

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Financial and Administrative Services
AGENDA DATE: January 27, 2009
CONTACT PERSON/PHONE: William F. Studer, Deputy City Manager, Financial and Administrative Services, 541-4011 and Carmen Arrieta-Candelaria, Chief Financial Officer, 541-4293
DISTRICT(S) AFFECTED: All

SUBJECT:

Discussion and action on an ordinance authorizing the issuance of \$58,115,000 of Combination Tax and Revenue Certificates of Obligation.

BACKGROUND / DISCUSSION:

This ordinance authorizes the issuance of \$58,115,000 of certificates of obligation to cover: \$5 million from the January 2006 Authorization that consists of the following projects: street resurfacing projects, street improvements (lane markings, loop detectors); TXDOT matching projects, 2% for the arts projects, drainage and sewer improvement projects, park improvements, facilities rehabilitation and other improvement projects, capital equipment; \$45 million from the August (Storm) 2006 Authorization that consists of the following projects: street resurfacing projects, street improvements; ponding area improvements, drainage and sewer improvement projects, facilities improvement projects, capital equipment purchases; and \$7.47 million to fund the CAP project for the CVB. The remaining funds will be used for bond issuance costs.

S&P has rated El Paso at AA with a stable outlook, while Fitch Ratings has assigned El Paso an AA- rating with a stable outlook. The City anticipates selling these bonds uninsured given market conditions at the time of this posting, however, this may change at the time of sale of bonds.

After these COs are issued, authorizations remaining are: \$60 million from the January 2006 and \$55 million from the August (Storm) 2006.

PRIOR COUNCIL ACTION:

Council authorized \$100 million of certificates of obligation in January 2006 and \$100 million of certificates of obligation in August 2006. The City has subsequently sold \$35,000,000 of certificates of obligation in 2007. Council had approved a prior resolution in late 2008 to cover the costs of the CAP but these were never issued and are now being included in this issuance.

AMOUNT AND SOURCE OF FUNDING:

\$58,115,000 of revenue proceeds will be used to fund various capital projects.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Carmen Arrieta-Candelaria
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

NOTICE OF INTRODUCTION AND PUBLIC HEARING

Pursuant to section 3.9A of the El Paso City Charter, the following Ordinance will be introduced at a Regular City Council Meeting on January 27, 2009:

- A. An Ordinance authorizing the issuance of “City of El Paso, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009;” and resolve matters which are necessary to effectuate said issuance.

PUBLIC HEARING WILL BE HELD ON JANUARY 27, 2009 FOR ITEM A

Public hearing will be held as part of the Regular City Council Meeting which begins at approximately 9:00 a.m. All interested persons present shall have an opportunity to be heard at that time. After the Public Hearing, Council may take immediate action to approve the Ordinance or may delay taking action on the Ordinance. No requirement is made by Section 3.9B of the El Paso City Charter to publish any further notice of this introduction and public hearing. A copy of the Ordinance is available for review in the City Clerk’s office, 2 Civic Center Plaza, Monday through Friday, 8AM to 5PM.

PLEASE PUBLISH IN THE EL PASO TIMES NO LATER THAN WEDNESDAY, JANUARY 21, 2009, WITHOUT SPACES IN BETWEEN THE LINES.

ORDINANCE NO. _____

\$58,115,000

**CITY OF EL PASO, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATES OF OBLIGATION
SERIES 2009**

Dated: January 15, 2009

Adopted: January 27, 2009

TABLE OF CONTENTS

	<u>Page</u>
ORDINANCE NO. _____	1
Section 1: Definitions.....	1
Section 2: Authorization – Designation - Principal Amount - Purpose	4
Section 3: Fully Registered Obligations – Dated Date - Authorized Denominations - Stated Maturities - Interest Rates	5
Section 4: Terms of Payment - Paying Agent/Registrar	6
Section 5: Redemption	7
Section 6: Registration – Transfer - Exchange of Certificates – Predecessor Certificates	9
Section 7: Book-Entry-Only Transfers and Transactions	10
Section 8: Execution - Registration	11
Section 9: Initial Certificates.....	11
Section 10: Forms	11
Section 11: Interest and Sinking Fund	12
Section 12: Levy of Taxes	12
Section 13: Pledge of Surplus Revenues.....	13
Section 14: Surplus Revenue Fund	14
Section 15: Deposits to Interest and Sinking Fund	14
Section 16: Security of Funds	14
Section 17: Remedies in Event of Default	14
Section 18: Special Covenants.....	15
Section 19: Issuance of Prior Lien Obligations and Additional Certificates	15
Section 20: Sale of the Certificates - Purchase Contract Approval - Official Statement Approval	16
Section 21: Notices to Holders - Waiver	16
Section 22: Cancellation	16
Section 23: Mutilated – Destroyed – Lost and Stolen Certificates	17
Section 24: Covenants to Maintain Tax Exempt Status of Interest on the Certificates	17
Section 25: Proceeds of Sale.....	21
Section 26: Satisfaction of Obligations of City	21
Section 27: Ordinance a Contract - Amendments.....	22

TABLE OF CONTENTS
(continued)

	Page
Section 28: Continuing Disclosure Undertaking	22
Section 29: Control and Custody of Certificates	25
Section 30: Bond Counsel’s Opinion.....	25
Section 31: CUSIP Numbers.....	25
Section 32: Benefits of Ordinance	26
Section 33: Inconsistent Provisions	26
Section 34: Governing Law	26
Section 35: Effect of Headings	26
Section 36: Severability	26
Section 37: Incorporation of Findings and Determinations	26
Section 38: Public Meeting	26
Section 39: Further Procedures	26
Section 40: Effective Date	27
EXHIBIT “A”	A-1
EXHIBIT “B”	B-1

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF EL PASO, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$58,115,000; PROVIDING FOR THE PAYMENT, TERMS AND CONDITIONS OF SUCH CERTIFICATES AND RESOLVING MATTERS NECESSARY TO EFFECTUATE SAID ISSUANCE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, notice of the City Council’s intention to issue certificates of obligation in the maximum principal amount not to exceed \$60,000,000 for the purpose of paying contractual obligations of the City of El Paso, Texas (the “City”) to be incurred for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing, resurfacing and improving various streets, roads, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, loop detectors and landscaping related thereto and the acquisition of necessary rights-of-way and land in connection therewith, (b) design, construction and installation of flood control, storm water, drainage improvements, ponding areas and related municipal facilities within the City, including the acquisition of rights-of-way, real property and any related demolition necessary in connection therewith, (c) acquiring, renovating, improving and equipping municipal facilities for departmental administration purposes, (d) improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center, (e) the purchase of equipment, machinery, vehicles, materials and supplies for the storm water, police and street maintenance departments, and (f) acquisition, construction and improvement of municipally owned public art projects, and (ii) professional services rendered in connection therewith (collectively, the “Project”), has been duly published in the El Paso Times, a newspaper of general circulation in the City on December 22, 2008 and December 30, 2008; and

WHEREAS, no petition protesting the issuance of the certificates of obligation described in the aforesaid notice, signed by at least 5% of the qualified electors of the City, has been presented to or filed with the City Clerk, any member of the City Council or any other official of the City on or prior to the date of the passage of this Ordinance; and

WHEREAS, the City Council hereby finds and determines that the certificates of obligation described in such notice should be authorized for issuance at this time in the amount and manner hereinafter provided;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

SECTION 1: Definitions.

(a) 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 Surplus Revenues therefor, the following words or terms, whenever the same appear herein without qualifying language, are defined to mean as follows:

(1) The term “Additional Certificates” shall mean combination tax and revenue certificates of obligation or other obligations which the City is authorized to issue, whether at the time of the adoption of this Ordinance or thereafter, hereafter issued under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, or any similar law hereafter enacted, and payable from ad valorem taxes and additionally payable from and secured by a lien on and pledge of the Surplus Revenues on a parity with and of equal dignity with the lien and pledge securing the payment of the Certificates.

(2) The term “Attorney General” shall mean the Attorney General of the State of Texas.

(3) The term “Certificates” shall mean the \$58,115,000 “City of El Paso, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009” authorized by this Ordinance.

(4) 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.

(5) The term “Comptroller” shall mean the Comptroller of Public Accounts of the State of Texas.

(6) The term “Debt Service Requirements” shall mean: (i) the interest on the Certificates; and (ii) the principal amounts due in accordance with the schedule in Section 3 hereof (which shall not be less than 2% of the original amount of the Certificates as a sinking fund each year).

(7) The term “Fiscal Year” shall mean the annual financial accounting period used with respect to the System now ending on February 28th of each year; provided, however, the City Council may change, by ordinance duly passed, such annual financial accounting period to end on another date if such change is found and determined to be necessary for accounting purposes and to be consistent with the ordinances authorizing the additional obligations of the City.

(8) The term “Government Securities” shall mean: (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

(9) The term “Interest and Sinking Fund” shall mean the special Fund created and established under the provisions of Section 11 of this Ordinance.

(10) The term “Maintenance and Operation Expenses” shall mean all reasonable and necessary expenses directly related and attributable to the operation and maintenance of the System, including, but not limited to, salaries, labor, materials, repairs and extensions necessary to operate the System.

(11) The term “Net Revenues” shall mean, with respect to any period, all income, revenues, and receipts received from the operation and ownership of the System less Maintenance and Operation Expenses of the System during such period.

(12) The term “Outstanding” when used in this Ordinance with respect to Certificates shall mean, as of the date of determination, all Certificates theretofore issued and delivered under this Ordinance, except:

(a) those Certificates theretofore cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(b) those Certificates for which payment has been duly provided by the City in accordance with the provisions of Section 26; and

(c) those Certificates that have been mutilated, destroyed, lost, or stolen and for which: (i) replacement Certificates have been registered and delivered in lieu thereof; or (ii) have been paid, all as provided in Section 23 hereof.

(13) The term “Prior Lien Obligations” shall mean any and all bonds or other obligations of the City presently outstanding or that may be hereafter issued, payable from and secured by a first lien on and pledge of the Net Revenues or by a lien on and pledge of the Net Revenues subordinate to a first lien and pledge of such Net Revenues but superior to the lien and pledge of the Surplus Revenues made for the Certificates.

(14) The term “Project” shall have the meaning set forth in the recitals to this Ordinance.

(15) The term “State” shall mean the State of Texas.

(16) The term “Stated Maturity” shall mean the principal amounts due in accordance with the schedule set forth in Section 3 hereof.

(17) The term “Surplus Revenues” shall mean the revenues of the System remaining after payment of all operation and maintenance expenses thereof, and all debt service, reserve, and other requirements in connection with the Prior Lien Obligations; provided, however, that for purposes of providing revenues for the payment of the Certificates, Surplus Revenues shall not include any revenues of the System in excess of \$1,000, and no amount of Surplus Revenues above \$1,000 shall be pledged to the payment of the Certificates.

(18) The term “Surplus Revenue Fund” shall mean the surplus revenue fund established by Section 14 of this Ordinance.

(19) The term “System” as used in this Ordinance means the City’s combined waterworks and sewer system, including all present and future additions, extensions, replacements and improvements thereto.

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

This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein.

All article and section references shall mean references to the respective articles and sections of this Ordinance unless designated otherwise.

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 \$58,115,000, to be designated and bear the title “CITY OF EL PASO, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009” (the “Certificates”), for the purpose of paying contractual obligations of the City of El Paso, Texas (the “City”) to be incurred for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing, resurfacing and improving various streets, roads, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, loop detectors and landscaping related thereto and the acquisition of necessary rights-of-way and land in connection therewith, (b) design, construction and installation of flood control, storm water, drainage improvements, ponding areas and related municipal facilities within the City, including the acquisition of rights-of-way, real property and any related demolition necessary in connection therewith, (c) acquiring, renovating, improving and equipping municipal facilities for departmental administration purposes, (d) improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center, (e) the purchase of equipment, machinery, vehicles, materials and supplies for the storm water, police and street maintenance departments, and (f) acquisition, construction and improvement of municipally owned public art projects, and (ii) professional services rendered in connection therewith, pursuant to authority conferred by, and in conformity with, the Constitution and laws of the State, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, and V.T.C.A., Government Code, Chapter 1502, as amended.

SECTION 3: Fully Registered Obligations – Dated Date - Authorized Denominations - Stated Maturities - Interest Rates. The Certificates are issuable in fully registered form only; shall be dated January 15, 2009 (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 August 15 in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at the per annum rates in accordance with the following schedule:

Serial Certificates

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2010	\$ 565,000	
2011	750,000	
2012	2,020,000	
2013	2,105,000	
2014	2,190,000	
2015	2,280,000	
2016	2,370,000	
2017	2,475,000	
2018	2,590,000	
2019	1,670,000	
2020	1,750,000	
2021	1,840,000	
2022	1,935,000	
2023	2,035,000	
2024	2,145,000	
2025	2,260,000	
2026	2,380,000	
2027	2,515,000	
2028	2,655,000	
2029	2,810,000	
2030	2,975,000	
2031	3,155,000	
2032	3,345,000	
2033	3,545,000	
2034	3,755,000	

TERM CERTIFICATES

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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The Certificates shall bear interest on the unpaid principal amount thereof from the date of their delivery to the initial purchasers (anticipated to be February 24, 2009) at the per annum rates shown above (calculated on the basis of a 360-day year of twelve 30-day months) and shall be payable on February 15, 2010, and each August 15 and February 15 thereafter until maturity or prior redemption.

SECTION 4: Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable, without exchange or collection charges to the registered owner thereof, 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.

The selection and appointment of Wells Fargo Bank, National Association, Austin, Texas, to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed, and the City agrees and covenants to cause to be kept and maintained at the designated office of the Paying Agent/Registrar and at all times at a place within the State, books and records (the "Security Register") for the registration, payment, and transfer of the Certificates, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form presented at this meeting and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe; and the Mayor or the City Manager and City Clerk or Alternate City Clerk are authorized to execute and deliver such Paying Agent/Registrar 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 any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to act as 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 registered owner of the Certificates by United States mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Both principal of, premium, if any, and interest on the Certificates, due and payable by reason of maturity or redemption, shall be payable only to the registered owners of the Certificates (hereinafter referred to as the "Holder" or "Holders") appearing on the Security Register and, to the extent permitted by law, neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Certificates shall be payable at the Stated Maturities or redemption thereof only upon presentation and surrender of the Certificates to the Paying Agent/Registrar at its offices in Minneapolis, Minnesota (the "Designated Payment/Transfer Office"). Interest on the Certificates shall be paid to the Holder whose name appears in the Security Register at the close of business on the Record Date (the last business day of the month next preceding the interest payment date) and shall be paid by the Paying Agent/Registrar: (i) by check sent by United States Mail, first class postage prepaid, to the address of the registered owner 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 order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions in the city where the principal offices of the Paying Agent/Registrar is located are authorized to be closed, 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 non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (the "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 fifteen (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 books of the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 5: Redemption.

(a) Optional Redemption. The Certificates having Stated Maturities on and after August 15, 2020, 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 August 15, 2019 or on any date thereafter at the redemption price of par plus accrued interest to the date of redemption.

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.

(b) Mandatory Sinking Fund Redemption. The Certificates stated to mature on August 15, 20__ and August 15, 20__ (the "Term Certificates") are subject to scheduled mandatory redemption and will be redeemed by the City, in part at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Interest and Sinking Fund, on the dates and in the respective principal amounts as set forth in the following schedule:

Term Certificates Maturing August 15, 20

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20 (maturity)	\$,000

Term Certificates Maturing August 15, 20

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20 (maturity)	\$,000

At least forty-five (45) days prior to each scheduled mandatory redemption date, the Paying Agent/Registrar shall select for redemption by lot, or by any other customary method that results in a random selection, a principal amount of Term Certificates equal to the aggregate

principal amount of such Term Certificates to be redeemed, shall call such Term Certificates for redemption on such scheduled mandatory redemption date, and shall give notice of such redemption, as provided in Section 5(d).

The principal amount of the Term Certificates of a Stated Maturity required to be redeemed on any redemption date pursuant to subparagraph (b) of this Section 5 shall be reduced, at the option of the City, by the principal amount of any Term Certificates of like maturity which, at least 50 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

(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 or not 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 Designated Payment/Transfer Office only upon presentation and surrender thereof by the Holder. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption thereof 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.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Certificates, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the

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

SECTION 6: Registration – Transfer - Exchange of Certificates – Predecessor Certificates. A Security Register relating to the registration, payment, and transfer or exchange of the Certificates shall at all times be kept and maintained by the City at the Designated Payment/Transfer Office and at a place within the State, and the Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each Holder of the Certificates issued under and pursuant to the provisions of this Ordinance. Any Certificate may, in accordance with its terms and the terms hereof, be transferred or exchanged for Certificates of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar at its Designated Payment/Transfer Office 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 form satisfactory to the Paying Agent/Registrar.

Upon the surrender for transfer of any Certificate at the Designated Payment/Transfer Office, the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Certificates, executed on behalf of, and furnished by, the City, of authorized denominations and 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 may be exchanged for other Certificates of authorized denominations and having the same Stated Maturity, bearing the same rate of interest, and of like aggregate principal amount as the Certificates surrendered for exchange upon the surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office. Whenever any Certificates are so surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of, and furnished by the City, to the Holder requesting the exchange.

All Certificates issued upon any transfer or exchange of Certificates shall be delivered at the Designated Payment/Transfer Office, or sent by United States mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be 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 cancelled 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 or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any Certificate registered and delivered pursuant to Section 23 hereof in lieu of a mutilated, lost, destroyed, or stolen Certificate, which 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 transfer or exchange any Certificate called for redemption, in whole or in part, within forty-five (45) days of the date fixed for 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 for redemption in part.

SECTION 7: Book-Entry-Only Transfers and Transactions. Notwithstanding the provisions contained herein relating to the payment, redemption and transfer/exchange of the Certificates, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company ("DTC"), a limited purpose trust company organized under the laws of the State of New York, in accordance with the requirements and procedures identified in the current DTC Operational Arrangements memorandum, as amended, the Blanket Issuer Letter of Representations, by and between the City and DTC, and the letter of representation from the Paying Agent/Registrar to DTC (collectively, the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Certificates shall be deposited with DTC who shall hold said Certificates for its participants (the "DTC Participants"). While the Certificates are held by DTC under the Depository Agreement, the Holder of the Certificates on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Certificate (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general, the City covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and provide for the Certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred, and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 4 and 6 hereof.

SECTION 8: 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 Clerk or Alternate City Clerk. The signatures of said officers and the seal of the City on the

Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of said 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 such individuals or any of them shall cease to hold such offices prior to the delivery of the certificates to the initial purchasers, and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Chapter 1201, Government Code, 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 as set forth in the form of the Initial Certificate provided in **Exhibit "A"**, manually executed by the Comptroller or his duly authorized agent, or a certificate of registration substantially as set forth in the form of the definitive Certificates provided in **Exhibit "A"**, 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 9: Initial Certificates. The Certificates herein authorized shall be initially issued either: (i) as a single fully registered certificate in the total principal amount shown in Section 2 hereof with principal installments to become due and payable as provided in Section 3 hereof and numbered T-1; or (ii) alternatively, as 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 Certificates") and, in either case, the Initial Certificates shall be registered in the name of the initial purchasers or the designee thereof. The Initial Certificates shall be the Certificates submitted to the Office of the Attorney General for approval, certified and registered by the Office of the Comptroller and delivered to the initial purchasers. Any time after the delivery of the Initial Certificates, the Paying Agent/Registrar, pursuant to written instructions from the initial purchasers, or the designee thereof, shall cancel the Initial Certificates 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 purchasers, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 10: Forms. The Certificates, the Registration Certificate of the Comptroller, the Certificate of Registration of the Paying Agent/Registrar, and the form of Assignment to be printed on the Certificates, shall be substantially in the forms set forth in **Exhibit "A"** 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 on insured Certificates and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or be determined by the officers executing such Certificates as evidenced by their execution thereof. Any portion of the text of any Certificate may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

The definitive Certificates and the Initial Certificates shall be printed, lithographed, or engraved, or produced in any other similar manner, all as determined by the officers executing such Certificates as evidenced by their execution thereof.

The City may provide: (i) for issuance of one fully registered Certificate for the Stated Maturity in the aggregate principal amount of such Stated Maturity; and (ii) for registration of such Certificate in the name of a securities depository, or the nominee thereof. While any Certificate is registered in the name of a securities depository or its nominee, references herein and in the Certificates to the "Holder" or "registered owner" of such Certificate shall mean the securities depository or its nominee and shall not mean any other person.

SECTION 11: Interest and Sinking Fund. The City covenants that for the purpose of paying the interest on and providing a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special Fund to be designated "Special 2009 Combination Tax and Revenue Certificate of Obligation Interest and Sinking Fund" (the "Interest and Sinking Fund") which Interest and Sinking Fund shall be kept and maintained at the City's depository bank, and moneys deposited in the Interest and Sinking Fund shall be used for no other purpose. The Mayor, Mayor Pro Tem, City Manager, Deputy City Manager for Financial and Administrative Services, and Chief Financial Officer of the City, individually or jointly, 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 Interest and Sinking Fund (on or prior to a principal and/or interest payment date) an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates.

SECTION 12: Levy of Taxes. Pursuant to the authority granted by the Constitution and the laws of the State and to the extent the Debt Service Requirements are not paid with Surplus Revenues or other legally available funds, there shall be and there is hereby levied, within the limitations prescribed by law, for the current year and each succeeding year thereafter while any of the Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars' valuation of taxable property in the City, adequate to pay the 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 Interest and Sinking Fund. The City Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the 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) The City's annual budget shall reflect (i) the amount of Debt Service Requirements to become due on the Certificates in the next succeeding Fiscal Year of the City, (ii) the amount on deposit in the Surplus Revenue Fund and the Interest and Sinking Fund, as of the date such budget is prepared (after giving effect to any payments required to be made during

the remainder of the then Fiscal Year), and (iii) the amount of Surplus Revenues estimated and budgeted to be available for the payment of the Debt Service Requirements on the Certificates during the next succeeding Fiscal Year of the City.

(b) The amount required to be provided in the succeeding Fiscal Year of the City from ad valorem taxes shall be the amount the Debt Service Requirements to be paid on the Certificates in the next succeeding Fiscal Year of the City exceeds the sum of (i) the amount shown to be on deposit in the Surplus Revenue Fund and the Interest and Sinking Fund (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year) at the time the annual budget is prepared, and (ii) the Surplus Revenues shown to be budgeted and available for payment of the Debt Service Requirements.

(c) Following the final approval of the annual budget of the City, the governing body of the City shall, by ordinance, levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (b) above, to be utilized for purposes of paying the principal of and interest on the Certificates in the next succeeding Fiscal Year of the City.

(d) If the liens and provisions of this Ordinance shall be released in a manner permitted by Section 26 hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding Certificates, there shall be subtracted the amount of any Certificates that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

SECTION 13: Pledge of Surplus Revenues. Pursuant to the authority granted by the Constitution and laws of the State, the City hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Obligations, a limited pledge of the Surplus Revenues of the System not to exceed \$1,000, with the exception of those in excess of the amounts required to be deposited to the Interest and Sinking Fund as hereafter provided, are hereby irrevocably pledged, equally and ratably, to the payment of the principal of and interest on the Certificates and any Additional Certificates, if issued, and such pledge shall 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.

V.T.C.A., Chapter 1208, Government Code, as amended, applies to the issuance of the Certificates and the pledge of the revenues granted by the City under this Section of this Ordinance, and such pledge is therefore valid, effective, and perfected. If the State law is amended at any time while the Certificates are Outstanding and unpaid such that the pledge of the revenues granted by the City under this Section of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Holders of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of V.T.C.A., Chapter 9, Business & Commerce Code, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14: Surplus Revenue Fund. The City hereby establishes a special fund or account to be designated the “City of El Paso, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009, Surplus Revenue Fund” (the “Surplus Revenue Fund”), said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City, and shall in no event be diverted or drawn upon for any purpose other than those herein provided. All Surplus Revenues shall be paid over and deposited into the Surplus Revenue Fund. The Surplus Revenues shall be appropriated and employed in the following order:

(a) First: For deposit to the Interest and Sinking Fund to provide for the payment of the Debt Service Requirements of the Certificates in accordance with the terms and conditions of this Ordinance; and

(b) Second: After all the requirements of subparagraph (a) above have been provided for, whether by the collection of an ad valorem tax levied in this Ordinance or by the use of the pledged Surplus Revenues, the Surplus Revenues may be used for any lawful purpose.

SECTION 15: Deposits to Interest and Sinking Fund. Any accrued interest received by the City from the purchasers of the Certificates shall be deposited into the Interest and Sinking Fund. Any proceeds of sale of the Certificates remaining after completion of, and payment of all costs associated with the Project (including any change orders) shall be deposited in the Interest and Sinking Fund. Amounts deposited to the Interest and Sinking Fund shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Surplus Revenues.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (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 the State 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: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State, the City covenants and agrees particularly that in the event the City: (a) defaults in the payments to be made to the Interest and Sinking Fund; or (b) defaults in the observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, any Holder shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies, and the specification of such remedies shall not be deemed to be exclusive.

SECTION 18: Special Covenants. The City hereby covenants as follows:

(a) That it has the lawful power to pledge the Surplus Revenues of the System to the payment of the Certificates in the manner herein contemplated and has lawfully exercised said powers under the Constitution and laws of the State, including V.T.C.A., Chapter 271, Local Government Code, as amended, and V.T.C.A., Government Code, Sections 1502.56 and 1502.58.

(b) That other than for the payment of the Certificates and the Prior Lien Obligations, the Surplus Revenues have not in any manner been pledged to the payment of any debt or obligation of the City or of the System.

(c) The City shall take no action or fail to take any action, which action or failure to act may render the interest on any of such Certificates subject to federal income taxation, particularly pursuant to section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), nor shall the City take any action or fail to take any action, which action or failure to act, would have the effect of causing the income derived by the City from the System to become subject to federal income taxation in the hands of the City, whether or not provision shall have been made for the payment of such Certificates.

SECTION 19: Issuance of Prior Lien Obligations and Additional Certificates. The City hereby expressly reserves the right to hereafter issue Prior Lien Obligations, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, payable, in whole or in part, from the Net Revenues (without impairment of the obligation of contract with the Holders of the Certificates) upon such terms and conditions as the City Council may determine. Additionally, the City hereby expressly reserves the right to hereafter issue Additional Certificates payable, in whole or in part, from and secured by a lien on and pledge of the Surplus Revenues of equal rank and dignity, and on a parity in all respects, with the lien thereon and pledge thereof securing the payment of the Certificates.

It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements, and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements, and covenants contained in any ordinance authorizing the issuance of the Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions contained herein and in any ordinance authorizing the issuance of Prior Lien Obligations, the provisions, agreements, and covenants contained therein shall prevail to the extent of such conflict and be applicable to this Ordinance, but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the Holders of the Prior Lien Obligations.

SECTION 20: Sale of the Certificates - Purchase Contract Approval - Official Statement Approval. The Certificates are hereby sold and awarded and shall be delivered to Southwest Securities, Inc., Banc of America Securities LLC and Citigroup Global Markets, Inc. (collectively, the "Purchasers"), pursuant to the terms and provisions of the Certificate Purchase Contract (the "Purchase Contract") relating to the Certificates, dated the date hereof, which is hereby approved. The Mayor or the City Manager are each authorized and directed to execute and deliver such Purchase Contract, substantially in the form presented at this meeting. It is hereby officially found, determined and declared that the terms of this sale are the most

advantageous reasonably obtainable. The Initial Certificate shall be registered in the name of Southwest Securities Inc. or its designee.

Furthermore, the Preliminary Official Statement prepared in connection with the public offering and sale of the Certificates is hereby ratified, confirmed and approved in all respects. The final Official Statement reflecting the terms of the sale (together with changes approved by the Mayor, Mayor Pro Tem, City Manager, Deputy City Manager for Financial and Administrative Services or Chief Financial Officer, any one or more of said officials), shall be and is hereby approved as to form and content, and the Purchasers are hereby authorized to use and distribute said final Official Statement dated January 27, 2009, in the reoffering, sale and delivery of the Certificates to the public. The Mayor and City Clerk or Alternate City Clerk are further authorized and directed to deliver for and on behalf of the City copies of said Official Statement in final form as may be required by the Purchasers, and such Official Statement in the final form and content executed by said officials shall be deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 21: Notices to 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 on 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 22: Cancellation. All Certificates surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled 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 cancelled by the Paying Agent/Registrar. All cancelled Certificates held by the Paying Agent/Registrar shall be returned to the City.

SECTION 23: Mutilated – Destroyed – Lost and Stolen Certificates. If: (a) any mutilated Certificate is surrendered to the Paying Agent/Registrar or the City, and the Paying Agent/Registrar receives evidence to their satisfaction of the destruction, loss, or theft of any Certificate; and (b) there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the

City or the Paying Agent/Registrar that such Certificate has been acquired by a bona fide purchaser, the City shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Certificate, a new Certificate of the same Stated Maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Certificate has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Certificate, pay such Certificate when due.

Upon the issuance of any new Certificate under this Section, the City may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Certificate issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Certificate shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Certificate shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding 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 24: Covenants to Maintain Tax Exempt Status of Interest on the Certificates.

(a) Definitions. When used in this Section, the following terms shall 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” means 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 improvement 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 Holder 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 field of municipal bond 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, constructed 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 rulings 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 person 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 of 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 rulings 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, 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 eighty (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 or 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, Mayor Pro Tem, City Manager, Deputy City Manager for Financial and Administrative Services, and Chief Financial Officer, either or any combination of them, 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 25: Proceeds of Sale. All amounts received as accrued interest on the Certificates plus the rounding amount of \$_____ shall be deposited to the Interest and Sinking Fund. Certificate proceeds representing net premium in the amount of \$_____ shall be used to pay (i) underwriter's discount in the amount of \$_____ and (ii) costs and expenses pertaining to the issuance of the Certificates in the amount of \$_____. To the extent any of

such amounts is not used for such purposes, such excess shall be deposited to the Interest and Sinking Fund. The remaining Certificate proceeds in the amount of \$_____ shall be deposited in a fund maintained at a City depository bank. Pending expenditure for the Project, such proceeds of sale may be invested in authorized investments and any investment earnings realized may be expended for the Project or deposited in the Interest and Sinking Fund as shall be determined by the City Manager. Any investment earnings or surplus proceeds remaining after completion of the Project shall be deposited to the credit of the Interest and Sinking Fund.

SECTION 26: Satisfaction of Obligations 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 and the lien on and pledge of the Surplus Revenues under this Ordinance 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 amounts thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when: (a) money sufficient to pay in full such Certificates or the principal amounts 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 (b) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities 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 amounts 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 Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, and all income from Government Securities 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 amounts 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 three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates for which 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.

SECTION 27: 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 and in Section 28 hereof. 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 written consent of Holders owning 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: (a) 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; (b) give any preference to any Certificate over any other Certificate; or (c) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 28: Continuing Disclosure Undertaking.

(a) Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

“MSRB” means the Municipal Securities Rulemaking Board.

“NRMSIR” means each person whom the SEC or its staff has determined to be a nationally recognized municipal securities information repository within the meaning of the Rule from time to time.

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

“SEC” means the United States Securities and Exchange Commission.

“SID” means any person designated by the State or an authorized department, officer, or agency thereof as, and determined by the SEC or its staff to be, a state information depository within the meaning of the Rule from time to time.

(b) Annual Reports.

The City shall provide annually to each NRMSIR and any SID, within six months after the end of each fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement approved in Section 20 of this Ordinance, being the information described in **Exhibit “B”** hereto. Any financial statements so to be provided shall be: (1) prepared in accordance with the accounting principles described in **Exhibit “B”** hereto; and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If audited financial statements are not so provided, then the City shall provide unaudited financial statements within the required period and the City shall provide audited financial statements for the applicable

fiscal year to each NRMSIR and any SID, when and if audited financial statements become available.

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

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the MSRB) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

(c) Material Event Notices.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any of the following events with respect to the Certificates, if such event is material within the meaning of the federal securities laws:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or events affecting the tax-exempt status of the Certificates;
7. Modifications to rights of Holders of the Certificates;
8. Certificate calls;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates; and
11. Rating changes.

The City shall notify any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 28(b) of this Ordinance by the time required by such Section.

(d) Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Certificates within the meaning of the Rule, except that the City in any event will give the notice required by Section 28(c) of any Certificate calls and defeasance that cause the City to be no longer such an “obligated person.”

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

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

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

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

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if: (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances; and (2) either: (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment; or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with Section 28(b) an explanation, in

narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 29: 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 investigation by the Attorney General, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificates pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the Purchasers.

Furthermore, the Mayor, Mayor Pro Tem, City Manager, Deputy City Manager for Financial and Administrative Services, and Chief Financial Officer, any one or more of said officials, are hereby authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Certificates, the approval of the Attorney General, and their registration by the Comptroller of Public Accounts and, together with the City's financial advisor, bond counsel, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Certificates to the Purchasers and the initial exchange thereof for definitive Certificates.

SECTION 30: Bond Counsel's Opinion. The Purchasers' obligation to accept delivery of the Certificates is subject to being furnished with the final approving opinion of Fulbright & Jaworski L.L.P., Bond Counsel for the City, 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 or an executed counterpart thereof shall accompany the global Certificates deposited with The Depository Trust Company. The engagement of such firm as Bond Counsel to the City in connection with the issuance, sale and delivery of the Certificates is hereby approved and confirmed.

SECTION 31: 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 the attorneys approving said Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

SECTION 32: 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 33: 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 34: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State and the United States of America.

SECTION 35: Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

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 or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 37: Incorporation of Findings and Determinations. The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 38: 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 Chapter 551 of the Texas Government Code, as amended.

SECTION 39: Further Procedures. The Mayor, Mayor Pro Tem, City Manager, Deputy City Manager for Financial and Administrative Services, and Chief Financial Officer of the City and all other officers, employees and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the seal of the City and on behalf of the City all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Certificates, and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Certificates, the Mayor, the City Clerk, the Alternate City Clerk, and/or the City Manager of the City, and its Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance: (i) in order to cure any technical ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 40: Effective Date. This Ordinance shall be in force and effect from and after its passage on the date shown below.

[Remainder of page intentionally left blank.]

APPROVED AND ADOPTED this _____ day of _____, 2009.

John F. Cook
Mayor, City of El Paso, Texas

ATTEST:

Richarda Duffy Momsen
City Clerk, City of El Paso, Texas

(SEAL)

APPROVED AS TO FORM:



Paul A. Braden
Attorney for the City

APPROVED AS TO CONTENT:



William F. Studer, Deputy City Manager
Financial and Administrative Services



Bertha A. Ontiveros
Assistant City Attorney

EXHIBIT "A"

FORM OF INITIAL CERTIFICATE

REGISTERED
NO. T-1

REGISTERED
\$58,115,000

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF EL PASO, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2009

Certificate Date:
January 15, 2009

Registered Owner: SOUTHWEST SECURITIES, INC.

Principal
Amount: FIFTY-EIGHT MILLION ONE HUNDRED FIFTEEN THOUSAND DOLLARS

The City of El Paso (the "City"), a body corporate and municipal corporation in El Paso County, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above (the "Registered Owner"), or the registered assigns thereof, the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), on August 15 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>
-------------	-----------------------------------	--------------------------

(Information to be inserted from Section 3 hereof)

and to pay interest on the unpaid principal amount hereof from the date of its delivery to the initial purchasers (February 24, 2009) at the per annum rates of interest specified above computed on the basis of a 360-day year consisting of twelve 30-day months; such interest being payable on February 15, 2010, and each August 15 and February 15 thereafter until maturity or prior redemption. Principal installments of this Certificate are payable in the year of maturity or on a redemption date to the Registered Owner hereof by Wells Fargo Bank, National Association, Austin, Texas (the "Paying Agent/Registrar"), upon presentation and surrender at its designated offices in Minneapolis, Minnesota (the "Designated Payment/Transfer Office"). Interest shall be 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 last business day of the month next preceding the interest payment date hereof, and interest shall be paid by the Paying Agent/Registrar by check sent by 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. 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 order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions in the city where the principal offices of the Paying Agent/Registrar is located are authorized to be closed, and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate 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.

This Certificate is dated January 15, 2009, and is issued in the aggregate principal amount of \$58,115,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing, resurfacing and improving various streets, roads, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, loop detectors and landscaping related thereto and the acquisition of necessary rights-of-way and land in connection therewith, (b) design, construction and installation of flood control, storm water, drainage improvements, ponding areas and related municipal facilities within the City, including the acquisition of rights-of-way, real property and any related demolition necessary in connection therewith, (c) acquiring, renovating, improving and equipping municipal facilities for departmental administration purposes, (d) improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center, (e) the purchase of equipment, machinery, vehicles, materials and supplies for the storm water, police and street maintenance departments, and (f) acquisition, construction and improvement of municipally owned public art projects, and (ii) professional services rendered in connection therewith, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, particularly V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended; and pursuant to an ordinance adopted by the governing body of the City (the "Ordinance").

The Certificates stated to mature on August 15, 20__ and August 15, 20__ (the "Term Certificates") are subject to scheduled mandatory redemption and will be redeemed by the City, in part at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Interest and Sinking Fund, on the dates and in the respective principal amounts as set forth in the following schedule:

Term Certificates Maturing August 15, 20	
<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20 (maturity)	\$,000

Term Certificates Maturing August 15, 20

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20 (maturity)	\$,000

The Paying Agent/Registrar will select by lot or by any other customary method that results in a random selection the specific Term Certificates (or with respect to Term Certificates having a denomination in excess of \$5,000, each \$5,000 portion thereof) to be redeemed by mandatory redemption. The principal amount of Term Certificates of a maturity required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions hereof shall be reduced, at the option of the City, by the principal amount of any Term Certificates of like maturity which, at least 50 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

The Certificates maturing on and after August 15, 2020, 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 August 15, 2019, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued 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, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed, payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and 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 thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered

owner within 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 of a Certificate redeemed in part.

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

This Certificate is payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and is additionally payable from and secured by a lien on and pledge of the Surplus Revenues, in an amount not to exceed \$1,000, of the City's waterworks and sewer system (the "System"), as provided in the Ordinance, such lien and pledge being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of the "Prior Lien Obligations" (as defined in the Ordinance) now outstanding and hereafter issued by the City. In the Ordinance, the City reserves and retains the right to issue obligations payable from and secured by a lien on and pledge of the Net Revenues ranking prior and superior to the pledge securing the payment of the Certificates. Additionally, the City reserves and retains the right to issue Additional Certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Surplus Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file at the offices of the Paying Agent/Registrar, and to all of the provisions of which the Registered Owner 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 Certificate; the properties constituting the System; the Surplus Revenues pledged to the payment of the principal of and interest on this Certificate; the nature, extent, and manner of enforcement of the pledge; 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 Registered Owners; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. 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 or her 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.

The City and the Paying Agent/Registrar, and any agent of either, may treat the Registered Owner hereof whose name appears on the Security Register: (i) on the Record Date as the owner entitled to the payment of the interest hereon; (ii) on the date of surrender of this Certificate as the owner entitled to the payment of the principal hereof at its Stated Maturity; 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 a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (the "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 fifteen (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 the Registered Owner 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 covenanted that the City is a duly organized and legally existing municipal corporation 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 by the levy of a tax and a pledge of and lien on the Surplus Revenues of the System as aforesated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications 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.

CITY OF EL PASO, TEXAS

Mayor

COUNTERSIGNED:

City Clerk

(CITY SEAL)

**REGISTRATION 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)

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 Owner as it appears on the face of the within Certificate in every particular.

FORM OF DEFINITIVE CERTIFICATES

REGISTERED
NO. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF EL PASO, TEXAS
COMBINATION TAX AND REVENUE
CERTIFICATE OF OBLIGATION
SERIES 2007

Certificate Date:
January 15, 2009

Interest Rate:

Stated Maturity
August 15, 20__

CUSIP NO:

Registered Owner:

Principal Amount:

DOLLARS

The City of El Paso (the "City"), a body corporate and municipal corporation in El Paso County, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above (the "Registered Owner"), or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount stated above from the date of their delivery to the initial purchasers at the per annum rate of interest specified above computed on the basis of a 360-day year consisting of twelve 30-day months; such interest being payable on February 15, 2010, and each August 15 and February 15 thereafter until maturity or prior redemption. Principal of this Certificate shall be payable at its Stated Maturity 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 shall be payable to the Registered Owner of this Certificate (or of 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 last business day of the month next preceding the interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent by 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. 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 order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions in the city where the principal offices of the Paying Agent/Registrar is located are authorized to be closed, and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and

interest on this Certificate 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.

This Certificate is dated January 15, 2009, and is issued in the aggregate principal amount of \$58,115,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: (a) constructing, resurfacing and improving various streets, roads, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, loop detectors and landscaping related thereto and the acquisition of necessary rights-of-way and land in connection therewith, (b) design, construction and installation of flood control, storm water, drainage improvements, ponding areas and related municipal facilities within the City, including the acquisition of rights-of-way, real property and any related demolition necessary in connection therewith, (c) acquiring, renovating, improving and equipping municipal facilities for departmental administration purposes, (d) improving, enlarging, equipping and repairing the El Paso Convention and Performing Arts Center, (e) the purchase of equipment, machinery, vehicles, materials and supplies for the storm water, police and street maintenance departments, and (f) acquisition, construction and improvement of municipally owned public art projects, and (ii) professional services rendered in connection therewith, pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, particularly V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended; and pursuant to an ordinance adopted by the governing body of the City (the "Ordinance").

The Certificates stated to mature on August 15, 20__ and August 15, 20__ (the "Term Certificates") are subject to scheduled mandatory redemption and will be redeemed by the City, in part at a price equal to the principal amount thereof, without premium, plus accrued interest to the redemption date, out of moneys available for such purpose in the Interest and Sinking Fund, on the dates and in the respective principal amounts as set forth in the following schedule:

Term Certificates Maturing August 15, 20

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20 (maturity)	\$,000

Term Certificates Maturing August 15, 20

<u>Redemption Date</u>	<u>Principal Amount</u>
August 15, 20	\$,000
August 15, 20 (maturity)	\$,000

The Paying Agent/Registrar will select by lot or by any other customary method that results in a random selection the specific Term Certificates (or with respect to Term Certificates having a denomination in excess of \$5,000, each \$5,000 portion thereof) to be redeemed by

mandatory redemption. The principal amount of Term Certificates of a maturity required to be redeemed on any redemption date pursuant to the foregoing mandatory sinking fund redemption provisions hereof shall be reduced, at the option of the City, by the principal amount of any Term Certificates of like maturity which, at least 50 days prior to the mandatory sinking fund redemption date (i) shall have been acquired by the City at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation, or (ii) shall have been redeemed pursuant to the optional redemption provisions hereof and not previously credited to a mandatory sinking fund redemption.

The Certificates maturing on and after August 15, 2020, 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 August 15, 2019, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty days prior to a redemption date, the City shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued 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, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed, payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and 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 thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within 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 of a Certificate redeemed in part.

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

redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

This Certificate is payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City and is additionally payable from and secured by a lien on and pledge of the Surplus Revenues, in an amount not to exceed \$1,000, of the City's waterworks and sewer system (the "System"), as provided in the Ordinance, such lien and pledge being junior and subordinate to the lien on and pledge of the Net Revenues of the System securing the payment of the "Prior Lien Obligations" (as defined in the Ordinance) now outstanding and hereafter issued by the City. In the Ordinance, the City reserves and retains the right to issue obligations payable from and secured by a lien on and pledge of the Net Revenues ranking prior and superior to the pledge securing the payment of the Certificates. Additionally, the City reserves and retains the right to issue Additional Certificates equally and ratably secured with the Certificates by a parity lien on and pledge of the Surplus Revenues.

Reference is hereby made to the Ordinance, a copy of which is on file at the offices of the Paying Agent/Registrar, and to all of the provisions of which the Registered Owner 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 Certificate; the properties constituting the System; the Surplus Revenues pledged to the payment of the principal of and interest on this Certificate; the nature, extent, and manner of enforcement of the pledge; 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 Registered Owners; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions thereof. 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 or her 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.

The City and the Paying Agent/Registrar, and any agent of either, may treat the Registered Owner hereof whose name appears on the Security Register: (i) on the Record Date as the owner entitled to the payment of the interest hereon; (ii) on the date of surrender of this Certificate as the owner entitled to the payment of the principal hereof at its Stated Maturity; 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 a non-payment 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 fifteen (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 the Registered Owner 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 covenanted that the City is a duly organized and legally existing municipal corporation 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 by the levy of a tax and a pledge of and lien on the Surplus Revenues of the System as aforesated. In case any provision in this Certificate or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications 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.

CITY OF EL PASO, TEXAS

Mayor

COUNTERSIGNED:

City Clerk

(CITY SEAL)

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Certificate of Obligation has been duly issued and registered under the provisions of the within mentioned Ordinance; the Certificate of Obligation or Certificates of Obligation 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 of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in Minneapolis, Minnesota, is the Designated Payment/Transfer Office for this Certificate.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, Austin, Texas
As Paying Agent/Registrar

Registered this date:

By

Authorized Signature

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 Owner as it appears on the face of the within Certificate in every particular.

EXHIBIT “B”

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 28 of this Ordinance.

ANNUAL FINANCIAL STATEMENTS AND OPERATING DATA

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

- (1) The portions of the financial statements of the City appended to the Official Statement as Appendix B, but for the most recently concluded fiscal year.
- (2) Statistical and financial data set forth in Tables numbered 1 through 15, inclusive.

ACCOUNTING PRINCIPLES

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in Paragraph 1 above.