

6,7 1st. 2000 gals.

ORDINANCE NO. 56

4908,000 - excess if needed

AN ORDINANCE authorizing the issuance of "CITY OF ZAVALLA, TEXAS, TAX AND SEWER SYSTEM SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 1996"; specifying the terms and features of said certificates; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the City and a pledge of the net revenues from the operation of the City's Sewer System; and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said Certificates, including the approval and execution of a Paying Agent/Registrar Agreement and the approval and distribution of an Official Statement; and providing an effective date.

WHEREAS, notice of the City Council's intention to issue certificates of obligation in the maximum principal amount of \$950,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of improvements and extensions to the City's Sewer System and (ii) professional services rendered in relation to such contraction and the financing thereof, has been duly published in the L.D. News a newspaper hereby found and determined to be of general circulation in the City of Zavalla, Texas, on \_\_\_\_\_, 1996 and \_\_\_\_\_, 1996, the date the first publication of such notice being not less than fifteen (15) days prior to the tentative date stated therein for the passage of the ordinance authorizing the issuance of such certificates; and

WHEREAS, no petition protesting the issuance of the None certificates of obligation and bearing valid petition signatures of at least 5% of the qualified electors of the City, has been presented to or filed with the Mayor, City Secretary or any other official of the City on or prior to the date of the passage of this ordinance; and

WHEREAS, the Council hereby finds and determines that all of the certificates of obligation described in such notice should be issued and sold at this time; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ZAVALLA, TEXAS:

SECTION 1: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net

Revenues therefor, the following words or terms, whenever the same appears herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Obligations" shall mean tax and revenue obligations hereafter issued which by their terms are payable from ad valorem taxes and additionally payable from and secured by a parity lien on and pledge of the Net Revenues of the System of equal rank and dignity with the lien and pledge securing the payment of the Previously Issued Certificates and the Certificates.

(b) The term "Certificates" shall mean the \$908,000 "City of Zavalla, Texas, Tax and Sewer System Surplus Revenue Certificates of Obligation, Series 1996" authorized by this Ordinance.

(c) The term "Certificate Fund" shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(d) The term "Collection Date" shall mean, when reference is being made to the levy and collection of annual ad valorem taxes, the date the annual ad valorem taxes levied each year by the City become delinquent.

(e) The term "Fiscal Year" shall mean the twelve month accounting period used by the City in connection with the operation of the System which may be any twelve consecutive month period established by the City.

(f) The term "Government Obligations" shall mean direct obligations of the United States of America, including obligations the principal of and interest on which are fully and unconditionally guaranteed by the United States of America, and United State Treasury obligations such as its State and Local Government Series in book entry form.

(g) The term "Gross Revenues" shall mean all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding refundable meter deposits, restricted gifts and grants in aid of construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts and other obligations payable from and secured only by a lien on and pledge of the Net Revenues.

(h) The term "Operating and Maintenance Expenses" shall mean all current expenses of operating and maintaining the System, 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 maintain the operations 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 obligations payable from Net Revenues shall be deducted in determining "Net Revenues." Depreciation shall not be considered Operating and Maintenance Expenses. Operating and Maintenance Expenses shall include payments under contracts for the purchase of water supply, treatment of sewage or other materials, goods, services or facilities for the System to the extent authorized by law and the provisions of such contract.

(i) The term "Net Revenues" shall mean the Gross Revenues of the System, with respect to any period, after deducting the System's Operating and Maintenance Expenses during such period.

(j) The term "Outstanding" when used in this Ordinance with respect to Certificates means, as of the date of determination, all Certificates theretofore issued and delivered under the Ordinance, except:

(1) those Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Certificates for which payment has been duly provided by the City in accordance with the provisions of Section 21 hereof; and

(3) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 20 hereof.

(k) The term "System" shall mean and include the sanitary sewer system of the City, including all present and future extensions, additions, replacements and improvements thereto.

SECTION 2: Authorization, Designation, Principal Amount, Purpose. Certificates of obligation of the City shall be and are hereby authorized to be issued in the aggregate principal amount of \$908,000, to be designated and bear the title "CITY OF ZAVALLA, TEXAS, TAX AND SEWER SYSTEM SURPLUS REVENUE CERTIFICATES OF OBLIGATIONS, SERIES 1996" (hereinafter referred to as the "Certificates"), for the purpose of paying contractual obligations to be incurred for (i) the construction of improvements and extensions to the City's Sewer System and (ii) professional services rendered in relation to such construction and the financing thereof, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, Texas Local Government Code, Subchapter C of Chapter 271, as amended.

SECTION 3: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Date. The Certificates are issuable in fully registered form only; shall be dated September 1, 1996 (the "Certificate Date") and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Certificates shall become due and payable on September 1 in each of the years and in principal amounts (the "Stated Maturities") in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate(s)</u>
1998	\$ 9,445	4.5 %
1999	9,870	4.5 %
2000	10,314	4.5 %
2001	10,778	4.5 %
2002	11,263	4.5 %
2003	11,770	4.5 %
2004	12,299	4.5 %
2005	12,853	4.5 %
2006	13,431	4.5 %
2007	14,667	4.5 %
2008	15,327	4.5 %
2009	16,017	4.5 %
2010	16,738	4.5 %
2011	17,491	4.5 %
2012	18,278	4.5 %
2013	19,100	4.5 %
2014	19,960	4.5 %
2015	20,859	4.5 %
2016	21,797	4.5 %
2017	22,778	4.5 %
2018	23,803	4.5 %
2019	24,874	4.5 %

*\$ 50,000. per yr.*

2020	25,993	4.5	%
2021	27,163	4.5	%
2022	28,286	4.5	%
2023	29,663	4.5	%
2024	30,998	4.5	%
2025	32,393	4.5	%
2026	33,850	4.5	%
2027	35,374	4.5	%
2028	36,965	4.5	%
2029	38,629	4.5	%
2030	40,367	4.5	%
2031	42,184	4.5	%
2032	44,082	4.5	%
2033	46,066	4.5	%
2034	48,139	4.5	%


The Certificates shall bear interest on the unpaid principal amounts from the Certificate Date at the per annum rates shown above in this Section (compute on the basis of a 360-day year of twelve 30-day months) and such interest shall be payable on March 1 and September 1 of each year, commencing March 1, 1997.

SECTION 4: Terms of Payment-Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of \_\_\_\_\_ to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, transfer and exchange of the Certificates (the "Security Registrar") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached hereto as **Exhibit A**, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor and City Secretary are authorized to execute and deliver such Agreement in connection with the delivery of the Certificates. The City covenants to maintain and provide a Paying

Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Certificates shall be payable at the Stated Maturities or redemption only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices in \_\_\_\_\_ (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holders whose name appears in the Security Register at the close of business on the Record Date (the 15th day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the City where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.



In the event of a 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 City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5: Redemption. (a) Optional Redemption. The Certificates having Stated Maturities on and after September 1, 1998, shall be subject to redemption prior to maturity, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on September 1, 1998 or on any date thereafter at the redemption price of par plus accrued interest to the date of redemption.

(b) Exercise of Redemption Option. At least forty-five (45) days prior to a redemption date for the Certificates (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the City shall notify the Paying Agent/Registrar of the decision to redeem Certificates, the principal amount of each Stated Maturity to be redeemed, and the date of redemption therefor. The decision of the City to exercise the right to redeem Certificates shall be entered in the minutes of the governing body of the City.

(c) Selection of Certificates for Redemption. If less than all Outstanding Certificates of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall treat such Certificates as representing the number of Certificates Outstanding which is obtained by dividing the principal amount of such Certificates by \$5,000 and shall select the Certificates to be redeemed within such Stated Maturity by lot.

(d) Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Certificates, a notice of redemption shall be sent by United States Mail, first class postage prepaid, in the name of the City and at the City's expense, to each Holder of a Certificate to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Certificates, (ii) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment

of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the principal office of the Paying Agent/Registrar only upon presentation and surrender of the Certificates. If a Certificate is subject by its terms to prior redemption has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys sufficient for the payment of such Certificate ( or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

SECTION 6: Registration - Transfer - Exchange of Certificates - Predecessor Certificates. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in a form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Certificate (other than the Initial Certificate(s) authorized in Section 8 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates of authorized denominations, having the same Stated Maturity and of a like aggregate principal amount as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates (other than the Initial Certificate(s) authorized in Section 8 hereof) may be exchanged for other Certificates of authorized denominations, having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Certificates surrendered for exchange, upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates to the Holder requesting the exchange.



All Certificates issued in any transfer or exchange of Certificates shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class, postage prepaid to the Holders, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Certificates surrendered in such transfer or exchange.

All transfers or exchanges of Certificates pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Certificates canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate of Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to the provisions of Section 18 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

Neither the City nor the Paying Agent/Registrar shall be required to issue or transfer to an assignee of a Holder any Certificate called for redemption, in whole or in part, within 45 days of the date fixed for the redemption of such Certificate; provided however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Certificate called by redemption in part.

SECTION 7: Execution - Registration. The Certificates shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signature of said officers on the Certificates bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Certificate Date shall be deemed to be duly executed on behalf of the City, notwithstanding that one or more of the individuals executing the same shall cease to be such officer at

the time of delivery of the Certificates to the initial purchaser(s) and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in the Bond Procedures Act of 1981, as amended.

No Certificate shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Certificate either a certificate of registration substantially in the form provided in Section 9C, manually executed by the Comptroller of Public Accounts of the State of Texas, or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9D, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly certified, registered and delivered.

SECTION 8: Initial Certificate(s). The Certificates herein authorized shall be initially issued either (i) as a single fully registered certificate in the total principal amount of \$908,000 with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as forty (40) fully registered certificates, being one certificate for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Certificate(s)") and, in either case, the Initial Certificate(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Certificate(s) shall be the Certificates submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Certificate(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Certificate(s) delivered hereunder and exchange therefor definitive Certificates of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms. A. Forms Generally. The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Certificates, shall be substantially in the "Form of Certificate" attached to this Ordinance and incorporated into it by reference for all purposes, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Certificates, or any maturities thereof, are purchased with insurance and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Certificates as evidenced by their execution. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the certificate.

The Certificates, including the Initial Certificate(s), shall be typewritten, printed, lithographed, or photocopied, or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution.

B. The Initial Certificate(s) shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Certificate shall be modified as follows:

(i) immediately under the name of the certificate the headings "Interest Rate \_\_\_\_\_" and "Stated Maturity \_\_\_\_\_" shall both be omitted;

(ii) paragraph one shall read as follows:

Registered Owner:

Principal Amount: \_\_\_\_\_ Dollars

The City of Zavalla (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Angelina, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on September 1 in each of the years and in principal installments in accordance with the following schedule:

<u>Year</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
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(Information to be inserted from  
schedule in Section 2 hereof).

(or so much thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the Certificate Date at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 of each year, commencing March 1, 1997. Principal installments of this Certificate are payable at its Stated Maturity or on a prepayment date to the registered owner hereof by \_\_\_\_\_, Texas (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in \_\_\_\_\_ (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar

at the close of business on the "Record Date," which is the 15th day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special account or fund on the books and records of the City known as the "SPECIAL SERIES 1996 TAX AND SEWER SYSTEM REVENUE CERTIFICATE OF OBLIGATION FUND," and all moneys deposited to the credit of such Fund shall be kept and maintained in a special banking account at the City's depository bank. Authorized officials of the City are hereby authorized and directed to make withdrawals from said Fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

Pending the transfer of funds to the Paying Agent/Registrar, money in the Certificate Fund may, at the option of the City, be invested in obligations identified in, and in accordance with the provisions of the "Public Funds Investment Act" (Texas Government Code, Chapter 2256) relating to the investment of "Certificate proceeds;" provided that all such investments shall be made in such a manner that the money required to be expended from said Fund will be available at the proper time or times. All interest and income derived from deposits and investments in said Certificate Fund shall be credited to, and any losses debited to, the said Certificate Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Certificates.

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SECTION 11: Tax Levy. To provide for the payment of the "Debt Service Requirements" on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in said City, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The City Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

The amount of taxes to be provided annually for the payment of the principal of and interest on the Certificates shall be determined and accomplished in the following manner:

(a) Prior to the date the City Council establishes the annual tax rate and passes an ordinance levying ad valorem taxes each year, the Council shall determine:

(1) The amount on deposit in the Certificate Fund after  
(a) deducting therefrom the total amount of Debt Service Requirements to become due on Certificates prior to the Collection Date for the ad valorem taxes to be levied and  
(b) adding thereto the amount of the Net Revenues of the System appropriated and allocated to pay such Debt Service Requirements prior to the Collection Date for the ad valorem taxes to be levied.

(2) The amount of Net Revenues of the System, appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(3) The amount of Debt Service Requirements to become due and payable on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date

for the taxes to be levied during the next succeeding calendar year.

(b) The amount of taxes to be levied annually each year to pay the Debt Service Requirements on the Certificates shall be the amounts established in paragraph (3) above less than sum total of the amounts established in paragraphs (1) and (2), after taking into consideration delinquencies and costs of collecting such annual taxes.

SECTION 12: Pledge of Net Revenues. The City hereby covenants and agrees that all the Net Revenues of the System, with the exception of those in excess of the amounts required to be deposited to the Certificate Fund as hereafter provided, are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates, and Additional Obligations, if issued, and the pledge of Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System in accordance with the terms and provisions hereof and be valid and binding without further action by the City and without any filing or recording except for the filing of this Ordinance in the records of the City.

SECTION 13: System Fund. The City covenants and agrees that revenue derived from the operation of the System shall be accounted for separate and apart from all other funds, accounts and moneys of the City, and all such revenues shall be deposited as collected into a fund maintained at an official depository of the City and known on the books of the City as the "System Fund" (hereinafter called the "System Fund"), which Fund shall be maintained during the period of time the Certificates are Outstanding. All moneys deposited to the credit of the System Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of all reasonable and proper Operating and Maintenance Expenses as defined herein or required by statute to be first charge on and claim against the Gross Revenues of the System,

Second: To the payment of all amounts required to be deposited in the special Funds created and established for the payment, security and benefit of Prior Lien Certificates in accordance with the terms and provisions of the ordinances authorizing the issuance of Prior Lien Certificates.

Third. To the payment, equally and ratably, of the amounts required to be deposited in the special funds and accounts created and established for the payment of the Previously Issued Certificates, the Certificate (the Certificate Fund) and Additional Obligations.

Any Net Revenues remaining in the System Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other City purpose now or hereafter permitted by law.

SECTION 14: Deposits to Certificate Fund. The City hereby covenants and agrees to cause to be deposited to the credit of the Certificate Fund prior to each principal and interest payment date for the Certificates from the pledged Net Revenues of the System in the System Fund, an amount equal to one hundred per centum (100%) of the amount required to fully pay the interest and principal payments then due and payable on the Certificates, such deposits to pay accrued interest and maturing principal on the Certificates to be made in substantially equal monthly installments on or before the 15th day of each month beginning on or before the 15th day of each month beginning on or before the 15th day of the month following the date of delivery of the Certificates to the initial purchaser.

The monthly deposits to the Certificate Fund, as hereinabove provided, shall be made until such time as such Fund contains an amount equal to pay the principal of and interest on the Certificates to maturity. Accrued interest received from the purchasers of the Certificates deposited to the Certificate Fund and ad valorem taxes levied, collected and deposited in the Certificate Fund for and on behalf of the Certificates may be taken into consideration and reduce the amount of the monthly deposits otherwise required to be deposited in the Certificate Fund from the Net Revenues of the System. In addition, any proceeds of sale of the Certificates in excess of the amount required to pay the contractual obligations to be incurred (including change orders to a construction contract) shall be deposited in the Certificate Fund, which amount shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 15: Reserve Fund. On or before the 25th day of each month, commencing on or before the 25th day of the month next following the delivery of the Certificates, there shall be deposited into the Reserve Fund from Net Revenues an amount not less than 1/120th of the average annual Principal and Interest Requirements on the Bonds so that at the end of ten (10) years



from the initial date of the Certificates, the Reserve Fund contains an amount at least equal to 100% of the average annual Principal and Interest Requirements of the Certificates as of the date of initial delivery of the Certificates (the "Required Reserve"). In calculating, the Principal and Interest requirement for the Reserve Fund, the initial Annual Interest Rate will be used as though it would be in effect until the final maturity of the Certificates.

In the event principal or the Certificates or Additional Certificates are prepaid in part for any reason which results in a reduction of average annual interest and principal requirement as it existed on the date of initial delivery of the Certificates or any Additional Certificates, the amount of the Required Reserve shall be automatically reduced to an amount equal to 100% of the average annual principal and interest requirements of all the outstanding Certificates and Additional Certificates after such partial redemption.

As and when Additional Certificates are delivered, the Required Reserve shall be increased, if required, to an amount specified in the resolution authorizing the issuance of such Additional Certificates, but in no event shall the Required Reserve ever be less than 100% of the average annual Principal and Interest Requirements of all outstanding Certificates and Additional Certificates. An additional amount required shall be so accumulated by the deposit in the Reserve Fund of all or any part of said required additional amount in cash immediately after the delivery of the then proposed Additional Certificates, or by the deposit of said required additional amount (or any balance of said required additional amount not deposited in cash as permitted above) in monthly installments, made on or before the 25th day of each month following the delivery of the then proposed Additional Certificates, of not less than 1/60th of said required additional amount (or 1/60 of the balance of said required additional amount not deposited in cash as permitted above). The Reserve Fund shall be used to pay the principal of or interest on the Certificates at any time when there is not sufficient money available in the Interest and Sinking Fund for such purpose, or to pay the principal of or interest on the last maturing Certificates.

For the purpose of determining the amount on deposit to the credit of the Reserve Fund investments in which money in such account shall have been invested shall be computed at the market value of such investment. The amount on deposit to the credit of the Reserve Fund shall be computed by the City at least annually, and shall be computed immediately upon any withdrawal from the Reserve Fund.

When and so long as the money and investments in the Reserve Fund total not less than the Required Reserve, no deposits need be made to the credit of the Reserve Fund; but when and if the Reserve Fund at any time contains less than the Required Reserve (other than during the initial build-up period permitted in the first paragraph of this Section or as the result of the issuance of Additional Certificates as provided in the second paragraph of this Section), the City covenants and agrees to cure the deficiency in the Required Reserve within twelve (12) months from the date the deficiency in funds occurred.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance make provisions (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws 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 17: Special Covenants. The City hereby further covenants as follows:

(a) It has the lawful power to pledge the Net Revenues of the System to the payment of the Certificates in the manner herein contemplated and has lawfully exercised such power under the Constitution and laws of the State of Texas, including said power existing under the Texas Revised Civil Statutes Articles 1111 et seq., Texas Local Government Code, Sections 271.041, et seq.

(b) Other than for the payment of the Certificates, 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.

SECTION 18: Mutilated - Destroyed - Lost and Stolen Certificates. In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of

indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless except that no such indemnity shall be required for any Certificate or Certificates held by the United States of America. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

Every replacement Certificate issued pursuant to this Section shall be valid and binding obligation, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Certificates; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Certificates.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Certificates.

SECTION 19: Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and the Net Revenues of the System and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Certificates or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Certificates or the principal amount(s) thereof at maturity or the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Obligations have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Certificates, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to

the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Obligations will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage Certificates" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Obligations held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of four (4) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

SECTION 20: Ordinance a Contract - Amendments. This Ordinance shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Certificate remains Outstanding except as permitted in this Section. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Certificates then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or

(3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 21: Covenants to Maintain Tax-Exempt Status.

(a) Definitions. When used in this Section 23, the following terms have the following meanings:

"Closing Date" means the date on which the Certificates are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Certificates.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Certificates are invested and which is not acquired to carry out the governmental purposes of the Certificates.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" mean any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Certificates. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Certificates has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvements of which is to be financed directly, or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Certificate to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the filed of municipal Certificate law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Certificates:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Certificates, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public or any property acquired, construction or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Certificates or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and ruling thereunder, the City shall not use Gross Proceeds of the Certificates to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such persons or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits or ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Certificates directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Certificates.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Certificates to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and ruling thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at

least six years after the day on which the last Outstanding Certificate is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Certificates with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Certificates until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Certificates by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Certificates equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eight (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.



(i) Not to Divert Arbitrage Profits. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity of final payment of the Certificates, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Certificates not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the Mayor and City Secretary, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Certificates, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

SECTION 22: Qualified Tax Exempt Obligations. In accordance with the provisions of paragraph (3) of subsection (b) of Section 265 of the Code, the city hereby designates the Certificates to be "qualified tax exempt obligations" in that the Certificates are not "private activity Certificates" as defined in the Code and the reasonably anticipated amount of "qualified tax exempt obligations" to be issued by the City (including all subordinate entities of the City) for the calendar year 1996 will not exceed \$10,000,000.

SECTION 23: Proceeds of Sale. The proceeds of sale of the Certificates, excluding the accrued interest and premium, if any, received from the Purchaser, shall be deposited in a construction fund maintained at the City's depository bank. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate fund as shall be determined by the City Council. Accrued interest and premium, if any, received from the Purchaser as well as surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund.

SECTION 24: Control and Custody of Certificates. The Mayor of the City shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the State of Texas, including the printing and supply of

definitive Certificates, and shall take and have charge and control of the Initial Certificate pending the approval thereof by the Attorney General and its registration thereof by the Comptroller of Public Accounts.

Furthermore, the Mayor and City Secretary, any one or more of said officials, are hereby authorized and directed to furnish and execute such documents and certificates relating to the City and the issuance of the Certificates, including a certification as to facts, estimates, circumstances and reasonable expectations pertaining to the use and expenditure and investment of the proceeds of the Certificates as may be necessary for the approval of the Attorney General and their registration by the Comptroller of Public Accounts. In addition, such officials, together with the City's financial advisor, Certificate counsel and the Paying Agent/Registrar, are authorized and directed to make the necessary arrangements for the delivery of the Initial Certificate(s) to the initial Purchaser.

SECTION 25: Notices of Holders-Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Certificates. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 26: Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the City may have

acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 27: Legal Opinion. The obligation of the Purchaser to accept delivery of the Certificates is subject to being furnished a final opinion of John D. Stover, Attorney, Lufkin, Texas, approving such Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Certificates. A true and correct reproduction of said opinion is hereby authorized to be printed on the definitive Certificates.

SECTION 28: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 29: Additional Certificates.

(a) Subject to the provisions of subparagraph (b) hereof, the City reserves the right to issue additional parity revenue Certificates for any lawful purpose, including the refunding of any Certificates, to be known as Additional Certificates, which, when issued and delivered, shall be payable from and secured by a first lien on and pledge of the Pledged Revenues in the same manner and to the same extent as the Certificates.

(b) No installment or series of Additional Certificates shall be issued unless:

(i) The owners of at least 51% of the Certificates then outstanding have given their written consent to the issuance of such additional Certificates;

(ii) A certificate is executed by the Mayor or the City Secretary to the effect that no default exists in connection with any of the covenants or requirements of the Ordinance or Ordinances authorizing the issuance of all then outstanding Certificates and that the Interest and Sinking Fund and the Reserve Fund each contains the amount then required to be on deposit therein;

(iii) An opinion of Certificate Counsel is rendered to the effect that (i) such Additional Certificates are valid and binding obligations of the City and enforceable in accordance with their terms subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or remedies generally and to the extent that certain equitable remedies, including specific performance may not be available; (ii) such Additional Certificates have been duly and validly authorized and issued in accordance with law; and

(iv) An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, signs and provides to the owners of the Certificates at least 45 days prior to the proposed issuance date of Additional Certificates, a written certificate to the effect that, in his or its opinion, during either the next preceding fiscal year, or any twelve consecutive calendar month period ending not later than 90 days preceding the month in which the resolution authorizing the issuance of the then proposed Additional Certificates is passed, the Net Revenues were at least 1.25 times the average annual Principal and Interest Requirements of all Certificates and Additional Certificates which are scheduled to be outstanding after the delivery of the then proposed Additional Certificates. It is specifically provided, however, that in calculating the amount of Net Revenues for the purposes of this subparagraph (iii), if there has been any increase in the rates or charges for services of the City's Sewer System which is then in effect and which has been in effect for at least 60 days prior to the month in which the resolution authorizing the issuance of the proposed Additional Certificates is passed, but which was not in effect during all of the entire period for which the Net Revenues are being calculated (hereinafter referred to as the "entire period") then the certified public accountant, or in lieu of the certified public accountant a firm of consulting engineers, shall determine and certify the amount of Net Revenues as being the total of (i) the actual Net Revenues for the entire period, plus (ii) a sum equal to the aggregate amount by which the actual billings to customers of the City's Sewer System during the entire period would have been increased if such increased rates or charges had been in effect during the time period.

(c) The City further reserves the right to issue Certificates, notes, or other obligations of inferior liens and Certificates, notes, or other obligations payable from sources other than Pledged Revenues.

(d) All Certificates of all series from time to time issued and delivered under the Ordinance shall be equally and ratably secured by the Pledged Revenues and any Additional Security as to principal, premium, if any, and interest.

SECTION 30: Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.

SECTION 31: Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

SECTION 32: Emergency. That the public importance of this measure and the fact that it is to the best interest of the City to provide funds for the construction of the City's Sewer System at the earliest possible date constitute and creates an emergency and an urgent public necessity requiring the suspension of any rules providing ordinances to be read more than one time or at more than one meeting of the City Council, and such rules and provisions are accordingly suspended, and this ordinance is declared to be an emergency measure, and shall take effect and be in full force immediately from and after its passage on the date shown below.

SECTION 33: 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 34: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 35: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number

shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 36: 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 the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 37: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 38: Effective Date. This Ordinance shall take effect and be in force immediately from and after its passage, and it is so ordained.

PASSED AND ADOPTED, this July \_\_, 1996.

CITY OF ZAVALLA, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Secretary

(City Seal)

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF ZAVALLA, TEXAS,  
TAX AND SEWER SYSTEM  
SURPLUS REVENUE  
CERTIFICATE OF OBLIGATION,  
SERIES 1996

Certificate Date: September 1, 1996      Interest Rate: \_\_\_\_\_      Stated Maturity: \_\_\_\_\_      CUSIP NO: \_\_\_\_\_

Registered Owner:

Principal Amount: \_\_\_\_\_ DOLLARS

The City of Zavalla (hereinafter referred to as the "City"), a body corporate and municipal corporation in the County of Angelina, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal amount hereof from the Certificate Date at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 in each year, commencing March 1, 1997. Principal of this Certificate is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the 15th day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. All payments of principal of, premium, if any, and interest on this

FORM OF CERTIFICATES

Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$908,000 (herein referred to as the "Certificates") for the purpose of paying contractual obligations to be incurred for (i) the construction of improvements and extensions to the City's Sewer System and (ii) professional services rendered in relation to such construction and the financing thereof, under and in strict conformity with the Constitution and laws of the State of Texas, particularly Texas Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein after referred to as the "Ordinance").

The Certificate maturing on and after September 1, 1998, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on September 1, 1998, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption and upon 30 days prior written notice being sent by United States Mail, first class postage prepaid, to the registered owners of the Certificates to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Certificate (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Certificate (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event of a partial redemption of the principal amount of this Certificate, payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of this Certificate to the principal office of the Paying Agent/Registrar, and there shall be issued to the registered owner hereof, without charge, a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum hereof. If this

FORM OF CERTIFICATES



Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer this Certificate to an assignee of the registered owner with 45 days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance hereof in the event of its redemption in part.

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Additionally, the Certificates, together with the Previously Issued Certificates (identified and defined in the Ordinance), are payable from and secured by a lien on and pledge of the Net Revenues (as defined in the Ordinance) of the City's Sewer System (the "System").

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the owner or holder of this Certificate by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the nature and extent of the pledge of the Net Revenues securing the payment of the Certificates; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the pledge of the Net Revenues and covenants made in the Ordinance may be discharged at or prior to the maturity of the Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Certificate, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Certificates of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

FORM OF CERTIFICATES

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of 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 City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Certificates is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Certificates to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Certificates do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Certificates as aforesaid. In case any provision in this Certificate shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Certificate and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

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

FORM OF CERTIFICATES

CITY OF ZAVALLA, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary

(SEAL)

C. \*Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Certificate(s) only.

REGISTERED CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER     §  
OF PUBLIC ACCOUNTS             §  
THE STATE OF TEXAS             §             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 duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this

\_\_\_\_\_

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

(SEAL)

\*NOTE TO PRINTER: Do Not Print on Definitive Certificates

D. Form of Certificate of Paying Agent/Registrar to appear on Definitive Certificates only.

REGISTERED CERTIFICATE BY PAYING AGENT/REGISTRAR

This Certificate has been duly issued and registered under the provisions of the within-mentioned Ordinance; the certificate or certificates of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar located in \_\_\_\_\_, is the "Designated Payment/Transfer Office" for this Certificate.

Registration Date:

\_\_\_\_\_

\_\_\_\_\_

as Paying Agent/Registrar

By: \_\_\_\_\_

Authorized Signature

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

DATED: .....

Signature guaranteed:  
.....

NOTICE: The signature on this  
 assignment must correspond with the  
 name of the registered owners as it  
 appears on the face of the within  
 Certificate in every particular.

PAYING AGENT AGREEMENT

THIS AGREEMENT entered into as of \_\_\_\_\_ (this "Agreement"), by and between the CITY OF ZAVALLA, TEXAS (the "City"), and FIRST BANK & TRUST EAST TEXAS in Lufkin, Texas, a banking association duly organized and existing under the laws of the State of Texas (the "Bank").

RECITALS

WHEREAS, the City has duly authorized and provided for the issuance of its Tax and Sewer System Surplus Revenue Certificates of Obligation, Series 1996 (the "Certificates") in the aggregate principal amount of \$908,000, such Bonds to be issued in fully registered form only as to the payment of principal and interest thereon; and

WHEREAS, the Bonds are scheduled to be delivered to the initial purchasers thereof on or about \_\_\_\_\_, 1996; and

WHEREAS, the City has selected the Bank to serve as Trustee in connection with the payment of the principal of, premium, if any, and interest on said Certificates and with respect to the registration, transfer and exchange thereof by the registered owners thereof; and

WHEREAS, the Bank has agreed to serve in such capacities for and on behalf of the City and has full power and authority to perform and serve as Trustee for the Certificates;

NOW, THEREFORE, it is mutually agreed as follows:

**ARTICLE ONE  
APPOINTMENT OF BANK AS  
PAYING AGENT AND REGISTRAR**

**Section 1.01. Appointment**

The City hereby appoints the Bank to serve as Trustee with respect to the Certificates. As Trustee for the Certificates, the Bank shall (a) be responsible for paying on behalf of the City the principal, premium (if any), and interest on the Certificates as the same become due and payable to the registered owners thereof, all in accordance with this Agreement and the "Ordinance" (hereinafter defined); (b) keep and maintain for and on behalf of the City the Certificate Register and such other

books and records as to the ownership of said Certificates and with respect to the transfer and exchange thereof as provided herein and in the "Ordinance"; and, (c) such other duties of the Trustee as provided herein and in the Ordinance.

The Bank hereby accepts its appointment, and agrees to serve as the Trustee for the Certificates.

**Section 1.02. Compensation**

As compensation for the Bank's services as Trustee, the City hereby agrees to pay the Bank the fees and amounts set forth in Schedule A attached hereto.

In addition, the City agrees to reimburse the Bank upon its request for all reasonable expenses, disbursements and advances incurred or made by the Bank in accordance with any of the provisions hereof (including the reasonable compensation and the expenses and disbursements of its agents and counsel).

**ARTICLE TWO  
DEFINITIONS**

**Section 2.01. Definitions**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

"Acceleration Date" on any Certificate means the date on and after which the principal or any or all installments of interest, or both, are due and payable on any Certificate which has become accelerated pursuant to the terms of the Certificate.

"Bank Office" means the principal corporate trust office of the Bank as indicated on the signature page hereof. The Bank will notify the City in writing of any change in location of the Bank Office.

"Fiscal Year" means the fiscal year of the City, ending December 31.

"Holder" and "Certificate Holder" each means the Person in whose name a Certificate is registered in the Certificate Register.

"City Request" and "City Order" means a written request or order signed in the name of the City by the Mayor, Mayor Pro-tem, City Secretary, or any one or more of said officials, delivered to the Bank.

"Legal Holiday" means a day on which the Bank is required or authorized to be closed.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision of a government.

"Predecessor Certificates" of any particular Certificate means every previous Certificate evidencing all or a portion of the same obligation as that evidenced by such particular Certificate (and, for the purposes of this definition, any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been registered and delivered in lieu thereof pursuant to Section 4.06 hereof and the Ordinance).

"Redemption Date" when used with respect to any Certificate to be redeemed means the date fixed for such redemption pursuant to the terms of the Ordinance.

"Ordinance" means the ordinance of the governing body of the City pursuant to which the Certificates are issued, certified by the City Secretary or any other officer of the City and delivered to the Bank.

"Responsible Officer" when used with respect to the Bank means the Chairman or Vice-Chairman of the Board of Directors, the Chairman or Vice-Chairman of the Executive Committee of the Board of Directors, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer, any Assistant Treasurer, the Cashier, any Assistant Cashier, any Trust Officer or Assistant Trust Officer, or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of familiarity with the particular subject.



"Certificate Register" means a register maintained by the Bank on behalf of the City providing for the registration and transfer of the Certificates.

"Stated Maturity" means the date specified in the Ordinance the principal of a Certificate is scheduled to be due and payable.

**Section 2.02. Other Definitions**

The terms "Bank," "City," and "Certificates (Certificate)" have the meanings assigned to them in the recital paragraphs of this Agreement.

The term "Trustee" refers to the Bank in the performance of the duties and functions of this Agreement.

**ARTICLE THREE  
PAYING AGENT**

**Section 3.01. Duties as Paying Agent**

As paying agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the City, pay on behalf of the City the principal of each Certificate at its Stated Maturity, Redemption Date, or Acceleration Date, to the Holder upon surrender of the Certificate to the Bank at the Bank Office.

As paying agent, the Bank shall, provided adequate collected funds have been provided to it for such purpose by or on behalf of the City, pay on behalf of the City the interest on each Certificate when due, by computing the amount of interest to be paid each Holder and preparing and sending checks by United States Mail, first class postage prepaid, on each payment date, to the Holders of the Certificates (or their Predecessor Certificates) on the respective Record Date, to the address appearing on the Certificate Register or by such other method, acceptable to the Bank, requested in writing by the Holder at the Holder's risk and expense.

**Section 3.02. Payment Dates**

The City hereby instructs the Bank to pay the principal of and interest on the Certificates on the dates specified in the Ordinance.

**ARTICLE FOUR  
REGISTRAR**

**Section 4.01. Certificate Register - Transfers and Exchanges**

The Bank agrees to keep and maintain for and on behalf of the City at the Bank Office books and records (herein sometimes referred to as the "Certificates to the Holders and containing such other information as may be reasonably required by the City and subject to such reasonable regulations as the City and the Bank may prescribe. All transfers, exchanges and replacement of Certificates shall be noted in the Certificate Register.

Every Certificate surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument of transfer, the signature on which has been guaranteed by an officer of a federal or state bank or a member of the National Association of Certificates Dealers, in form satisfactory to the Bank, duly executed by the Holder thereof or his agent duly authorized in writing.

The Bank may request any supporting documentation it feels necessary to effect a re-registration, transfer or exchange of the Certificates.

To the extent possible and under reasonable circumstances, the Bank agrees that, in relation to an exchange or transfer of Certificates, the exchange or transfer by the Holders thereof will be completed and new Certificates delivered to the Holder or the assignee of the Holder in not more than three (3) business days after the receipt of the Certificates to be cancelled in an exchange or transfer and the written instrument of transfer or request for exchange duly executed by the Holder, or his duly authorized agent, in form and manner satisfactory to the Trustee.

**Section 4.02. Certificates**

The City shall provide an adequate inventory of printed Certificates to facilitate transfers or exchanges thereof. The Bank covenants that the inventory of printed Certificates will be kept in safekeeping pending their use, and reasonable care will be exercised by the Bank in maintaining such Certificates in safekeeping, which shall be not less than the care maintained by the Bank for debt securities of other political subdivisions or corporations for which it serves as registrar, or that is maintained for its own securities.

**Section 4.03. Form of Certificate Register**

The Bank, as Registrar, will maintain the Certificate Register relating to the registration, payment, transfer and exchange of the Certificates in accordance with the Bank's general practices and procedures in effect from time to time. The Bank shall not be obligated to maintain such Certificate Register in any form other than those which the Bank has currently available and currently utilizes at the time.

The Certificate Register may be maintained in written form or in any other form capable of being converted into written form within a reasonable time.

**Section 4.04. List of Certificate Holders**

The Bank will provide the City at any time requested by the City, upon payment of the required fee, a copy of the information contained in the Certificate Register. The City may also inspect the information contained in the Certificate Register at any time the Bank is customarily open for business, provided that reasonable time is allowed the Bank to provide an up-to-date listing or to convert the information into written form.

The Bank will not release or disclose the contents of the Certificate Register to any person other than to, or at the written request of, an authorized officer or employee of the City, except upon receipt of a court order or as otherwise required by law. Upon receipt of a court order and prior to the release or disclosure of the contents of the Certificate Register, the Bank will notify the City so that the City may contest the court order or such release or disclosure of the contents of the Certificate Register.

**Section 4.05. Return of Cancelled Certificates**

The Bank will, at such reasonable intervals as it determines, surrender to the City, Certificates in lieu of which or in exchange for which other Certificates have been issued, or which have been paid.

**Section 4.06. Mutilated, Destroyed, Lost or Stolen Certificates**

The City hereby instructs the Bank, subject to the applicable provisions of the Ordinance, to deliver and issue Certificates in exchange for or in lieu of mutilated, destroyed, lost, or stolen Certificates as long as the same does not result in an overissuance.

In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Bank, in its discretion, may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed lost or stolen Certificate, only after (i) the filing by the Holder thereof with the Bank of evidence satisfactory to the Bank of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership hereof and (ii) the furnishing to the Bank of indemnification in an amount satisfactory to hold the City and the Bank harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

**Section 4.07. Transaction Information to City**

The Bank will, within a reasonable time after receipt of written request from the City, furnish the City information as to the Certificates it has paid pursuant to Section 3.01, Certificates it has delivered upon the transfer or exchange of any Certificates pursuant to Section 4.01, and Certificates it has delivered in exchange for or in lieu of mutilated, destroyed, lost, or stolen Certificates pursuant to Section 4.06.

**ARTICLE FIVE  
THE BANK**

**Section 5.01. Duties of Bank**

The Bank undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

**Section 5.02. Reliance on Documents, Etc**

(a) The Bank may conclusively rely, as to the truth of the statements and correctness of the opinions expressed therein, on certificates or opinions furnished to the Bank.

(b) The Bank shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bank was negligent in ascertaining the pertinent facts.

(c) No provisions of this Agreement shall require the Bank to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it.

(d) The Bank may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, Certificate, note, security, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. Without limiting the generality of the foregoing statement, the Bank need not examine the ownership of any Certificates, but is protected in acting upon receipt of Certificates containing an endorsement or instruction of transfer or power of transfer which appears on its face to be signed by the Holder or an agent of the Holder. The Bank shall not be bound to make any investigation into the facts or matters stated in a resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, Certificate, note, security, or other paper or document supplied by City.

(e) The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

(f) The Bank may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Bank.

**Section 5.03. Recitals of City**

The recitals contained herein with respect to the City and in the Certificates shall be taken as the statements of the City, and the Bank assumes no responsibility for their correctness.

The Bank shall in no event be liable to the City, any Holder or Holders of any Certificate, or any other Person for any amount due on any Certificate from its own funds.

**Section 5.04. May Hold Certificates**

The Bank, in its individual or any other capacity, may become the owner or pledgee of Certificates and may otherwise deal with the City with the same rights it would have if it were not Trustee, or any other agent.

**Section 5.05. Moneys Held by Bank**

Money held by the Bank hereunder need not be segregated from any other funds provided appropriate trust accounts are maintained in the name and for the benefit of the City. Except as specifically provided in this Agreement, all money received by the Bank will be held, managed, and paid as provided in the Ordinance.

The Bank shall be under no liability for interest on any money received by it hereunder.

**Section 5.06. Indemnification**

To the extent permitted by law, the City agrees to indemnify the Bank for, and hold it harmless against, any loss, liability, or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

**Section 5.07. Interpleader**

The City and the Bank agree that the Bank may seek adjudication of any adverse claim, demand, or controversy over its person as well as funds on deposit, in either a Federal or State District Court located in the State and County where either the Bank Office or the administrative offices of the City is located, and in the State and County where either the Bank Office or the administrative offices of the City is located, and agree that service of process by certified or registered mail, return receipt requested, to the address referred to in Section 6.03 of this Agreement shall constitute adequate service. The City and the Bank further agree that the Bank has the right to file a Bill of Interpleader in any court of competent jurisdiction to determine the rights of any Person claiming any interest herein.

**ARTICLE SIX  
MISCELLANEOUS PROVISIONS**

**Section 6.01. Amendment**

This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

**Section 6.02. Assignment**

This Agreement may not be assigned by either party without the prior written consent of the other.

**Section 6.03. Notices**

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted hereby to be given or furnished to the City or the Bank shall be mailed or delivered to the City or the Bank, respectively, at the addresses shown on the signature page of this Agreement.

**Section 6.04. Effect of Headings**

The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

**Section 6.05. Successors and Assigns**

All covenants and agreements herein by the City shall bind its successors and assigns, whether so expressed or not.

**Section 6.06. Severability**

In case any provision herein shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 6.07. Benefits of Agreement**

Nothing herein, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim hereunder.

**Section 6.08. Entire Agreement**

This Agreement and the Ordinance constitute the entire agreement between the parties hereto relative to the Bank acting as Trustee and if any conflict exists between his Agreement and the Ordinance, the Ordinance shall govern.

**Section 6.09. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

**Section 6.10. Termination**

This Agreement will terminate (i) on the date of final payment of the principal of and interest on the Certificates to the Holders thereof or (ii) may be earlier terminated by either party upon sixty (60) days written notice; provided, however, an early termination of this Agreement by either party shall not be effective until (a) a successor Trustee has been appointed by the City and such appointment accepted and (b) notice has been given to the Holders of the Certificates of the appointment of a successor Trustee. Furthermore, the Bank and City mutually agree that the effective date of an early termination of this Agreement shall not occur at any time which would disrupt, delay or otherwise adversely affect the payment of the Certificates.

Upon an early termination of this Agreement, the Bank agrees to promptly transfer and deliver the Certificate Register (or a copy thereof), together with other pertinent books and records relating to the Certificates, to the successor Trustee designated and appointed by the City.

The provisions of Section 1.02 and of Article Five shall survive and remain in full force and effect following the termination of this Agreement.

**Section 6.11. Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas and performable in Angelina County, Texas.



**City of Zavalla, Texas**  
245 N. Second  
Zavalla, Texas 75980

By: \_\_\_\_\_  
Opal Gant, Mayor

ATTEST::

\_\_\_\_\_  
City Secretary

(SEAL)

Trustee:

**First Bank & Trust East Texas**

By: \_\_\_\_\_  
Lindon L. Baker, Jr.  
Executive Vice President  
and Trust Officer  
P. O. Box 152020  
Lufkin, Texas 75915-2020