding Compounding Date.

### Section 3.03. Medium, Method and Place of Payment.

(a) The principal of, premium, if any, and interest on the Bonds shall be paid in lawful money of the United States of America as provided in this Section and each Pricing Certificate.

(b) Interest on the Bonds shall be payable to the Owners whose names appear in the Register at the close of business on the Record Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (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 (the "Special Payment Date", which shall be at least 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

(c) Interest on the Bonds shall be paid by check (dated as of the Interest Payment Date) and sent by the Paying Agent/Registrar to the person entitled to such payment by United States mail, first class postage prepaid, to the address of such person as it appears in the Register or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expenses of such other customary banking arrangements.

(d) The principal of each Bond shall be paid to the person in whose name such Bond is registered on the due date thereof (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office.

(e) If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office 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 a Saturday, Sunday, legal holiday, or day on which such banking institutions are required or 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.

(f) Subject to Title 6, Texas Property Code, as amended, Unclaimed Payments remaining unclaimed for three years after the applicable payment or redemption date shall be paid by the Paying Agent/Registrar to the City, to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar, nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat, abandoned property, or similar law.

#### Section 3.04. Execution and Initial Registration.

(a) The Bonds shall be executed on behalf of the City by the Mayor and City Secretary of the City, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the

same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided in this Ordinance, duly authenticated by manual execution by an officer or duly authorized representative of the Paying Agent/Registrar. It shall not be required that the same authorized representative of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bond delivered on the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided in this Ordinance, manually executed by the Comptroller of Public Accounts of the State of Texas or by his duly authorized agent, which certificate shall be evidence that the Initial Bond has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial Bond representing the entire principal amount of the Bonds, payable in stated installments to the Purchaser or its designee, executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the Purchaser or its designee as set forth in the Pricing Certificate. Upon payment for the Initial Bond, the Paying Agent/Registrar shall cancel the Initial Bond and deliver to DTC on behalf of the Purchaser one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all of the Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC. To the extent that the Paying Agent/Registrar is eligible to participate in DTC's FAST System, as evidenced by agreement between the Paying Agent/Registrar and DTC, the Paying Agent/Registrar shall hold the definitive Bonds in safekeeping for DTC.

### Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof and premium, if any, thereon, for the further purpose of making and receiving payment of the interest thereon (subject to the provisions herein that interest is to be paid to the person in whose name the Bond is registered on the Record Date or Special Record Date, as applicable), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to

the contrary.

(b) All payments made to the person deemed to be the Owner of any Bond in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Bonds remain outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) Registration of any Bond may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the Bonds, or any portion thereof in any integral multiple of \$5,000, to the assignee or assignees thereof, and the right of such assignee or assignees thereof to have the Bond or any portion thereof registered in the name of such assignee or assignees. No transfer of any Bond shall be effective until entered in the Register. Upon assignment and transfer of any Bond or portion thereof, a new Bond or Bonds will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned Bond. To the extent possible the Paying Agent/Registrar will issue such new Bond or Bonds in not more than three business days after receipt of the Bond to be transferred in proper form and with proper instructions directing such transfer.

(c) Any Bond may be converted and exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office, together with a written request therefor duly executed by the registered owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the Paying Agent/Registrar, for a Bond or Bonds of the same maturity and interest rate and in any authorized denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. If a portion of any Bond is redeemed prior to its scheduled maturity as provided herein, a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in the denomination or denominations of any integral multiple of \$5,000 at the request of the registered owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon surrender thereof for cancellation. To the extent possible, a new Bond or Bonds shall be delivered by the Paying Agent/Registrar to the registered owner of the Bond or Bonds in not more than three business days after receipt of the Bond to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each Bond issued in exchange for any Bond or portion thereof assigned, transferred or converted shall have the same principal maturity date and bear interest at the same rate as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall convert and exchange the

Bonds as provided herein, and each substitute Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such substitute Bond is delivered.

(e) The City will pay the Paying Agent/Registrar's reasonable and customary charge for the initial registration or any subsequent transfer, exchange or conversion of Bonds, but the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, exchange or conversion of a Bond. In addition, the City hereby covenants with the Owners of the Bonds that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of and interest on the Bonds, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration, conversion and exchange of Bonds as provided herein.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within 45 days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled balance of a Bond.

#### Section 3.07. Cancellation and Authentication.

(a) All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be canceled and destroyed upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall periodically furnish the City with certificates of destruction of such Bonds.

(b) Each substitute Bond issued pursuant to the provisions of Sections 3.06 and 3.09 of this Ordinance, in conversion of and exchange for or replacement of any Bond or Bonds issued under this Ordinance, shall have printed thereon a Paying Agent/Registrar's Authentication Certificate, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Bond, manually sign and date such Authentication Certificate, and no such Bond shall be deemed to be issued or outstanding unless such Authentication Certificate is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein. Pursuant to Chapter 1201, Texas Government Code, as amended, and particularly subchapter D thereof, the duty of conversion and exchange or replacement of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Paying Agent/Registrar's Authentication Certificate, the converted and exchanged or replaced Bonds shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Initial Bond which was originally delivered pursuant to this Ordinance, approved by the Attorney

General, and registered by the Comptroller of Public Accounts.

(c) Bonds issued in conversion and exchange or replacement of any other Bond or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Bonds, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) shall be payable as to principal and interest, all as provided, and in the manner required or indicated, in the Form of Bonds set forth in this Ordinance.

### Section 3.08. Replacement Bonds.

(a) Upon the presentation and surrender to the Paying Agent/Registrar, at the Designated Payment/Transfer Office, of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/ Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the City to save them harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

### Section 3.09. Book-Entry-Only System.

(a) The definitive Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than an Owner, as shown in the register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the registered Owner at the close of business on the Record Date, the term "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(c) The previous execution and delivery of the Blanket Letter of Representation with respect to obligations of the City is hereby ratified and confirmed; and the provisions thereof shall be fully applicable to the Bonds.

**Section 3.10. Successor Securities Depository; Transfer Outside Book-Entry-Only System.**

In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, and that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts, as identified by DTC. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

**Section 3.11. Payments to Cede & Co.**

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Representation Letter.

## ARTICLE IV

### REDEMPTION OF BONDS BEFORE MATURITY

**Section 4.01. Limitation on Redemption.**

The Bonds shall be subject to redemption before scheduled maturity only as provided in this Article IV and each Pricing Certificate.

**Section 4.02. Optional and Mandatory Redemption.**

(a) The City reserves the option to redeem Bonds as provided in each Pricing Certificate.

(b) The City, at least forty-five (45) days before the redemption date (unless a shorter period shall be satisfactory to the Paying Agent/Registrar), shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds to be redeemed.

**Section 4.03. Partial Redemption.**

(a) If less than all of the Bonds are to be redeemed, the City shall determine the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar (or DTC or a successor securities depositor, as applicable, if the Bonds are in Book-Entry-Only form) to call by lot Bonds, or portions thereof within such maturity and in such principal amounts, for redemption.

(b) A portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. The Paying Agent/Registrar shall treat each \$5,000 portion of the Bond as though it were a single Bond for purposes of selection for redemption.

(c) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Bond as to which only a portion thereof is to be redeemed.

**Section 4.04. Notice of Redemption to Owners.**

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice by United States mail, first class postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or part thereof) to be redeemed, at the address shown on the Register.

(b) The notice shall state the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

**Section 4.05. Payment Upon Redemption.**

(a) Before or on each redemption date, the Paying Agent/Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Interest and Sinking Fund or otherwise received by the Paying Agent/Registrar from the City sufficient to pay the principal of, premium, if any, and accrued interest on such Bonds.

(b) Upon presentation and surrender of any Bond called for redemption at the Designated Payment/Transfer Office on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, premium, if any, and accrued interest on such Bond to the date of redemption from the money set aside for such purpose.

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in the payment of the principal thereof, premium, if any, or accrued interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

(b) If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender of such Bond for redemption, such Bond or portion thereof shall continue to bear interest at the rate stated on the Bond until paid or until due provision is made for the payment of same.

Section 4.07. Conditional Notice of Redemption.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

ARTICLE V

PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

(a) The City hereby appoints \_\_\_\_\_, as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfer and registrations as herein provided. It shall be the duty of the Paying

Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each Bond to which payments with respect to the Bonds shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The Paying Agent/Registrar has agreed to maintain a copy of the Register at its offices, or the office of its agent, located in \_\_\_\_\_, Texas.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Bonds, and of all conversions, exchanges and replacements of such Bonds, as provided in this Ordinance.

(c) The execution and delivery of a Paying Agent/Registrar Agreement, specifying the duties and responsibilities of the City and the Paying Agent/Registrar, is hereby approved with such changes as may be approved by the Pricing Officer and the Pricing Officer is hereby authorized to execute such agreement.

#### Section 5.02. Qualifications.

Each Paying Agent/Registrar shall be (i) a commercial bank, trust company, or other entity duly qualified and legally authorized under applicable law, (ii) authorized under such laws to exercise trust powers, (iii) subject to supervision or examination by a federal or state governmental authority, and (iv) a single entity.

#### Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

#### Section 5.04. Termination.

The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated a certified copy of a resolution of the City (i) giving notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar; provided that no such termination shall be effective until a successor Paying Agent/Registrar has accepted the duties of Paying Agent/Registrar for the Bonds.

#### Section 5.05. Notice of Change to Owners.

Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Owner by United States mail, first class postage prepaid, at the address in the Register, stating the effective date of the change and the name of the replacement Paying Agent/Registrar and the mailing address of its Designated Payment/Transfer Office.

Section 5.06. Agreement to Perform Duties and Functions.

By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and the Pricing Certificate and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby.

Section 5.07. Delivery of Records to Successor.

If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

## ARTICLE VI

### FORM OF THE BONDS

Section 6.01. Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and the Pricing Certificate and (ii) 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 any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof.

(b) Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(c) The Bonds shall be printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof except that the Initial Bond submitted to the Attorney General of Texas, the definitive Bond delivered to DTC and any temporary Bonds may be typewritten or photocopied or other wise produced.

Section 6.02. Form of Bonds.

The form of Bonds, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance and the Pricing Certificate:

(a) [Form of Bond]

REGISTERED

REGISTERED

No. \_\_\_\_\_

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

United States of America  
State of Texas

**CITY OF KILLEEN, TEXAS**  
**WATERWORKS AND SEWER SYSTEM REVENUE REFUNDING BOND**  
**SERIES \_\_\_\_\_\***

Interest Rate	Maturity Date	Original Issue Date	CUSIP Number
_____ %*	_____*	_____*	_____*

The City of Killeen (the "City") in the County of Bell, State of Texas, for value received, hereby promises to pay to

\_\_\_\_\_\*

or registered assigns, on the Maturity Date specified above, the sum of

\_\_\_\_\_ DOLLARS\*

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Original Issue Date specified above or the most recent interest payment date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, 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 to be paid

\_\_\_\_\_

\* As provided in each Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

\_\_\_\_\_ \* semiannually on \_\_\_\_\_ \* and \_\_\_\_\_ \* of each year, commencing. Notwithstanding the foregoing, during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, any payment to the securities depository, or its nominee or registered assigns, shall be made in accordance with existing arrangements between the City and the securities depository.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the office in \_\_\_\_\_ \*, Texas (the "Designated Payment/Transfer Office"), of the Paying Agent/Registrar executing the registration certificate appearing hereon, or, with respect to a successor Paying Agent/Registrar, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangements acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the person to whom interest is to be paid. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the last business day of the month next preceding such interest payment date; provided, however, that in the event of nonpayment of interest on a scheduled interest payment date, and for 30 days thereafter, a new record date for such interest payment (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 (the "Special Payment Date", which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Paying Agent/Registrar at the close of business on the last business day preceding the date of mailing such notice.

During any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office 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 a Saturday, Sunday, legal holiday, or day on which such 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.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in

the aggregate principal amount of \$ \_\_\_\_\_\* (herein referred to as the "Bonds"), issued pursuant to a certain Ordinance of the City Council of the City (the "Ordinance") for the purpose of providing funds to refund the Refunded Obligations and to pay costs of issuance associated with the issuance of the Bonds.

This Bond and all the Bonds of the series of which it is a part constitute special obligations of the City of Killeen, Texas, and, together with the Series 2010 Bonds, the Series 2011 Bonds, the Series 2012 Bonds, the Series 2013 Bonds and any Additional Parity Obligations, are payable as to both principal and interest from and equally secured by a first lien on and pledge of the Net Revenues of the City's combined Waterworks and Sewer System. Reference is hereby made to the Ordinance for a more complete statement of the covenants and provisions securing the payment of this Bond and the series of which it is one.

Whenever the beneficial ownership of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

The City expressly reserves the right to issue further and additional special revenue obligations equally secured by a lien on and pledge of the Net Revenues of the City's combined Waterworks and Sewer System on a parity with the Bonds of this issue; provided, however, that any and all such additional parity obligations may be issued only in accordance with and subject to the covenants, conditions, limitations and restrictions relating thereto which are set out and contained in the Ordinance, to which reference is hereby made for more complete and full particulars.

The holders of the Bonds are not entitled to demand payment thereof out of any money raised by taxation.

The City has reserved the option to redeem the Bonds maturing on and after \_\_\_\_\_, \_\_\_\_\*, before their respective scheduled maturity in whole or from time to time in part in integral multiples of \$5,000 on \_\_\_\_\_, \_\_\_\_\*, 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 redemption date. If less than all of the Bonds are to be redeemed, the City shall determine the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof within such maturity or maturities and in such amounts, for redemption.

---

\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

**[Redemption Provisions**

The City has also reserved the option to redeem the Term Bond maturing on \_\_\_\_\_, 20\_\_\*, before its respective scheduled maturity in whole or from time to time in part in integral multiples of \$5,000, on \_\_\_\_\_\*, 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 redemption date. If less than all of the Bonds are to be redeemed, the City shall determine the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof within such maturity or maturities and in such amounts, for redemption.

The Bonds maturing on \_\_\_\_\_, 20\_\_\* (the "Term Bonds") are subject to mandatory sinking fund redemption by lot prior to maturity in the following amounts, on the following dates and at a price of par plus accrued interest to the redemption date.

**Bonds Maturing \_\_\_\_\_, 20\_\_\***

<b>Redemption Date</b>	<b>Principal Amount</b>
_____, 20__	\$ _____
_____, 20__*	_____ ]**

---

\*Final Maturity

Notice of such redemption or redemptions shall be sent by United States mail, first-class postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Bonds to be redeemed in whole or in part. Notice having been so given, the Bonds or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice, and from and after such date, notwithstanding that any of the Bonds or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Bonds or portions thereof shall cease to accrue. Conditional notice of redemption may also be given as provided in the Ordinance.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Bond Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such

---

\* As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

\*\* Use of Term Bonds, if any, to be determined by the Pricing Officer.

prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, this Bond has been duly executed on behalf of the City, under its official seal, in accordance with law.

---

City Secretary  
City of Killeen, Texas

---

Mayor  
City of Killeen, Texas

[CITY SEAL]

(b) [Form of Certificate of Paying Agent/Registrar]

CERTIFICATE OF PAYING AGENT/REGISTRAR

This is one of the Bonds referred to in the within mentioned Ordinance. The series of Bonds of which this Bond is a part was originally issued as one Initial Bond which was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

\_\_\_\_\_, \_\_\_\_\_, Texas  
as Paying Agent/Registrar

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

(c) [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 hereunder and hereby irrevocably constitutes and appoints

\_\_\_\_\_ attorney  
to transfer the within Bond on the books kept for registration hereof, with full power of substitution  
in the premises.

Dated: \_\_\_\_\_

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 and must be guaranteed by members of the New York Stock Exchange or a commercial bank or trust company.

Signature Guaranteed By:

\_\_\_\_\_  
Authorized Signatory

(d) Initial Bond Insertions.

(i) The Initial Bond shall be in the form set forth in paragraph (a) of this Section, except that:

A. immediately under the name of the Bond, the headings "INTEREST RATE" and "MATURITY DATE" shall both be completed with the words "As Shown Below" and "CUSIP NO. \_\_\_\_\_" deleted;

B. in the first paragraph:

the words "on the Maturity Date specified above" shall be deleted and the following will be inserted (with all blanks to be completed with information included in the Pricing Certificate): "on \_\_\_\_\_\* in the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

Years	Principal Installments	Interest Rates
-------	---------------------------	-------------------

(Information from Pricing Certificate to be inserted.)

C. In the second paragraph of the Initial Bond, "initial" shall be inserted before "Paying Agent/Registrar" in the first sentence, "executing the registration certificate appearing hereon," shall be deleted and an additional sentence shall be added to the paragraph as follows: "The initial Paying Agent/Registrar is \_\_\_\_\_";

D. the Initial Bond shall be numbered T-1.

(ii) The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond in lieu of the Certificate of Paying Agent/Registrar:

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER           §  
OF PUBLIC ACCOUNTS                   §     REGISTER NO. \_\_\_\_\_

THE STATE OF TEXAS

§  
§

I HEREBY CERTIFY THAT there is on file and of record in my office a certificate to the effect that the Attorney General of the State of Texas has approved this Bond, and that this Bond has been registered this day by me.

WITNESS MY SIGNATURE AND SEAL OF OFFICE this \_\_\_\_\_.

[SEAL]

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

Section 6.03. CUSIP Registration.

The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

Section 6.04. Municipal Bond Insurance.

In the event that municipal bond guaranty insurance shall be obtained with respect to the Bonds, the Bonds, including the Initial Bond, may bear an appropriate legend, as provided by such insurer.

In connection with the sale of one or more series of the Bonds, the City may obtain municipal bond insurance policies from one or more Bond Insurers to guarantee the full and complete payment required to be made by or on behalf of the City on the Bonds. The Pricing Officer is hereby authorized to sign a commitment letter or insurance agreement with the Bond Insurer or Bond Insurers and to pay the premium for the bond insurance policies at the time of the delivery of the Bonds to the underwriter out of the proceeds of sale of the Bonds or from other available funds and to execute such other documents and certificates as necessary in connection with the bond insurance policies as the Pricing Officer may deem appropriate. Printing on the Bonds covered by the bond insurance policies a statement describing such insurance, in form and substance satisfactory to the Bond Insurer and the Pricing Officer, is hereby approved and authorized. The Pricing Certificate may contain provisions related to the bond insurance policies, including payment provisions thereunder, and the rights of the Bond Insurer or Insurers, and any such provisions shall be read and interpreted as an integral part of this Ordinance.

ARTICLE VII

APPROVAL OF OFFERING DOCUMENTS, PAYING AGENT/REGISTRAR  
AGREEMENT AND ESCROW AGREEMENT;  
CONTROL AND DELIVERY OF THE BONDS

Section 7.01. Approval of Offering Documents, Paying Agent/Registrar Agreement and Escrow Agreement. The Pricing Officer is hereby authorized to approve the Preliminary Official Statement, the Official Statement relating to the Bonds and any addenda, supplement or amendment thereto and to deem such documents final in accordance with Rule 15c2-12. The City further approves the distribution of such Official Statement in the reoffering of the Bonds by the Purchaser in final form, with such changes therein or additions thereto as the Pricing Officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof.

The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar ("Paying Agent Agreement") in substantially the form and substance previously approved by the City in previous transactions is hereby approved. The Pricing Officer is hereby authorized and directed to complete, amend, modify and execute the Paying Agent Agreement as necessary.

The discharge and defeasance of Refunded Obligations shall be effectuated pursuant to the terms and provisions of an Escrow Agreement, in the form and containing the terms and provisions as shall be approved by a Pricing Officer, including any insertions, additions, deletions, and modifications as may be necessary (a) to carry out the program designed for the City by the underwriters or purchasers, (b) to maximize the City's present value savings and/or to minimize the City's costs of refunding, (c) to comply with all applicable laws and regulations relating to the refunding of the Refunded Obligations and (d) to carry out the other intents and purposes of this Ordinance; and, the Pricing Officer is hereby authorized to execute and deliver such Escrow Agreement, on behalf of the City, in multiple counterparts.

To maximize the City's present value savings and to minimize the City's costs of refunding, the City hereby authorizes and directs that certain of the Refunded Obligations shall be called for redemption prior to maturity in the amounts, at the dates and at the redemption prices set forth in each Pricing Certificate, and the Pricing Officer is hereby authorized and directed to take all necessary and appropriate action to give or cause to be given a notice of redemption to the holders or paying agent/registrar, as appropriate, of such Refunded Obligations, in the manner required by the documents authorizing the issuance of such Refunded Obligations.

The Pricing Officer and the Escrow Agent are each hereby authorized (a) to subscribe for, agree to purchase, and purchase Defeasance Securities that are permitted investments for a defeasance escrow established to defease Refunded Obligations, and to execute any and all subscriptions, purchase agreements, commitments, letters of authorization and other documents necessary to effectuate the foregoing, and any actions heretofore taken for such purpose are hereby ratified and approved, and (b) to authorize such contributions to the escrow fund as are provided in the Escrow Agreement.

(a) 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 the Bond Purchase Agreement.

Section 7.02. Control and Delivery of Bonds.

(a) The Mayor of the City is hereby authorized to have control of the Initial Bond and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Purchaser under and subject to the general supervision and direction of the Mayor of the City, against receipt by the City of all amounts due to the City under the terms of sale.

ARTICLE VIII

FUNDS AND ACCOUNTS, INITIAL DEPOSITS  
AND APPLICATION OF MONEY

Section 8.01. Fund Designations.

The City hereby covenants and agrees that all revenues derived from the operation of the System shall be kept separate from other funds of the City. To that end the City hereby confirms its previous creation and establishment of the following special Funds pursuant to the ordinances authorizing the issuance of the Parity Revenue Obligations, to-wit:

(a) The City of Killeen Waterworks and Sewer System Revenue Fund (the "Revenue Fund"). This Fund shall be kept in the City's official depository bank.

(b) The City of Killeen Waterworks and Sewer System Revenue Bonds Interest and Sinking Fund (the "Interest and Sinking Fund"). This Fund shall be kept at an official depository bank of the City. Money deposited in this Fund shall be used to pay principal of and interest on the Parity Revenue Obligations when and as the same shall become due and payable.

(c) The City of Killeen Waterworks and Sewer System Revenue Bonds Reserve Fund, (the "Reserve Fund"). This Fund shall be kept at an official depository bank of the City. Money deposited in this Fund shall be used to pay principal of and/or interest on the Parity Revenue Obligations falling due at any time when there is not sufficient money available in the Interest and Sinking Fund.

The special Funds herein provided shall continue to be maintained at all times while any of the Parity Revenue Obligations remain outstanding.

Section 8.02. Initial Deposits; Escrow Fund.

On the Closing Date, the City shall cause the proceeds from the sale of the Bonds to be deposited as follows:

- (i) first, any accrued interest on each series of the Bonds from the Original Issue Date until the Closing Date, shall be deposited to the credit of the Interest and Sinking Fund;
- (ii) second, the remaining balance, less any amounts paid at Closing as costs of issuance, shall be deposited to the credit of the Escrow Fund.

Section 8.03. Revenue Fund.

All revenues of every nature received through the operation of the System shall be deposited from day to day as collected into the Revenue Fund, to be kept separate and apart from all other City funds and accounts. Moneys deposited in the Revenue Fund shall be pledged and appropriated to the following uses and in the order of precedence shown:

- (a) To the payment of all reasonable and proper expenses of operating and maintaining the System as set forth in the definition of "Net Revenues" contained in Section 1.01 hereof.
- (b) To the payment of all amounts required to be deposited and credited to all funds and accounts to meet all financial obligations of the City relating to the currently outstanding Parity Revenue Obligations.
- (c) To the payment of all amounts required to be deposited and credited to the Interest and Sinking Fund to meet all financial obligations of the City related to the Bonds, the Series 2010 Bonds, the Series 2011 Bonds, the Series 2012 Bonds, the Series 2013 Bonds and any Parity Obligations.
- (d) To the payment of all amounts required to be deposited and credited to the Reserve Fund pursuant to this Ordinance or any ordinance relating to the issuance of Parity Revenue Obligations.
- (e) To any other fund, account or subaccount to the extent required pursuant to the provisions of any ordinance relating to Parity Revenue Obligations.
- (f) To any other fund, account or subaccount to the extent required by any ordinances pursuant to which subordinate debt is issued.
- (g) To any other City purpose now or hereafter permitted by law.

Section 8.04. Interest and Sinking Fund.

(a) The City hereby covenants and agrees to make monthly deposits to the Interest and Sinking Fund from moneys in the Revenue Fund to pay the principal of and interest on the Bonds as follows:

(i) Such amounts, deposited in substantially equal monthly installments on or before the 10th day of each month following the Closing Date, as will be sufficient, together with other amounts, if any, then on hand in the Interest and Sinking Fund and available for such purpose, to pay the interest scheduled to accrue and become due and payable with respect to the Bonds on the next succeeding Interest Payment Date;

(ii) Such amounts, deposited in substantially equal monthly installments on or before the 10th day of each month following the Closing Date, as will be sufficient, together with other amounts, if any, on hand in the Interest and Sinking Fund and available for such purpose, to pay the principal scheduled to mature and come due on the Bonds on the next succeeding Interest Payment Date on which principal of the Bonds is to be payable.

(b) The monthly deposits to the Interest and Sinking Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until such time as (i) the total amount on deposit in the Interest and Sinking Fund and Reserve Fund is equal to the amount required to pay all outstanding obligations (principal and/or interest) for which said Fund was created and established to pay or (ii) the Bonds are no longer outstanding, i.e., fully paid as to principal and interest or all of the Bonds have been refunded.

(c) Any proceeds of the Bonds not required to be deposited in the Escrow Fund, shall be deposited to the Interest and Sinking Fund. Proceeds of the Bonds so deposited, accrued interest and any other amount or amounts received from the Purchaser of the Bonds and required by this Ordinance to be deposited to the Interest and Sinking Fund, may be taken into consideration and reduce the amount of the monthly deposits hereinabove provided which would otherwise be required to be deposited in the Interest and Sinking Fund from the Net Revenues of the System.

#### Section 8.05. Reserve Fund.

(a) The City hereby covenants and agrees with the Owners of the Bonds that it will provide for the accumulation of, and when accumulated, will thereafter continuously maintain in the Reserve Fund an amount equal to not less than the average annual principal and interest requirements of the Parity Revenue Obligations (calculated on a Fiscal Year basis as of the date the last series of Parity Revenue Obligations were authorized). Immediately following the delivery of the Bonds, the appropriate City officials shall calculate and determine the average annual principal and interest requirement for the Parity Revenue Obligations then outstanding. After deducting the amount then on deposit in the Reserve Fund from such calculation, the amount of the difference, if any, shall be deposited in the Reserve Fund in sixty (60) substantially equal monthly payments on or before the 10<sup>th</sup> day of each month; the initial monthly deposit to be made on or before the 10<sup>th</sup> day of the month next following the Closing Date. After the total amount required to be on deposit in the Reserve Fund has been accumulated, monthly payments to said fund may be terminated;

provided, however, should the amount on deposit therein be reduced below the sum required to be maintained in said fund after the same has been accumulated, payments to said fund in an amount equal to the deficiency shall be resumed and continued to be made on or before the 10<sup>th</sup> day of each month until the total amount then required to be on deposit in the Reserve Fund has been fully restored. In the event money in the Reserve Fund is used for an authorized purpose while monthly payments are being made to said fund, the amount required to restore the sum then required to be on deposit therein shall be added to the payments then being made in the following month or months until the total amount then required to be on deposit in said fund has been fully restored.

(b) Notwithstanding the requirements of subsection (a) above, the City may provide a Reserve Fund Obligation issued in amounts equal to all or part (as may be specified in the ordinance authorizing any series of Parity Revenue Obligations), of the average annual principal and interest required of the Parity Revenue Obligations in lieu of depositing cash into the Reserve Fund; provided, however, that no such Reserve Fund Obligation may be so substituted unless (i) the substitution of the Reserve Fund Obligation will not cause any ratings then assigned to the Bonds by Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business to be lowered and (ii) the ordinance authorizing the substitution of the Reserve Fund Obligation for all or part of the average annual principal and interest requirements of the Parity Revenue Obligations contains (A) a finding that such substitution is cost effective and (B) a provision that the interest due on any repayment obligation of the City by reason of payments made under such policy does not exceed the highest lawful rate on interest which may be paid by the City at the time of the delivery of the Reserve Fund Obligation. The City reserves the right to apply the proceeds of the Revenue Fund to payment of the subrogation obligation incurred by the City (including interest) to the issuer of the Reserve Fund Obligation, the payment of which will result in the reinstatement of such Reserve Fund Obligation, prior to making payment required to be made to the Reserve Fund pursuant to the provisions of this Section to restore the balance in such fund to the average annual principal and interest requirements of the Parity Revenue Obligations.

(c) In the event a Reserve Fund Obligation issued to satisfy all or part of the City's obligation with respect to the Reserve Fund causes the amount then on deposit in the Reserve Fund to exceed the average annual principal and interest requirements of all Parity Revenue Obligations, the City, may transfer such excess amount to any fund or funds established for the payment of or security for the Parity Revenue Obligations (including any escrow established for the final payment of any such obligations pursuant to Chapter 1207, Texas Government Code) or use such excess amount for any lawful purpose now or hereafter provided by law.

(d) Notwithstanding anything to the contrary contained herein, the requirement set forth in subsection (a) above to maintain the Reserve Fund shall be suspended for such time as the "net revenues" of the System for each Fiscal Year are equal to at least 1.35 times the combined average annual principal and interest requirements of all outstanding Parity Revenue Obligations. In the event that the "net revenues" for any Fiscal Year are less than 1.35 times the combined average annual principal and interest requirements of all outstanding Parity Revenue Obligations, the City will be required to commence maintaining the Reserve Fund as provided in this Section 8.05, and to continue maintaining such Reserve Fund until the earlier of (i) such time as the Reserve Fund is

fully funded or (ii) the "net revenues" in each of two consecutive years have been equal to not less than 1.35 times the combined average annual principal and interest requirements of all outstanding Parity Revenue Obligations. Notwithstanding the provisions of subsection (a) above, if the City commences deposits in the Reserve Fund and later is authorized to suspend payments into the fund under this section any funds so accumulated may, at the discretion of the City: (i) remain in the Reserve Fund or (ii) be used for any lawful purpose including additional projects or to pay debt service on the Bonds. The term "net revenues" as used in this Section shall mean the gross revenues of the System after deduction of maintenance and operating expenses, but not deducting depreciation or expenditures which, under standard accounting practices, are classed as capital expenditures.

Section 8.06. Deficiencies in Funds.

If in any month the City shall, for any reason, fail to pay into the Interest and Sinking Fund and Reserve Fund the full amounts required, amounts equivalent to such deficiencies shall be set apart and paid into said Funds from the first available and unallocated revenues of the System for the following month or months and such payments shall be in addition to the amounts hereinabove provided to be otherwise paid into said Funds during such month or months.

Section 8.07. Excess Revenues.

Any revenues in excess of those required to establish and maintain the Funds as above required may be used to purchase and retire Parity Revenue Obligations in the open market at not exceeding the market value thereof, the redemption of such obligations, or for any lawful purpose now or hereafter provided by law.

Section 8.08. Security of Funds.

All moneys on deposit in the funds referred to in this Ordinance shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

Section 8.09. Investments.

(a) Money in the Funds established by this Ordinance, at the option of the City, may be invested in such securities or obligations as permitted under applicable law.

(b) Any securities or obligations in which money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 8.10. Investment Income.

Interest and income derived from investment of any fund created by this Ordinance shall be credited to such fund.

## ARTICLE IX

### ADDITIONAL OBLIGATIONS

#### Section 9.01. Issuance of Additional Parity Obligations Authorized.

In addition to the right to issue obligations of inferior lien as authorized by the laws of this State, the City reserves the right to issue Additional Parity Obligations which, when duly authorized and issued in compliance with law and the terms and conditions hereinafter appearing, shall be on a parity with the Bonds herein authorized, Series 2010 Bonds, the Series 2011 Bonds, the Series 2012 Bonds, the Series 2013 Bonds and any Additional and Parity Obligations payable from and equally and ratably secured by a first lien on and pledge of the Net Revenues of the System and Additional Parity Obligations shall in all respects be of equal dignity. The Additional Parity Obligations may be issued in one or more installments, provided, however, that none shall be issued unless and until the following conditions have been met:

(a) The City is not then in default as to any covenant, condition or obligation prescribed in an ordinance authorizing the issuance of the outstanding Parity Revenue Obligations.

(b) The proposed Additional Parity Obligations shall have been approved by the Attorney General of Texas.

(c) Each of the Funds created for the payment, security and benefit of the Parity Revenue Obligations contains the amount of money then required to be on deposit therein.

(d) The City has secured from a Certified Public Accountant a certificate or report reflecting that for the fiscal year next preceding the date of the proposed Additional Parity Obligations or a consecutive twelve (12) month period out of the fifteen (15) month period next preceding the month in which the ordinance authorizing the proposed Additional Parity Obligations is adopted, the "net revenues" of the System were equal to at least 1.20 times the combined average annual principal and interest requirements on all Parity Revenue Obligations to be outstanding after the issuance of the proposed Additional Parity Obligations. In making a determination of such net revenues, the Certified Public Accountant may take into consideration a change in the rates and charges for services and facilities afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which such net revenues are determined and, for purposes of satisfying such net revenues test, make a pro forma determination of such net revenues for the period of time covered by the certificate or report based upon such change in rates and charges as being in effect for the entire period covered by the certificate or report. The term "net revenues" as used in this Section 9.01 shall mean the gross revenues of the System after deduction of maintenance and operating expenses, but not deducting depreciation or expenditures which, under standard accounting practices, are classed as capital expenditures.

(e) The ordinance authorizing the Additional Parity Obligations provides (i) that the Interest and Sinking Fund be augmented by amounts adequate to accumulate the sum required to pay the principal and interest on such obligations as the same shall become due, and (ii) (a) the amount to be accumulated and maintained in the Reserve Fund, or such amount together with the amount or amounts any Reserve Policy or Policies, shall be increased to an amount not less than the average annual principal and interest requirements of all Parity Revenue Obligations to be outstanding after giving effect to the issuance of the proposed additional obligations, and any additional amount required to be maintained in the Reserve Fund shall be accumulated within sixty-one months from the date of delivery of such Additional Parity Obligations or (b) the Reserve Fund is expected to meet the requirements of Section 8.05(d) of this Ordinance.

(f) Parity Revenue Obligations may be refunded (pursuant to any law then available) upon such terms and conditions as the governing body of the City may deem to be in the best interest of the City and its inhabitants; and if less than all such outstanding Parity Revenue Obligations are refunded, the proposed refunding obligations shall be considered as "Additional Parity Obligations" under the provisions of this Section, and the report or certificate required by paragraph (d) shall give effect to the issuance of the proposed refunding obligations and shall not give effect to the obligations being refunded.

## ARTICLE X

### PARTICULAR REPRESENTATIONS AND COVENANTS

#### Section 10.01. Rates and Charges.

The City covenants and agrees with the Owners of the Bonds that so long as any Parity Revenue Obligations, or any interest thereon, remain outstanding and unpaid, it will charge and collect for services rendered by the System amounts sufficient at all times to:

- (a) Pay all operating, maintenance, depreciation, replacement and betterment expenses, and other costs deductible in determining Net Revenues;
- (b) Establish and maintain the Interest and Sinking Fund and Reserve Fund created for the payment and security of the Parity Revenue Obligations; and
- (c) Pay the requirements of all other outstanding lawful indebtedness of the System as and when the same becomes due.

#### Section 10.02. Maintenance and Operation; Insurance.

The City shall maintain the System in good condition and operate the same in an efficient manner and at reasonable cost. So long as any Parity Revenue Obligations are outstanding, the City agrees to maintain insurance for the benefit of the holder or holders of the obligations on the System of a kind and in an amount which usually would be carried by private companies engaged in a

similar type of business. Nothing in this ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the operation of the System, but nothing herein shall be construed as preventing the City from doing so.

Section 10.03. Records; Accounts; Accounting Reports.

The City hereby covenants and agrees that so long as any Parity Revenue Obligations, or any interest thereon, remain outstanding and unpaid, it will keep and maintain a proper and complete system of records and accounts pertaining to the operation of the System, separate and apart from all other records and accounts, in which complete and correct entries shall be made of all transactions relating thereto, as provided by Chapter 1502, Texas Government Code, as amended, and that the owner or owners of any of said Parity Revenue Obligations or any duly authorized agent or agents of such owners shall have the right at all reasonable times to inspect all such records, accounts and data relating thereto, and to inspect the System and all properties comprising same. The City further agrees that within 90 days following the close of each fiscal year, it will cause an audit of such books and accounts to be made by an independent firm of Certified Public Accountants or Licensed Public Accountants. Each such audit, in addition to whatever other matters may be thought proper by the Accountant, shall particularly include the following:

- (a) A detailed statement of the income and expenditures of the System for such fiscal year.
- (b) A balance sheet as of the end of such fiscal year.
- (c) The Accountant's comments regarding the manner in which the City has carried out the requirements of this ordinance and his recommendations for any changes or improvements in the operation, records and accounts of the System.
- (d) A list of the insurance policies in force at the end of the fiscal year on the System properties, setting out as to each policy the amount thereof, the risk covered, the name of the insurer, and the policy's expiration date.
- (e) A list of the securities which have been on deposit as security for the money in the Interest and Sinking Fund throughout the fiscal year, a list of the securities, if any, in which the Reserve Fund has been invested, and a statement of the manner in which money in the System Fund has been secured in such fiscal year.
- (f) The number of properties connected with the System.

Expenses incurred in making the audits above referred to are to be regarded as maintenance and operating expenses of the System and paid as such.

Section 10.04. Special Covenants.

The City hereby further covenants as follows:

(a) The City has the lawful power to pledge the Net Revenues supporting this issue of Bonds and has lawfully exercised said power under the Constitution and laws of the State of Texas, including said power existing under Chapter 1502, Texas Government Code, as amended; that the Bonds and the Additional Parity Obligations, when issued, shall be ratably secured under said pledge in such manner that one issue of Parity Revenue Obligations shall have no preference over any other issue.

(b) Other than the Parity Revenue Obligations to be outstanding following issuance of the Bonds and certain obligations of the City which may be issued in the future secured by and payable from a lien on and pledge of the Net Revenues, the Bonds, the Series 2010 Bonds, the Series 2011 Bonds, the Series 2012 Bonds, the Series 2013 Bonds and any Additional and any Additional Parity Obligations, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

(c) So long as any of the Bonds or any interest thereon remain outstanding, the City will not sell or encumber the System or any substantial part thereof, provided that this shall not be construed to prohibit the sale of such machinery or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System; also, with the exception of the Additional Parity Obligations expressly permitted by this Ordinance to be issued, it will not encumber the Net Revenues of the System unless such encumbrance is made junior and subordinate to all of the provisions of this Ordinance.

(d) No free service of the System shall be allowed, and should the City or any of its agencies or instrumentalities make use of the services and facilities of the System, payment of the reasonable value thereof shall be made by the City out of moneys from sources other than the revenues and income of the System.

(e) To the extent that it legally may, the City further covenants and agrees that, as long as any Parity Revenue Obligations, or any interest thereon, are outstanding, no franchise shall be granted for the installation or operation of any competing waterworks or sewer system; and that the City will prohibit the operation of any water system or sewer system other than those owned by the City, and the operation of any such system by anyone other than this City is hereby prohibited.

**Section 10.05. Payment of the Bonds.**

While any of the Bonds are outstanding and unpaid, there shall be made available to the Paying Agent/Registrar, out of the Interest and Sinking Fund, money sufficient to pay the interest on and the principal of the Bonds, as applicable, as will accrue or mature on each applicable Interest Payment Date.

**Section 10.06. Other Representations and Covenants.**

(a) The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Ordinance and in each Bond; and the City will, at the times and in the manner prescribed by this Ordinance and the Pricing Certificate, deposit or cause to be deposited the amounts of money specified by this Ordinance and the Pricing Certificate.

(b) The City is duly authorized under the laws of the State of Texas to issue the Bonds; all action on its part for the creation and issuance of the Bonds has been duly and effectively taken; and the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City in accordance with their terms.

Section 10.07. Covenants Regarding Tax Exemption of Interest on the Tax-Exempt Bonds.

(a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Tax-Exempt Bonds as obligations described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Tax-Exempt Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Tax-Exempt Bonds, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Tax-Exempt Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Tax-Exempt Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Tax-Exempt Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Tax-Exempt Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Tax-Exempt Bonds, other than investment property acquired with --

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the Tax-Exempt Bonds are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Tax-Exempt Bonds;

(7) to otherwise restrict the use of the proceeds of the Tax-Exempt Bonds or amounts treated as proceeds of the Tax-Exempt Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Tax-Exempt Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Tax-Exempt Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the Refunded Obligations not expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter

promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Tax-Exempt Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Tax-Exempt Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the City Manager or Director of Finance to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Tax-Exempt Bonds. This Ordinance is intended to satisfy the official intent requirements set forth in Section 1.150-2 of the Treasury Regulations.

(d) Disposition of Project. The City covenants that the property constituting the project financed by the Refunded Obligations will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Tax-Exempt Bonds. For purposes of this subsection, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes of this subsection, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

## ARTICLE XI

### DEFAULT AND REMEDIES

#### Section 11.01. Events of Default.

Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an "Event of Default," to-wit:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any Owner to the City; or

- (iii) the City files bankruptcy.

Section 11.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then and in every case any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Bonds then outstanding.

Section 11.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

## ARTICLE XII

### DISCHARGE AND DEFEASANCE

Section 12.01. Defeasance of Bonds.

(a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest

in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased Bonds shall have become due and payable or (3) any combination of (1) and (2). At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the revenues herein pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Bond as aforesaid when proper notice of redemption of such Bonds shall have been given or upon the establishment of irrevokable provisions for the giving of such notice, in accordance with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bond and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bond affected thereby.

(e) Notwithstanding the provisions of subsection (a) immediately above, to the extent that, upon the defeasance of any Defeased Bond to be paid at its maturity, the City retains the right under Texas law to later call that Defeased Bond for redemption in accordance with the provisions of this Ordinance, the City may call such Defeased Bond for redemption upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) immediately above with respect to such Defeased Bond as though it was being defeased at the time of the exercise of the option to redeem the Defeased Bond and the effect of the redemption is taken into

account in determining the sufficiency of the provisions made for the payment of the Defeased Bond.

## ARTICLE XIII

### CONTINUING DISCLOSURE UNDERTAKING

#### 13.01 Continuing Disclosure Undertaking.

(a) Annual Reports. The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of any fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 7.01 of this Ordinance, being the information as designated by the Pricing Officer in the Pricing Certificate. Any financial statements to be so provided shall be (1) prepared in accordance with the accounting principles described in Exhibit "B" hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements within such period, and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet web site or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(b) Event Notices. The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, of any of the following events with respect to the Bonds:

- A. Principal and interest payment delinquencies;
- B. Non-payment related defaults, if material within the meaning of the federal securities laws;
- C. Unscheduled draws on debt service reserves reflecting financial difficulties;
- D. Unscheduled draws on credit enhancements reflecting financial difficulties;

- E. Substitution of credit or liquidity providers, or their failure to perform;
- F. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other events affecting the tax status of the Bonds;
- G. Modifications to rights of holders of the Bonds, if material within the meaning of the federal securities laws;
- H. Bond calls, if material within the meaning of the federal securities laws and tender offers;
- I. Defeasances;
- J. Release, substitution, or sale of property securing repayment of the Bonds, if material within the meaning of the federal securities laws;
- K. Rating changes;
- L. Bankruptcy, insolvency, receivership or similar event of the City;
- M. The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material within the meaning of the federal securities laws;
- N. Appointment of a successor or additional trustee or the change of name of a trustee, if material within the meaning of the federal securities laws;
- O. Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
- P. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (a) of this Section by the time required by such subsection. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(c) Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Section 12.02 of this Ordinance that causes the Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

**UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.**

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change

in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consents to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

(d) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

"Financial Obligation" means (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

#### ARTICLE XIV

#### AMENDMENT OF ORDINANCE; FURTHER PROCEDURES; AND SEVERABILITY

##### Section 14.01. Amendment of Ordinance.

The City hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The City may from time to time, without the consent of any holder, except as otherwise required by paragraph (b) below, amend or supplement this Ordinance in order to (i) cure any ambiguity, defect or omission in this Ordinance that does not materially adversely affect the interests of the holders, (ii) grant additional rights or security for the benefit of the holders, (iii) add events of default as shall not be inconsistent with the provisions of this Ordinance and that shall not materially adversely affect the interests of the holders, (iv) qualify this Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (v) make such other provisions in regard to matters or questions arising under this Ordinance as shall not be inconsistent with the provisions of this Ordinance and that shall not in the opinion of the City's Bond Counsel materially adversely affect the interests of the holders.

(b) Except as provided in paragraph (a) above, the holders of Bonds aggregating in principal amount 51% of the aggregate principal amount of then outstanding Bonds that are the subject of a proposed amendment shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the City; provided, however, that without the consent of 100% of the holders in aggregate principal amount of the then outstanding Bonds, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Ordinance or in any of the Bonds so as to:

- (1) Make any change in the maturity of any of the outstanding Bonds;
- (2) Reduce the rate of interest borne by any of the outstanding Bonds;
- (3) Reduce the amount of the principal of, or redemption premium, if any, payable on any outstanding Bonds;
- (4) Modify the terms of payment of principal or of interest or redemption premium on outstanding Bonds or any of them or impose any condition with respect to such payment; or
- (5) Change the minimum percentage of the principal amount of the Bonds necessary for consent to such amendment.

(c) If at any time the City shall desire to amend this Ordinance under this Section, the City shall send by U.S. mail to each registered owner of the affected Bonds a copy of the proposed amendment and cause notice of the proposed amendment to be published at least once in a financial publication published in The City of New York, New York or in the State of Texas. Such published notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the office of the City for inspection by all holders of such Bonds.

(d) Whenever at any time within one year from the date of publication of such notice the City shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all of the Bonds then outstanding that are required for the amendment, which instrument or instruments shall refer to the proposed amendment and that shall specifically consent

to and approve such amendment, the City may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance with such amendatory Ordinance, and the respective rights, duties, and obligations of the City and all holders of such affected Bonds shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the holder of a Bond pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the publication of the notice provided for in this Section, and shall be conclusive and binding upon all future holders of the same Bond during such period. Such consent may be revoked at any time after six months from the date of the publication of said notice by the holder who gave such consent, or by a successor in title, by filing notice with the City, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the affected Bonds then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

#### Section 14.02. Further Procedures.

The officers and employees of the City are hereby authorized 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 on behalf of and under the corporate seal of the City all such instruments, 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, the Bond Purchase Agreement, the Escrow Agreement and the Official Statement. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Manager or Director of Finance of the City, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Attorney General of Texas. In the event that any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, 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 14.03. Severability.

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance is held to be invalid or unenforceable, the remainder of this Ordinance and the application of such section, article, paragraph, sentence, clause, phrase or word to other persons and circumstances nevertheless shall be valid and enforceable; and it is hereby declared that this Ordinance would have been enacted without such invalid or unenforceable provision.

Section 14.04. No Personal Liability.

No covenant or agreement contained in the Bonds, this Ordinance or any corollary instrument shall be deemed to be the covenant or agreement of any member of the City Council or any officer, agent, employee or representative of the City Council in his or her individual capacity, and neither the directors, officers, agents, employees or representatives of the City Council nor any person executing the Bonds shall be personally liable thereon or be subject to any personal liability for damages or otherwise or accountability by reason of the issuance thereof, or any actions taken or duties performed, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the issuance of the Bonds.

Section 14.05. Payment of Attorney General Fee.

The City hereby authorizes the disbursement of a fee equal to the lesser of (i) one-tenth of one percent of the principal amount of the Bonds or (ii) \$9,500, provided that such fee shall not be less than \$750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General's review and approval of public securities and credit agreements, as required by Section 1202.004, Texas Government Code, as amended. The appropriate member of the City's staff is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Bonds.

-----

FINALLY PASSED, APPROVED AND EFFECTIVE ON FIRST READING IN ACCORDANCE WITH Section 1201.028 Texas Government Code this September 24, 2019.

---

Mayor, City of Killeen, Texas

ATTEST:

---

City Secretary, City of Killeen, Texas

[CITY SEAL]

APPROVED AS TO FORM:

---

City Attorney, City of Killeen, Texas

## **EXHIBIT A**

### DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Article XII of this Ordinance.

#### Accounting Principles

The accounting principles referred to in such Article are the accounting principles described in the notes to the financial statements included in the Official Statement.