

**ORDINANCE OF THE CITY OF KENNEDALE, TEXAS**

**AUTHORIZING THE ISSUANCE OF**

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**CITY OF KENNEDALE, TEXAS  
COMBINATION TAX AND REVENUE CERTIFICATES OF  
OBLIGATION, SERIES 2005**  
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**ORDINANCE AUTHORIZING THE ISSUANCE  
OF CERTIFICATES OF OBLIGATION**

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**THE STATE OF TEXAS** §  
**COUNTY OF TARRANT** §  
**CITY OF KENNEDALE** §

WHEREAS, the City Council deems it advisable to issue Certificates of Obligation in the amount of \$790,000 for the purpose of paying all or a portion of the City's contractual obligations incurred for the construction of a new library and community center facility, the acquisition of interests in land relating to such facility and the construction of parking improvements relating to the facility and for the payment of legal, fiscal and engineering fees in connection with these projects; and

WHEREAS, the Certificates of Obligation hereinafter authorized and designated are to be issued and delivered for cash pursuant to Subchapter C of Chapter 271, Local Government Code and Chapter 1502, Government Code, as amended; and

WHEREAS, the City Council has heretofore passed a resolution authorizing and directing the City Secretary to give notice of intention to issue Certificates of Obligation; and

WHEREAS, said notice has been duly published in a newspaper of general circulation in said City, said newspaper being a "newspaper" as defined in §2051.044, Texas Government Code; and

WHEREAS, the City received no petition from the qualified electors of the City protesting the issuance of such Certificates of Obligation; and

WHEREAS, it is considered to be to the best interest of the City that said interest bearing Certificates of Obligation be issued.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KENNEDALE:**

Section 1. **RECITALS, AMOUNT AND PURPOSE OF THE CERTIFICATES.** The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section. The certificates of the City of Kennedale, Texas (the "Issuer") are hereby authorized to be issued and delivered in the aggregate principal amount of \$790,000 for the purpose of paying all or a portion of the Issuer's contractual obligations incurred for the construction of a new library and community center facility, the acquisition of interests in land relating to such facility and the construction of parking improvements relating to the facility and for the payment of legal, fiscal and engineering fees in connection with these projects (collectively, the "Project").

Section 2. **DESIGNATION, DATE, DENOMINATIONS, NUMBERS, MATURITIES OF CERTIFICATES AND INTEREST RATES.** Each certificate issued pursuant to this Ordinance shall be designated: "CITY OF KENNEDALE, TEXAS, COMBINATION TAX AND REVENUE

CERTIFICATE OF OBLIGATION, SERIES 2005", and initially there shall be issued, sold, and delivered hereunder one fully registered certificate, without interest coupons, dated February 1, 2005, in the principal amount stated above and in the denominations hereinafter stated, numbered T-1, with certificates issued in replacement thereof being in the denominations and principal amounts hereinafter stated and numbered consecutively from R-1 upward, payable to the respective Registered Owners thereof (with the initial certificate being made payable to the initial purchaser as described in Section 11 hereof), or to the registered assignee or assignees of said certificates or any portion or portions thereof (in each case, the "Registered Owner"). The Certificates shall mature on February 15 in the years and in the principal amounts and interest rates set forth below, interest on each Certificate accruing on the basis of a 360-day year of twelve 30-day months from February 1, 2005 or the most recent interest payment date to which interest has been paid or provided for at the per annum rates of interest, payable semiannually on February 15 and August 15 of each year until the principal amount shall have been paid or provision for such payment shall have been made, commencing February 15, 2006, as follows:

Year	Principal Amount	Interest Rate	Year	Principal Amount	Interest Rate
2008	\$30,000	4.25%	***	***	***
2009	30,000	4.25	2018	\$ 80,000	3.90%
2010	30,000	4.25	***	***	***
2011	30,000	4.25	2021	135,000	4.10
2012	35,000	4.25	***	***	***
2013	35,000	4.25	2024	155,000	4.30
2014	35,000	4.25	***	***	***
***	***	***	2026	115,000	4.40
2016	80,000	3.65			

Section 3. CHARACTERISTICS OF THE CERTIFICATES. (a) Registration, Transfer, Conversion and Exchange; Authentication. The Issuer shall keep or cause to be kept at the principal corporate trust office of Wachovia Bank, National Association, Houston, Texas, the "Paying Agent/Registrar"), books or records for the registration of the transfer, conversion and exchange of the Certificates (the "Registration Books"), and the Issuer hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the Issuer and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the registered owner of each Certificate to which payments with respect to the Certificates shall be mailed, as herein provided; but it shall be the duty of each registered owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The Issuer shall have the right to inspect the Registration Books 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 Issuer shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer, conversion, exchange and delivery of a substitute Certificate or Certificates. Registration of assignments, transfers, conversions and exchanges of Certificates shall be made in the manner provided and with the effect stated in the FORM OF CERTIFICATE set forth in this Ordinance. Each substitute Certificate shall bear a letter and/or number to distinguish it from each other Certificate.

Except as provided in Section 3(c) of this Ordinance, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate, date and manually sign said Certificate, and no such Certificate shall be deemed to be issued or outstanding unless such Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all paid Certificates and Certificates surrendered for conversion and exchange. No additional ordinances, orders, or resolutions need be passed or adopted by the governing body of the Issuer or any other body or person so as to accomplish the foregoing conversion and exchange of any Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Certificates in the manner prescribed herein, and said Certificates shall be printed or typed on paper of customary weight and strength. Pursuant to Chapter 1201, Government Code, and particularly Subchapter D thereof, the duty of conversion and exchange of Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Certificate, the converted and exchanged Certificate shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates that initially were issued and delivered pursuant to this Ordinance, approved by the Attorney General and registered by the Comptroller of Public Accounts.

(b) Payment of Certificates and Interest. The Issuer hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the Issuer and the Paying Agent/Registrar with respect to the Certificates, and of all conversions and exchanges of Certificates, and all replacements of Certificates, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (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 Issuer. Notice of the past due interest shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each registered owner appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(c) In General. The Certificates (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities (notice of which shall be given to the Paying Agent/Registrar by the Issuer at least 50 days prior to any such redemption date), (iii) may be converted and exchanged for other Certificates, (iv) may be transferred and assigned, (v) shall have the characteristics, (vi) shall be signed, sealed, executed and authenticated, (vii) the principal of and interest on the Certificates shall be payable, and (viii) shall be administered and the Paying Agent/Registrar and the Issuer shall have certain duties and responsibilities with respect to the

Certificates, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF CERTIFICATE set forth in this Ordinance. The Certificate initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Certificate issued in conversion of and exchange for any Certificate or Certificates issued under this Ordinance the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF CERTIFICATE.

(d) Book-Entry Only System. The Certificates issued in exchange for the Certificate initially issued to the initial purchaser specified herein shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"), and except as provided in subsection (f) hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Paying Agent/Registrar shall have no responsibility or obligation to any securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created ("DTC Participant") to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates. Without limiting the immediately preceding sentence, the Issuer 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 Certificates, (ii) the delivery to any DTC Participant or any other person, other than a Registered Owner of Certificates, as shown on the Registration Books, of any notice with respect to the Certificates, or (iii) the payment to any DTC Participant or any other person, other than a Registered Owner of Certificates, as shown in the Registration Books of any amount with respect to principal of or interest on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the Issuer and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Registration Books as the absolute owner of such Certificate for the purpose of payment of principal and interest with respect to such Certificate, for the purpose of registering transfers with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and interest on the Certificates only to or upon the order of the Registered Owners, as shown in the Registration Books 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 Issuer's obligations with respect to payment of principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than a Registered Owner, as shown in the Registration Books, shall receive a Certificate evidencing the obligation of the Issuer to make payments of principal and interest 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 being mailed to the Registered Owner at the close of business on the Record date, the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

(e) Successor Securities Depository; Transfers Outside Book-Entry Only System. In the event that the Issuer determines that DTC is incapable of discharging its responsibilities described herein and in the representations letter of the Issuer to DTC or that it is in the best interest of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the Issuer shall (i) appoint a successor securities depository, qualified to act as such under Section 17A of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Certificates to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Certificates and transfer one or more separate certificated Certificates to DTC Participants having Certificates credited to their DTC accounts. In such event, the Certificates shall no longer be restricted to being registered in the Registration Books 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 Registered Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

(f) Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Certificate and all notices with respect to such Certificate shall be made and given, respectively, in the manner provided in the representations letter of the Issuer to DTC.

(g) Cancellation of Initial Certificate. On the closing date, one initial Certificate representing the entire principal amount of the Certificates, payable in stated installments to the purchaser designated in Section 11 or its designee, executed by manual or facsimile signature of the Mayor and City Secretary of the Issuer, 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 such purchaser or its designee. Upon payment for the initial Certificate, the Paying Agent/Registrar shall cancel the initial Certificate and deliver to the Depository Trust Company on behalf of such purchaser one registered definitive Certificate for each year of maturity of the Certificates, in the aggregate principal amount of all of the Certificates for such maturity.

Section 4. FORM OF CERTIFICATES. The form of the Certificates, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Certificates initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance.

(a) [Form of Certificate]

NO. R-	UNITED STATES OF AMERICA STATE OF TEXAS CITY OF KENNEDALE, TEXAS COMBINATION TAX AND REVENUE CERTIFICATE OF OBLIGATION SERIES 2005	PRINCIPAL AMOUNT \$ _____
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<u>Interest Rate</u>	<u>Dated Date</u>	<u>Maturity Date</u>	<u>CUSIP No.</u>
	February 1, 2005	February 15, _____	

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

ON THE MATURITY DATE specified above, the City of Kennedale, in Tarrant County, Texas (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on the Maturity Date specified above, the Principal Amount specified above. The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from February 1, 2005 at the Interest Rate per annum specified above. Interest is payable on February 15, 2006 and semiannually on each August 15 and February 15 thereafter to the Maturity Date specified above, or the date of redemption prior to maturity; except, if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates, if any, for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full.

THE PRINCIPAL OF AND INTEREST ON this Certificate are payable in lawful money of the United States of America, without exchange or collection charges. The principal of this Certificate shall be paid to the registered owner hereof upon presentation and surrender of this Certificate at maturity, or upon the date fixed for its redemption prior to maturity, at the principal corporate trust office of Wachovia Bank, National Association, Houston, Texas, which is the "Paying Agent/Registrar" for this Certificate. The payment of interest on this Certificate shall be made by the Paying Agent/Registrar to the registered owner hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable

solely from, funds of the Issuer required by the ordinance authorizing the issuance of this Certificate (the "Certificate Ordinance") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the registered owner hereof, at its address as it appeared on the last day of the month preceding each such date (the "Record Date") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. In the event of a non-payment of interest on a scheduled 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 Issuer. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each owner of a Certificate appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

ANY ACCRUED INTEREST due at maturity or upon the redemption of this Certificate prior to maturity as provided herein shall be paid to the registered owner upon presentation and surrender of this Certificate for redemption and payment at the principal corporate trust office of the Paying Agent/Registrar. The Issuer covenants with the registered owner of this Certificate that on or before each principal payment date, interest payment date, and accrued interest payment date for this Certificate it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Certificate Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Certificates, when due.

IF THE DATE for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, a legal holiday or a day on which banking institutions in the city where the principal corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day that is not such a Saturday, Sunday, legal holiday or day on which 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 CERTIFICATE is one of a series of Certificates dated February 1, 2005, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$790,000 for the purpose of paying all or a portion of the City's contractual obligations incurred for the construction of a new library and community center facility, the acquisition of interests in land relating to such facility and the construction of parking improvements relating to the facility and for the payment of legal, fiscal and engineering fees in connection with these projects.

ON FEBRUARY 15, 2015, or on any date thereafter, the Certificates of this series having stated maturities on and after February 15, 2016, may be redeemed prior to their scheduled maturities, at the option of the Issuer, with funds derived from any available and lawful source, as a

whole, or in part, and, if in part, the particular Certificates, or portions thereof, to be redeemed shall be selected and designated by the Issuer (provided that a portion of a Certificate may be redeemed only in an integral multiple of \$5,000), at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.

IN ADDITION TO THE OPTIONAL REDEMPTION OF THE CERTIFICATES described above, the Certificates of this series maturing on February 15 in the years 2016, 2018, 2021, 2024 and 2026 are subject to mandatory redemption prior to maturity in part at random, by lot or other customary method selected by the Paying Agent/Registrar, at par plus accrued interest to the redemption date, in amounts sufficient to redeem said Certificates on February 15 in the years and principal amounts shown on the following schedule. Such Certificates shall be redeemed with funds from the "Interest and Sinking Fund" created by the Certificate Ordinance and shall be redeemed by the Paying Agent/Registrar in part prior to maturity with funds from the Interest and Sinking Fund, for the principal amount thereof and accrued interest to the date of redemption, and without premium, on each of the aforesaid dates, in the principal amounts, respectively, as set forth in the following schedule:

Certificates Maturing February 15, 2016		Certificates Maturing February 15, 2018		Certificates Maturing February 15, 2021		Certificates Maturing February 15, 2024		Certificates Maturing February 15, 2026	
Principal									
<u>Year</u>	<u>Amount</u>								
2015	\$40,000	2017	\$40,000	2019	\$45,000	2022	\$50,000	2025	\$55,000
2016 <sup>(1)</sup>	40,000	2018 <sup>(1)</sup>	40,000	2020	45,000	2023	50,000	2026 <sup>(1)</sup>	60,000
				2021 <sup>(1)</sup>	45,000	2024 <sup>(1)</sup>	55,000		

<sup>(1)</sup>Final maturity of Certificate.

The principal amount of the Certificates required to be redeemed pursuant to the operation of such mandatory sinking fund shall be reduced by the principal amount of any Certificates that, at least 50 days prior to the mandatory sinking fund redemption date, shall have been (1) purchased by the Issuer and delivered to the Paying Agent/Registrar for redemption or (2) redeemed pursuant to the optional redemption provision described below and delivered to the Paying Agent/Registrar for cancellation.

AT LEAST 30 days prior to the date fixed for any redemption of Certificates or portions thereof prior to maturity a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption, to the registered owner of each Certificate to be redeemed at its address as it appeared on the 45th day prior to such redemption date and to major securities depositories, national bond rating agencies and bond information services; provided, however, that the failure of the registered owner to receive such notice, or any defect therein or in the sending or mailing thereof, shall not affect the validity or effectiveness of the proceedings for the redemption of any Certificate. By the date fixed for any such redemption due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Certificates or portions thereof that are to be so redeemed. If such written notice of redemption is sent and if due provision for such payment is made, all as provided above, the Certificates or portions thereof that

are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Certificate shall be redeemed, a substitute Certificate or Certificates having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the Issuer, all as provided in the Certificate Ordinance.

ALL CERTIFICATES OF THIS SERIES are issuable solely as fully registered certificates, without interest coupons, in the denomination of any integral multiple of \$5,000. As provided in the Certificate Ordinance, this Certificate may, at the request of the registered owner or the assignee or assignees hereof, be assigned, transferred, converted into and exchanged for a like aggregate principal amount of fully registered certificates, without interest coupons, payable to the appropriate registered owner, assignee or assignees, as the case may be, having the same denomination or denominations in any integral multiple of \$5,000 as requested in writing by the appropriate registered owner, assignee or assignees, as the case may be, upon surrender of this Certificate to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Certificate Ordinance. Among other requirements for such assignment and transfer, this Certificate must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate or any portion or portions hereof in any integral multiple of \$5,000 to the assignee or assignees in whose name or names this Certificate or any such portion or portions hereof is or are to be registered. The form of Assignment printed or endorsed on this Certificate may be executed by the registered owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate or any portion or portions hereof from time to time by the registered owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring, converting and exchanging any Certificate or portion thereof will be paid by the Issuer. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, conversion or exchange, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer, conversion, or exchange (i) during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date, or (ii) with respect to any Certificate or any portion thereof called for redemption prior to maturity, within 45 days prior to its redemption date.

IN THE EVENT any Paying Agent/Registrar for the Certificates is changed by the Issuer, resigns, or otherwise ceases to act as such, the Issuer has covenanted in the Certificate Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the registered owners of the Certificates.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly authorized, issued and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization, issuance and delivery of this Certificate have been performed, existed and been done in accordance with law; that this Certificate is a general obligation of said Issuer, issued on the full faith and credit thereof; and that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in said Issuer, and have been pledged for such payment, within the limit prescribed by law, and that this Certificate is additionally secured by and payable from a pledge of the revenues of the Issuer's combined Waterworks and Sewer Systems remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) that are payable from all or part of said revenues, all as provided in the Certificate Ordinance.

BY BECOMING the registered owner of this Certificate, the registered owner thereby acknowledges all of the terms and provisions of the Certificate Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Certificate Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the Issuer, and agrees that the terms and provisions of this Certificate and the Certificate Ordinance constitute a contract between each registered owner hereof and the Issuer.

IN WITNESS WHEREOF, the Issuer has caused this Certificate to be signed with the manual or facsimile signature of the Mayor of the Issuer and countersigned with the manual or facsimile signature of the City Secretary of said Issuer, and has caused the official seal of the Issuer to be duly impressed, or placed in facsimile, on this Certificate.

\_\_\_\_\_  
(signature)  
City Secretary

\_\_\_\_\_  
(signature)  
Mayor

(SEAL)

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

**PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE**  
(To be executed if this Certificate is not accompanied by an  
executed Registration Certificate of the Comptroller  
of Public Accounts of the State of Texas)

It is hereby certified that this Certificate has been issued under the provisions of the Certificate Ordinance described in the text of this Certificate; and that this Certificate has been issued in conversion or replacement of, or in exchange for, a certificate, certificates, or a portion of a certificate or certificates of a series that originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

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

Wachovia Bank, National Association  
Houston, Texas  
Paying Agent/Registrar

By: \_\_\_\_\_  
Authorized Representative

(c) [Form of Assignment]

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_.

Please insert Social Security or Taxpayer Identification Number of Transferee

\_\_\_\_\_

(Please print or typewrite name and address, including zip code, of Transferee.)

\_\_\_\_\_

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to register the transfer of the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.

\_\_\_\_\_

NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

(d) [Form of Registration Certificate of the Comptroller of Public Accounts]

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and that this Certificate has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this

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

(COMPTROLLER'S SEAL)

(e) [Initial Certificate Insertions]

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

A. immediately under the name of the Certificate, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "As shown below" and "CUSIP No. \_\_\_\_\_" shall be deleted.

B. the first paragraph shall be deleted and the following will be inserted:

"THE CITY OF KENNEDALE, TEXAS (the "Issuer"), being a political subdivision and municipal corporation of the State of Texas, hereby promises to pay to the Registered Owner specified above, or registered assigns (hereinafter called the "Registered Owner"), on February 15 in each of 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 Section 2 to be inserted)

The Issuer promises to pay interest on the unpaid principal amount hereof (calculated on the basis of a 360-day year of twelve 30-day months) from February 1, 2005 at the respective Interest Rate per annum specified above. Interest is payable on February 15, 2006 and semiannually on each August 15 and February 15 thereafter to the date of payment of the principal installment specified above, or the date of redemption prior to maturity; except, that if this Certificate is required to be authenticated and the date of its authentication is later than the first Record Date (hereinafter defined), such Principal Amount shall bear interest from the interest payment date next preceding the

date of authentication, unless such date of authentication is after any Record Date but on or before the next following interest payment date, in which case such principal amount shall bear interest from such next following interest payment date; provided, however, that if on the date of authentication hereof the interest on the Certificate or Certificates, if any, for which this Certificate is being exchanged is due but has not been paid, then this Certificate shall bear interest from the date to which such interest has been paid in full."

C. The Initial Certificate shall be numbered "T-1."

Section 5. INTEREST AND SINKING FUND. A special "Interest and Sinking Fund" is hereby created and shall be established and maintained by the Issuer at an official depository bank of the Issuer. Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the Issuer, and shall be used only for paying the interest on and principal of the Certificates. All amounts received from the sale of the Certificates as accrued interest and ad valorem taxes levied and collected for and on account of the Certificates shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while any of the Certificates are outstanding and unpaid, the governing body of the Issuer shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on the Certificates as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Certificates as such principal matures (but never less than 2% of the original amount of the Certificates as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Issuer, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the Issuer, for each year while any of the Certificates are outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Certificates, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

Section 6. SURPLUS REVENUES. The Certificates are additionally secured by and payable from a pledge of the revenues of the Issuer's combined Waterworks and Sewer Systems remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve and other requirements in connection with all of the Issuer's revenue obligations (now or hereafter outstanding) that are payable from all or part of the Net Revenues of the Issuer's Waterworks and Sewer Systems, constituting "Surplus Revenues." The Issuer shall deposit such Surplus Revenues to the credit of the Interest and Sinking Fund created pursuant to Section 5, to the extent necessary to pay the principal and interest on the Certificates. Notwithstanding the requirements of Section 5, if Surplus Revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes that otherwise would have been required to be levied pursuant to Section 5 may be reduced to the extent and by the amount of the Surplus Revenues then on deposit in the Interest and Sinking Fund.

Section 7. DEFEASANCE OF CERTIFICATES. (a) Any Certificate and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Certificate")

within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section 7, when payment of the principal of such Certificate, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, 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 in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Issuer with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates shall have become due and payable. At such time as a Certificate shall be deemed to be a Defeased Certificate hereunder, as aforesaid, such Certificate and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Certificates that is made in conjunction with the payment arrangements specified in subsection 7(a)(i) or (ii) shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the Issuer expressly reserves the right to call the Defeased Certificates for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Certificates immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Issuer be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Issuer, or deposited as directed in writing by the Issuer. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 7(a)(i) or (ii). All income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Defeased Certificates, with respect to which such money has been so deposited, shall be remitted to the Issuer or deposited as directed in writing by the Issuer.

(c) The term "Defeasance Securities" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (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 of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the Issuer adopts or approves the

proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

(d) Until all Defeased Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates the same as if they had not been defeased, and the Issuer shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(e) In the event that the Issuer elects to defease less than all of the principal amount of Certificates of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates by such random method as it deems fair and appropriate.

Section 8. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES. (a) Replacement Certificates. In the event any outstanding Certificate is damaged, mutilated, lost, stolen or destroyed, the Paying Agent/Registrar shall cause to be printed, executed and delivered, a new certificate of the same principal amount, maturity and interest rate, as the damaged, mutilated, lost, stolen or destroyed Certificate, in replacement for such Certificate in the manner hereinafter provided.

(b) Application for Replacement Certificates. Application for replacement of damaged, mutilated, lost, stolen or destroyed Certificates shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft or destruction of a Certificate, the registered owner applying for a replacement certificate shall furnish to the Issuer and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft or destruction of a Certificate, the registered owner shall furnish to the Issuer and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft or destruction of such Certificate, as the case may be. In every case of damage or mutilation of a Certificate, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Certificate shall have matured, and no default has occurred that is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate, the Issuer may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate) instead of issuing a replacement Certificate, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Certificates. Prior to the issuance of any replacement certificate, the Paying Agent/Registrar shall charge the registered owner of such Certificate with all legal, printing, and other expenses in connection therewith. Every replacement certificate issued pursuant to the provisions of this Section by virtue of the fact that any Certificate is lost, stolen or destroyed shall constitute a contractual obligation of the Issuer whether or not the lost, stolen or destroyed Certificate shall be found at any time, or be enforceable by anyone, and shall be entitled to

all the benefits of this Ordinance equally and proportionately with any and all other Certificates duly issued under this Ordinance.

(e) Authority for Issuing Replacement Certificates. In accordance with Subchapter D of Chapter 1201, Government Code, this Section 8 of this Ordinance shall constitute authority for the issuance of any such replacement certificate without necessity of further action by the governing body of the Issuer or any other body or person, and the duty of the replacement of such certificates is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates in the form and manner and with the effect, as provided in Section 3(a) of this Ordinance for Certificates issued in conversion and exchange for other Certificates.

**Section 9. CUSTODY, APPROVAL, AND REGISTRATION OF CERTIFICATES; BOND COUNSEL'S OPINION; CUSIP NUMBERS AND CONTINGENT INSURANCE PROVISION, IF OBTAINED.** (a) The Mayor of the Issuer is hereby authorized to have control of the Certificates initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the Issuer's Bond Counsel and the assigned CUSIP numbers may, at the option of the Issuer, be printed on the Certificates issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the registered owners of the Certificates. In addition, if bond insurance is obtained, the Certificates may bear an appropriate legend as provided by the insurer.

(b) The obligation of the initial purchaser to accept delivery of the Certificates is subject to the initial purchaser being furnished with the final, approving opinion of McCall, Parkhurst & Horton L.L.P., bond counsel to the Issuer, which opinion shall be dated as of and delivered on the date of initial delivery of the Certificates to the initial purchaser. The engagement of such firm as bond counsel to the Issuer in connection with issuance, sale and delivery of the Certificates is hereby approved and confirmed. The execution and delivery of an engagement letter between the Issuer and such firm, with respect to such services as bond counsel, is hereby authorized in such form as may be approved by the Mayor and the Mayor is hereby authorized to execute such engagement letter.

**Section 10. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE CERTIFICATES.** The Issuer covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Certificates as Obligation described in section 103 of 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 Issuer covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Certificates (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 Issuer, 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 Certificates, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds 5 percent of the proceeds of the Certificates 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" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Certificates (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;

(d) to refrain from taking any action that would otherwise result in the Certificates being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Certificates being "federally guaranteed" within the meaning of section 149(b) of the Code;

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

(1) proceeds of the Certificates 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 bonds are issued,

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

(3) 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 Certificates;

(g) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates 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

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) 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 Certificates 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.

In order to facilitate compliance with the above covenant (h), a "Rebate Fund" is hereby established by the Issuer 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 certificateholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

For purposes of the foregoing (a) and (b), the Issuer 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 bonds expended prior to the date of issuance of the Certificates. It is the understanding of the Issuer 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 that modify or expand provisions of the Code, as applicable to the Certificates, the Issuer 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 Certificates under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Certificates, the Issuer 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 Certificates under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Mayor to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, that may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates.

**Section 11. SALE OF CERTIFICATES AND APPROVAL OF OFFICIAL STATEMENT.** The Certificates are hereby initially sold and shall be delivered to Braymen, Lambert and Noel Securities, Ltd. (the "Underwriter"), at a price of \$790,356.85 (which represents the par amount of the Certificates, plus an aggregate net original issue premium on the Certificates of \$4,057.70, less an underwriter's discount of \$7,260.70, and plus accrued interest on the Certificates of \$3,560.10), pursuant to the terms and provisions of a Purchase Agreement that the Mayor is hereby authorized to execute and deliver and that the City Secretary of the Issuer is hereby authorized to attest. It is hereby officially found, determined, and declared that the terms of this sale are the most advantageous reasonably obtainable. The Certificates shall initially be registered in the name of Braymen, Lambert and Noel Securities, Ltd. The Issuer hereby approves the form and content of the Official Statement

relating to the Certificates and any addenda, supplement or amendment thereto, and approves the distribution of such Official Statement in the reoffering of the Certificates by the Underwriter in final form, with such changes therein or additions thereto as the officer executing the same may deem advisable, such determination to be conclusively evidenced by his execution thereof. The distribution and use of the Preliminary Official Statement dated January 31, 2005, prior to the date hereof is hereby ratified and confirmed.

**Section 12. ALLOCATION OF CERTIFICATE PROCEEDS.** The Issuer covenants to account for the expenditure of sale proceeds and investment earnings to be used for the construction and acquisition of the Project on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed. The foregoing notwithstanding, the Issuer shall not expend proceeds of the sale of the Certificates or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Certificates, or (2) the date the Certificates are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of the Certificates or the interest thereon. For purposes hereof, the Issuer 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.

**Section 13. DISPOSITION OF PROJECT.** The Issuer covenants that the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the Issuer of cash or other compensation, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates. For purposes of the foregoing, 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 hereof, the Issuer shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

**Section 14. INTEREST EARNINGS ON CERTIFICATE PROCEEDS.** Interest earnings derived from the investment of proceeds from the sale of the Certificates shall be used along with other certificate proceeds for the Project; provided that after completion of such purpose, if any of such interest earnings remain on hand, such interest earnings shall be deposited in the Interest and Sinking Fund. It is further provided, however, that any interest earnings on certificate proceeds that are required to be rebated to the United States of America pursuant to Section 10 hereof in order to prevent the Certificates from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

**Section 15. CONSTRUCTION FUND.** The Issuer hereby creates and establishes and shall maintain on the books of the Issuer a separate fund to be entitled the "Series 2005 Combination Tax and Revenue Certificate of Obligation Construction Fund" for use by the Issuer for payment of all lawful costs associated with the acquisition and construction of the Project as hereinbefore provided. Upon payment of all such costs, any moneys remaining on deposit in said Fund shall be transferred

to the Interest and Sinking Fund. Amounts so deposited to the Interest and Sinking Fund shall be used in the manner described in Section 5 of this Ordinance.

Section 16. NO RULE 15c2-12 UNDERTAKING. In connection with the sale of the Certificates, the Issuer has made no undertaking with respect to Rule 15c2-12 promulgated by the United States Securities and Exchange Commission, as the offering of the Certificates, in a principal amount of less than \$1,000,000 is exempt from such Rule.

Section 17. METHOD OF AMENDMENT. The Issuer hereby reserves the right to amend this Ordinance subject to the following terms and conditions, to-wit:

(a) The Issuer 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 which shall not materially adversely affect the interests of the holders, (v) 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 (iv) 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 which shall not in the opinion of the Issuer's Bond Counsel materially adversely affect the interests of the holders.

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

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

(c) If at any time the Issuer shall desire to amend this Ordinance under this Section, the Issuer shall send by U.S. mail to each registered owner of the affected Certificates 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 Issuer for inspection by all holders of such Certificates.

(d) Whenever at any time within one year from the date of publication of such notice the Issuer shall receive an instrument or instruments executed by the holders of at least 51% in aggregate principal amount of all of the Certificates then outstanding which are required for the amendment, which instrument or instruments shall refer to the proposed amendment and which shall specifically consent to and approve such amendment, the Issuer 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 Issuer and all holders of such affected Certificates shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the holder of a Certificate 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 Certificate 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 Issuer, but such revocation shall not be effective if the holders of 51% in aggregate principal amount of the affected Certificates then outstanding, have, prior to the attempted revocation, consented to and approved the amendment.

For the purposes of establishing ownership of the Certificates, the Issuer shall rely solely upon the registration of the ownership of such Certificates on the registration books kept by the Paying Agent/Registrar.

Section 18. CONTINUED PERFECTION OF SECURITY INTEREST. Chapter 1208, Government Code, applies to the issuance of the Certificates and the pledge of the ad valorem taxes granted by the Issuer under Section 5 of this Ordinance and the pledge of the Surplus Revenues under Section 6 of this Ordinance, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates are outstanding and unpaid such that the pledge of the taxes granted by the Issuer under Section 5 of this Ordinance or the pledge of the Surplus Revenues under Section 6 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledges, the Issuer agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions

of Chapter 9, Business & Commerce Code and enable a filing to perfect the security interest in said pledges to occur.

Section 19. **INCONSISTENT PROVISIONS.** All indentures, ordinances or resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

Section 20. **GOVERNING LAW.** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 21. **SEVERABILITY.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 22. **DESIGNATION AS QUALIFIED TAX-EXEMPT OBLIGATIONS.** The Issuer hereby designates the Certificates as "qualified tax-exempt obligations" as defined in section 265(b)(3) of the Code. In furtherance of such designation, the Issuer represents, covenants and warrants the following: (a) that during the calendar year in which the Certificates are issued, the Issuer (including any subordinate entities) has not designated nor will designate obligations that when aggregated with the Certificates, will result in more than \$10,000,000 of "qualified tax-exempt bonds" being issued; (b) that the Issuer reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Certificates are issued, by the Issuer (or any subordinate entities) will not exceed \$10,000,000; and, (c) that the Issuer will take such action or refrain from such action as necessary, and as more particularly set forth in Section 10, hereof, in order that the Certificates will not be considered "private activity bonds" within the meaning of section 141 of the Code.

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