

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

**DEPARTMENT:** Financial and Administrative Services

**AGENDA DATE:** April 14, 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 regarding an ordinance authorizing the issuance of “City of El Paso, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009A” and resolve matters which are necessary to effectuate said issuance, including a delegation of authority.

**BACKGROUND / DISCUSSION:**

On March 10, 2009, City Council authorized the publication of a notice of the City’s intent to issue certificates of obligation at the City’s April 14<sup>th</sup> City Council Meeting. Pursuant to Chapter 1371 of the Texas Government Code, the attached Ordinance authorizes each of the City Manager or the Deputy City Manager for Finance and Administrative Services to finalize the terms of the Certificates within certain specified parameters. The parameters are set forth in Section 4 of the Ordinance. In addition, if such pricing officer determines it is economically advantageous to issue all or a portion of the Certificates as “Build America Bonds” under the federal stimulus legislation, the Ordinance authorizes the pricing officer to do so. Pursuant to Section 1201.028 of the Texas Government Code, this Ordinance is scheduled to be approved at a single meeting of the City Council. Notice of this public hearing is being published as required by the City Charter.

The not-to-exceed par amount of the certificates’ proposed to be issued at the April 14<sup>th</sup> meeting is \$79,500,000. The proceeds from such certificates will only be used for the projects described in the attached resolution. These projects were previously approved by the City Council in January 2006, August 2006 (Storm) and December 2008. Please see the attached spreadsheets that support the following breakdown:

January 2006 Authorization:	\$15,000,000
Storm 2006 Authorization:	35,000,000
December 2008 Authorization:	<u>29,500,000*</u>
Total Proposed:	<u>\$79,500,000</u>

Representatives from First Southwest and Bond Counsel will be on hand at the meeting for discussion.

**PRIOR COUNCIL ACTION:**

On March 10, 2009, council authorized the publication of a notice of intention to issue certificates in the amount of \$79,500,000.

**AMOUNT AND SOURCE OF FUNDING:**

The proceeds from these COs will fund remaining bond projects; repayment of the bonds will be accounted for in the debt service fund as appropriate. Sources of funding are property taxes and Mass Transit fare box and sales tax revenues.

\*\$12 million of these bonds will be funded from Mass Transit revenues.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_  
*Carmen Cecilia Cardenas*  
(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:** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

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

Adopted: April 14, 2009

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**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF “CITY OF EL PASO, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009A”; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID CERTIFICATES; AND RESOLVING OTHER MATTERS WHICH ARE NECESSARY TO EFFECTUATE SAID ISSUANCE; INCLUDING THE DELEGATION OF MATTERS RELATING TO THE SALE AND ISSUANCE OF THE CERTIFICATES TO AN AUTHORIZED CITY OFFICIAL WITHIN CERTAIN SPECIFIED PARAMETERS.**

**WHEREAS**, notice of the City Council’s intention to issue certificates of obligation in the maximum principal amount not to exceed \$79,500,000 for the purpose of paying contractual obligations of the City of El Paso, Texas (the “City”) to be incurred for (i) the construction of public works, to wit: (a) constructing, resurfacing and improving various streets, roads, bridges, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, ADA connectivity, traffic signals, loop detectors, lighting 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) renovating, improving and equipping existing municipal facilities, including fiber optic connectivity, ADA improvements, roofing system rehabilitation and replacement, and lighting projects, (d) renovating, improving and expanding municipally owned international bridge facilities, (e) acquisition, construction and improvement of municipally owned public art projects, (f) design, construction and improvements to transportation and terminal facilities, including the acquisition of necessary land therefor, and (g) the purchase of capital equipment, including motor vehicles, for the following city departments: police, fire, transportation, street and public works, 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 March 12, 2009 and March 19, 2009; 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 and, in accordance with the provisions of V.T.C.A., Government Code, Chapter 1371, as amended, the authority to determine the principal amount of Certificates to be issued and to negotiate the terms of sale thereof should be delegated to a Pricing Officer (hereinafter designated), such terms of sale and principal amount to be specified in a pricing certificate (the “Pricing Certificate”) to be executed by the Pricing Officer;

**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 “City of El Paso, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009A” 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 appearing in the Pricing Certificate executed pursuant to this Ordinance (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 21; 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 20 hereof.

(13) The term “Pricing Certificate” shall mean the pricing certificate that sets forth the terms of the Certificates in accordance with Section 4 of this Ordinance and is executed by the Pricing Officer, all in accordance with the provisions of V.T.C.A., Government Code, Chapter 1371, as amended.

(14) The term “Pricing Officer” shall mean the City Manager of the City, or in the absence thereof, the Deputy City Manager for Financial and Administrative Services, each acting in such capacity severally and not jointly.

(15) 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.

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

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

(18) The term “Stated Maturity” shall mean the principal amounts due in accordance with the schedule appearing in the Pricing Certificate.

(19) 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.

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

(21) 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 – Series Designation – Principal Amount – Purpose – Certificate Date.** Certificates of obligation of the City shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth to be designated and bear the title “CITY OF EL PASO, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2009A” (herein referred to as the “Certificates”), 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, bridges, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, ADA connectivity, traffic signals, loop detectors, lighting 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) renovating, improving and equipping existing municipal facilities, including fiber optic connectivity, ADA improvements, roofing system rehabilitation and replacement, and lighting projects, (d) renovating, improving and expanding municipally owned international bridge facilities, (e) acquisition, construction and improvement of municipally owned public art projects, (f) design, construction and improvements to transportation and terminal facilities, including the acquisition of necessary land therefor, and (g) the purchase of capital equipment, including motor vehicles, for the following city departments: police, fire, transportation, street and public works, and (ii) professional services rendered in connection therewith (herein referred to collectively as the "Project"), in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, V.T.C.A., Government Code, Chapter 1371, as amended, and V.T.C.A. Government Code, Chapter 1502, as amended. The Certificates shall be dated (the "Certificate Date") as provided in the Pricing Certificate.

**SECTION 3: Fully Registered Obligations - Terms.** The Certificates shall be issued as fully registered obligations, without coupons, and as either or both "Current Interest Certificates" (obligations paying accrued interest to the holders or owners on and at stated intervals prior to maturity) and "Capital Appreciation Certificates" (obligations paying no accrued interest to the holders or owners prior to maturity).

(a) **Current Interest Certificates.** Current Interest Certificates (other than the Initial Certificates referenced in Section 9 hereof) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall be lettered "R" and numbered consecutively from One (1) upward and principal thereof shall become due and payable on a date certain in each of the years and in amounts (the "Stated Maturities") in accordance with the details of the Current Interest Certificates as set forth in the Pricing Certificate.

The Current Interest Certificates shall bear interest on the unpaid principal amounts from the date specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year consisting of twelve 30-day months). Interest on the Current Interest Certificates shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

(b) **Capital Appreciation Certificates.** Capital Appreciation Certificates (other than the Initial Certificates referenced in Section 9 hereof) shall each be issued in Maturity Amounts (the "Accreted Value" [as hereinafter defined] at maturity) of \$5,000, or any integral multiple thereof within a Stated Maturity, shall be lettered "CAB-" and numbered consecutively from One (1) upward, and the original principal amounts of the Capital Appreciation Certificates shall accrete interest at the yield(s) stated in the Pricing Certificate, and shall become due and payable on a date certain in each of the years (the "Stated Maturities") in the Maturity Amounts set forth in the Pricing Certificate.

Interest on the Capital Appreciation Certificates shall accrue from the date of delivery of the Certificates to the initial purchasers, and be compounded semiannually in each year on the dates (the "Compounding Dates"), and commencing on the date, set forth in the Pricing

Certificate, until the Stated Maturity or earlier redemption thereof. The accreted interest on Capital Appreciation Certificates shall be payable at maturity or earlier redemption as a portion of the Maturity Amount or Accreted Value thereof.

The term “Accreted Value”, as used herein with respect to Capital Appreciation Certificates, shall mean the original principal amount of a Capital Appreciation Certificate, plus the initial premium, if any, paid therefor, with interest thereon compounded semiannually to the Compounding Date next preceding the date of such calculation (or the date of calculation, if such calculation is made on a Compounding Date), at the respective interest rates stated in the Pricing Certificate therefor and, with respect to each \$5,000 Accreted Value at maturity, as set forth in the Accreted Value table attached to the Pricing Certificate and in the Official Statement referred to in the Pricing Certificate. For any day other than a Compounding Date, the Accreted Value of a Capital Appreciation Certificate shall be determined by a straight line interpolation between the values for the applicable semiannual Compounding Dates (based on 30-day months).

**SECTION 4: Delegation of Authority to Pricing Officer.** (a) As authorized by V.T.C.A., Government Code, Chapter 1371, as amended, the City Manager of the City, or in the absence thereof, the Deputy City Manager for Finance and Administrative Services (the “Pricing Officer”) is hereby authorized to act on behalf of the City in selling and delivering the Certificates and carrying out the other procedures specified in this Ordinance determining the aggregate principal amount of the Certificates, the date of the Certificates, any additional or different designation or title by which the Certificates shall be known, determining whether the Certificates shall be issued in one or more taxable or tax exempt series or subseries, the price at which the Certificates will be sold, the years in which the Certificates will mature, the principal amount or Maturity Amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the record date, the compounding dates, the price and terms upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, the designation of a paying agent/registrar, the terms of any bond insurance applicable to the Certificates, the designation of one or more funds for the payment of the Certificates, and all other matters relating to the issuance, sale, and delivery of the Certificates, all of which shall be specified in the Pricing Certificate, provided that:

(i) the aggregate original principal amount of the Certificates shall not exceed \$79,500,000;

(ii) the true interest cost rate for the Certificates shall not exceed 6.50% (after taking into account any applicable direct payments received from the Federal government for any Certificates issued as Build America Bonds in accordance with Section 4(c) hereof); and

(iii) the maximum maturity date for the Certificates shall not exceed December 31, 2040.

The execution of the Pricing Certificate shall evidence the sale date of the Certificates by the City to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the City's interest costs associated with one or more series of the Certificates, then the Pricing Officer is authorized, in connection with effecting the sale of the Certificates, to obtain from a municipal bond insurance company (the "Insurer") a municipal bond insurance policy in support of one or more series of the Certificates. To that end, should the Pricing Officer exercise such authority and commit the City to obtain a municipal bond insurance policy, for so long as such policy is in effect, the requirements of the Insurer relating to the issuance of said policies are incorporated by reference into this Ordinance and made a part hereof for all purposes, notwithstanding any other provision of this Ordinance to the contrary. Each of the City Manager of the City, the Deputy City Manager and the Pricing Officer shall have the authority to execute any documents to affect the issuance of said policy by the Insurer.

(b) In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount not exceeding the amount authorized in Subsection (a)(i) above, which shall be sufficient in amount to provide for the purposes for which the Certificates are authorized and to pay costs of issuing the Certificates. The delegation made hereby shall expire if not exercised by the Pricing Officer by the close of business on October 14, 2009. The Certificates shall be sold by negotiated sale to the underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined). The Pricing Officer is hereby delegated the authority to select and designate the Purchasers, which delegation shall be evidenced by the execution of the Pricing Certificate.

(c) Build America Bonds. Within the parameters set forth in Section 4 above, the Pricing Officer is authorized to cause the Certificates to be issued, in whole or in part, as "Build America Bonds" under the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act") to the extent the Pricing Officer determines such issuance is economically advantageous to the City. In the event the Pricing Officer makes such determination and all or a portion of the Certificates are issues as Build America Bonds, then the Pricing Officer is authorized to make such elections as are required by federal tax law or otherwise recommended by Bond Counsel to effectuate such taxable bond issuance, including any irrevocable election to treat such taxable Certificates as "Qualified Build America Bonds" under the Stimulus Act, as applicable.

**SECTION 5: Terms of Payment - Paying Agent/Registrar.** The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the Paying Agent/Registrar for the Certificates shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Certificates (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement," substantially in the form attached to the Pricing Certificate and such reasonable rules and

regulations as the Paying Agent/Registrar and the City may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Agreement in connection with the delivery of the Certificates. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The Certificates shall be payable at their Stated Maturities or upon their earlier redemption, only upon the presentation and surrender of the Certificates to the Paying Agent/Registrar at its designated offices provided in the Pricing Certificate (the "Designated Payment/Transfer Office"); provided, however, while a Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Certificate. Interest accrued on a Capital Appreciation Certificate shall be payable at its Stated Maturity or redemption as a portion of the Accreted Value or Maturity Amount. Interest on a Current Interest Certificate shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day on which 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 on which banking institutions 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 one or more maturities of the Current Interest Certificates 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 past due 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 of the Current Interest Certificates appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

**SECTION 6: Registration – Transfer – Exchange of Certificates – Predecessor Certificates.** The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every Holder of the Certificates issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of like kind, maturity, and amount

and in 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 surrender for assignment or transfer of any Certificate (other than the Initial Certificates authorized in Section 9 hereof) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Certificates, executed on behalf of and furnished by the City, shall be registered and issued to the assignee or transferee of the previous Holder; such Certificates to be of authorized denominations, of like Stated Maturity, and of a like aggregate principal amount (with respect to Current Interest Certificates) or Maturity Amount (with respect to Capital Appreciation Certificates) as the Certificate or Certificates surrendered for transfer.

At the option of the Holder, Certificates (other than the Initial Certificates authorized in Section 9 hereof) 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 (with respect to Current Interest Certificates) or Maturity Amount (with respect to Capital Appreciation Certificates) as the Certificates surrendered for exchange, upon surrender of the Certificates to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Certificates are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Certificates, executed on behalf of and furnished by the City, to the Holder requesting the exchange.

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

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

Certificates canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed, or stolen Certificate for which a replacement Certificate has been issued, registered, and delivered in lieu thereof pursuant to the provisions of Section 20 hereof, and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Certificate.

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

**SECTION 7: Book-Entry-Only Transfers and Transactions.** Notwithstanding the provisions contained in Sections 5 and 6 relating to the payment 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 5 and 6 hereof.

**SECTION 8: Execution - Registration.** The Certificates shall be executed on behalf of the City by the Mayor under the City’s seal reproduced or impressed thereon and attested by the City Clerk or Alternate City Clerk. The signature of said officials on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of individuals who are or were the proper officials of the City on the date of the adoption of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Certificates to the initial purchaser(s) and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, V.T.C.A., 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 in the form provided in Section 9(c), manually executed by the Comptroller of Public Accounts of the State of Texas, or his or her duly authorized agent, or a

certificate of registration substantially in the form provided in Section 9(d), 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 as fully registered Certificates of the appropriate kind (Current Interest Certificates and Capital Appreciation Certificates) as specified in the Pricing Certificate, being (i) a single, fully registered Current Interest Certificate in the aggregate principal amount noted and principal installments to become due and payable as provided in the Pricing Certificate and numbered TR-1, and (ii) a single, fully registered Capital Appreciation Certificate in the aggregate Maturity Amount noted, and with installments of such Maturity Amount to become due and payable as provided, in the Pricing Certificate and numbered TCAB-1 (hereinafter called the “Initial Certificates”) and the Initial Certificates shall be registered in the name of the initial purchaser) or the designee thereof. The Initial Certificates shall be the Certificates submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial 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 like kind and of authorized denominations, Stated Maturities, principal amounts (with respect to Current Interest Certificates) or Maturity Amounts (with respect to the Capital Appreciation Certificates) 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.**

(a) **Forms Generally.** The Certificates, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Certificates, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Certificates to be completed and modified with the information set forth in the Pricing Certificate, 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 determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling forms and terms of the Certificates. Any portion of the text of any Certificates may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Certificate.

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

(b) Form of Certificates.

**[CURRENT INTEREST CERTIFICATES]**

REGISTERED  
NO. R- \_\_\_\_\_

PRINCIPAL AMOUNT  
\$ \_\_\_\_\_

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

Certificate Date: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ Stated Maturity: \_\_\_\_\_ CUSIP No. \_\_\_\_\_

Registered Owner:

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

The City of El Paso (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of El Paso, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Certificate is prior to the initial interest payment date in which case it shall bear interest from the \_\_\_\_\_) at the per annum rate of interest specified above computed on the basis of a 360 day year of twelve 30 day months; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ in each year, commencing \_\_\_\_\_, until maturity or prior redemption. Principal of this Certificate is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. 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

on which 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 close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the "Certificates") 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, bridges, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, ADA connectivity, traffic signals, loop detectors, lighting 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) renovating, improving and equipping existing municipal facilities, including fiber optic connectivity, ADA improvements, roofing system rehabilitation and replacement, and lighting projects, (d) renovating, improving and expanding municipally owned international bridge facilities, (e) acquisition, construction and improvement of municipally owned public art projects, (f) design, construction and improvements to transportation and terminal facilities, including the acquisition of necessary land therefor, and (g) the purchase of capital equipment, including motor vehicles, for the following city departments: police, fire, transportation, street and public works, and (ii) professional services rendered in connection therewith, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, V.T.C.A., Government Code, Chapter 1371, as amended, and V.T.C.A. Government Code, Chapter 1502, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance"). The Certificates are issued in part as "Current Interest Certificates", which total in principal amount \$\_\_\_\_\_ and pay accrued interest at stated intervals to registered owners and in part as "Capital Appreciation Certificates", which total in original principal amount \$\_\_\_\_\_ and pay no accrued interest prior to their Stated Maturities or redemption.

[The Certificates maturing on the dates hereinafter identified (the "Term Certificates") are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Certificates due

Term Certificates due

Redemption Date

Principal Amount

Redemption Date

Principal Amount

The particular Term Certificates of a Stated Maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Certificates for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the City, by the principal amount of Term Certificates of like Stated Maturity which, at least 50 days prior to a mandatory redemption date, (1) 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 (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Current Interest Certificates maturing on and after \_\_\_\_\_, 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 \_\_\_\_\_, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Certificates, 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, in whole or in part, 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 such redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., 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 redemption price of 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 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, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal at the Stated Maturity, or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a Certificate 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 each registered owner of a Certificate 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.

CITY OF EL PASO, TEXAS

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

**[CAPITAL APPRECIATION CERTIFICATES]**

REGISTERED  
NO. CAB- \_\_\_\_\_

MATURITY AMOUNT  
\$ \_\_\_\_\_

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

Certificate Date: \_\_\_\_\_ Interest Rate: \_\_\_\_\_ Stated Maturity: \_\_\_\_\_ CUSIP No. \_\_\_\_\_

Registered Owner:

Maturity Amount:

The City of El Paso (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of El Paso, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above, the Maturity Amount stated above (or so much thereof as shall not have been paid upon prior redemption). The Maturity Amount of this Certificate represents the accretion of the original principal amount of this Certificate (including the initial premium, if any, paid herefor) from the date of delivery to the initial purchasers to the Stated Maturity and such accretion in value occurring at the above Stated Yield and compounding on \_\_\_\_\_, and semiannually thereafter on \_\_\_\_\_ and \_\_\_\_\_. A table of the "Accreted Values" per \$5,000 "Accreted Value" at maturity is printed on this Certificate or attached hereto. The term "Accreted Value", as used herein, means the original principal amount of this Certificate plus the initial premium, if any, paid herefor with interest thereon compounded semiannually to \_\_\_\_\_ and \_\_\_\_\_, as the case may be, next preceding the date of such calculation (or the date of calculation, if such calculation is made on \_\_\_\_\_ or \_\_\_\_\_) at the Stated Yield for the Stated Maturity shown above and in the above referenced Table of Accreted Values. For any date other than \_\_\_\_\_ or \_\_\_\_\_, the Accreted Value of this Certificate shall be determined by a straight line interpolation between the values for the applicable semiannual compounding dates (based on 30-day months). 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 on which 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 close, then the date for

such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

The Accreted Value of this Certificate is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Payment of the Maturity Amount or Accreted Value as of a redemption date of this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$ \_\_\_\_\_ (herein referred to as the "Certificates") 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, bridges, thoroughfares, sidewalks, pathways and related municipal facilities within the City, including lane markings, ADA connectivity, traffic signals, loop detectors, lighting 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) renovating, improving and equipping existing municipal facilities, including fiber optic connectivity, ADA improvements, roofing system rehabilitation and replacement, and lighting projects, (d) renovating, improving and expanding municipally owned international bridge facilities, (e) acquisition, construction and improvement of municipally owned public art projects, (f) design, construction and improvements to transportation and terminal facilities, including the acquisition of necessary land therefor, and (g) the purchase of capital equipment, including motor vehicles, for the following city departments: police, fire, transportation, street and public works, and (ii) professional services rendered in connection therewith and to pay the costs and expenses of issuance, in accordance with the authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, V.T.C.A., Government Code, Chapter 1371, as amended, and V.T.C.A. Government Code, Chapter 1502, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the "Ordinance"). The Certificates are issued in part as "Current Interest Certificates", which total in principal amount \$ \_\_\_\_\_ and pay accrued interest at stated intervals to registered owners and in part as "Capital Appreciation Certificates", which total in original principal amount \$ \_\_\_\_\_ and pay no accrued interest prior to their Stated Maturities.

The Capital Appreciation Certificates maturing on and after \_\_\_\_\_ may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in Maturity Amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected by lot by the Paying Agent/Registrar), on \_\_\_\_\_, or on any date thereafter, at the redemption price of the Accreted Value (as determined and defined herein) as of the date of redemption.

At least thirty (30) days prior to a redemption date, the City shall cause a written notice to be sent by United States Mail, first class postage prepaid, to the registered owners of the Certificates to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its Maturity Amount) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Certificate (or the portion of its Maturity Amount to be redeemed) shall become due and payable, and shall cease to accrete in value from and after the redemption date, provided moneys for the payment of the redemption price to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event a portion of the Maturity Amount of a Certificate is to be redeemed and the registered owner hereof is someone other than Cede & Co., payment of the redemption price 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 Maturity Amount 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 redemption price of 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 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, accruing interest at the same rate, and of the same aggregate Maturity 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, shall treat the registered owner whose name appears on the Security Register (i) on the date of surrender of this Certificate as the owner entitled to payment of the Maturity Amount at its Stated Maturity, or Accreted Value at its redemption, in whole or in part, and (ii) 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.

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

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

CITY OF EL PASO, TEXAS

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

(SEAL)

NOTE TO PRINTER: Print the "Table of Accreted Values" on the Certificates as called for in paragraph one.

(c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Certificates only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER )  
 ) REGISTER NO. \_\_\_\_\_  
OF PUBLIC ACCOUNTS )  
 )  
THE STATE OF TEXAS )

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 \_\_\_\_\_.

(SEAL)

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

(d) Form of Certificate of Paving Agent/Registrar to appear on Definitive Certificates only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

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

The designated office of the Paying Agent/Registrar in \_\_\_\_\_ is the designated payment/transfer Office for this Certificate.

\_\_\_\_\_  
\_\_\_\_\_  
as Paying Agent/Registrar

Registration Date:

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Social Security or other identifying number: \_\_\_\_\_)  
the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints

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

DATED: \_\_\_\_\_

Signature guaranteed:

\_\_\_\_\_

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

(f) The Initial Certificates for the Current Interest Certificates and the Capital Appreciation Certificates shall be in the respective forms set forth therefor in paragraph (b) of this Section, except as follows:

**[CURRENT INTEREST INITIAL CERTIFICATE]**

Heading and first two paragraphs shall be amended to read as follows:

NO. TR-1 \$ \_\_\_\_\_

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

Certificate Date:  
\_\_\_\_\_

Registered Owner:

Principal Amount: DOLLARS

The City of El Paso (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of El Paso, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the registered owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on \_\_\_\_\_ in the years and in principal installments in accordance with the following schedule:

<u>Stated</u> <u>Maturity</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate(s)</u>
----------------------------------	-----------------------------------	-----------------------------------

(Information to be inserted from Pricing Certificate).

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid principal installments hereof from the \_\_\_\_\_ at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on \_\_\_\_\_, and each \_\_\_\_\_ and 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 \_\_\_\_\_ (the "Paying Agent/Registrar"), upon presentation and surrender, at its designated offices in \_\_\_\_\_ (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the

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

**[CAPITAL APPRECIATION INITIAL CERTIFICATE]**

Heading and first two paragraphs shall be amended to read as follows:

REGISTERED  
NO. TCAB-1

MATURITY AMOUNT  
\$ \_\_\_\_\_

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

Certificate Date:  
\_\_\_\_\_

Registered Owner:

Maturity Amount:

The City of El Paso (hereinafter referred to as the “City”), a body corporate and political subdivision in the County of El Paso, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the aggregate Maturity Amount stated above on \_\_\_\_\_ in each of the years and in installments in accordance with the following schedule:

<u>Year of Maturity</u>	<u>Installment Maturity Amount</u>	<u>Stated Yield(s)</u>
-----------------------------	--	----------------------------

(Information to be inserted from Pricing Certificate).

The respective installments of the Maturity Amount hereof represents the accretion of the original principal amounts of each year of maturity from the date of delivery to the initial purchasers ( \_\_\_\_\_ ) to the respective years of maturity (including the initial premium, if any, paid by the initial purchasers) and such accretion in values occurring at the respective Stated Yields and compounding on \_\_\_\_\_, and semiannually thereafter on each \_\_\_\_\_ and \_\_\_\_\_. A table of the "Accreted Values" per \$5,000 "Accreted Value" at maturity is attached to this Certificate. The term "Accreted Value", as used herein, means the original principal amount of this Certificate plus premium, if any, paid herefor with interest thereon compounded semiannually to \_\_\_\_\_ and \_\_\_\_\_, as the case may be, next preceding the date of such calculation (or the date of calculation, if such calculation is made on \_\_\_\_\_ or \_\_\_\_\_) at the respective Stated Yields shown above and in the Table of Accreted Values attached hereto. For any date other than shall be determined by a straight line interpolation between the values for the applicable semiannual compounding dates (based on 30-day months). 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 on which 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 on which banking institutions 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.

The installments of the Maturity Amount or Accreted Value of this Certificate are payable in the years of maturity or on a redemption date to the registered owner hereof, without exchange or collection charges, by \_\_\_\_\_ (the "Paying Agent/ Registrar"), upon presentation and surrender, at its designated offices in \_\_\_\_\_ (the "Designated Payment/Transfer Office"), and shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

**SECTION 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 one or more special Funds to be designated as specified in the Pricing Certificate by the Pricing Officer (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 Tern, City Manager, Deputy City Manager for Finance and Administrative Services, Chief Financial Officer and City Clerk 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 21 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 2009A, Surplus Revenue Fund” or such other designation specified in the Pricing Certificate (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: 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 21: 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 amount(s) (with respect to Current Interest Certificates) and Maturity Amount (with respect to Capital Appreciation Certificates) 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 amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of 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.

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.

The City reserves the right, subject to satisfying the requirements of (i) and (ii) above, to substitute other Government Securities for the Government Securities originally deposited, to reinvest the uninvested moneys on deposit for such defeasance and to withdraw for the benefit of the City moneys in excess of the amount required for such defeasance.

Upon such deposit as described above, such Certificates shall no longer be regarded to be outstanding or unpaid. Provided, however, the City has reserved the option, to be exercised at the time of the defeasance of the Certificates, to call for redemption, at an earlier date, those Certificates which have been defeased to their maturity date, if the City: (i) in the proceedings providing for the firm banking and financial arrangements, expressly reserves the right to call the Certificates for redemption; (ii) gives notice of the reservation of that right to the Holders of the Certificates immediately following the making of the firm banking and financial arrangements; and (iii) directs that notice of the reservation be included in any redemption notices that it authorizes.

**SECTION 22: Ordinance a Contract – Amendments – Outstanding Certificates.** This Ordinance, together with the Pricing Certificate, 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 31 hereof. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders who own a majority of the aggregate of the principal amount (with respect to Current Interest Certificates) and Maturity Amount (with respect to Capital Appreciation Certificates) of the Certificates then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of and interest on the Certificates, reduce the principal amount or Maturity Amount, as the case may be, thereof, the redemption price, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount or Maturity Amount, as the case may be, of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

**SECTION 23: 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(0) 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 Tern, City Manager, Deputy City Manager for Finance and Administrative Services, Chief Financial Officer and City Clerk of the City, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as one or more of such persons deems 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 24: Sale of Certificates - Official Statement.** The Certificates authorized by this Ordinance are to be sold by the City to the Purchasers in accordance with a purchase agreement (the "Purchase Contract"), the terms and provisions of which Purchase Contract are to

be determined by the Pricing Officer, in accordance with Section 4 hereof. With regard to such terms and provisions of the Purchase Contract, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Certificates;
2. The details of the public offering of the Certificates by the Purchasers;
3. The details of an Official Statement (and, if appropriate, any Preliminary Official Statement) relating to the Certificates and the City's Rule 15c2-12 compliance;
4. A security deposit for the Certificates;
5. The representations and warranties of the City to the Purchasers;
6. The details of the delivery of, and payment for, the Certificates;
7. The Purchasers' obligations under the Purchase Contract;
8. The certain conditions to the obligations of the City under the Purchase Contract;
9. Termination of the Purchase Contract;
10. Particular covenants of the City;
11. The survival of representations made in the Purchase Contract;
12. The payment of any expenses relating to the Purchase Contract;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Certificates.

The Pricing Officer is hereby authorized and directed to execute the Purchase Contract for and on behalf of the City and as the act and deed of this City Council.

The Mayor and City Clerk of the City are further authorized and directed to manually or electronically execute and deliver for and on behalf of the City copies of a Preliminary Official Statement and Official Statement, prepared in connection with the offering of the Certificates by the Purchasers, in final form as may be required by the Purchasers, and such final Official Statement in the form and content as approved by the Pricing Officer or as manually or electronically executed by said officials shall be deemed to be approved by the City Council of the City and constitute the Official Statement authorized for distribution and use by the Purchasers.

**SECTION 25: 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.

**SECTION 26: Proceeds of Sale.** Immediately following the delivery of the Certificates, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance and municipal bond insurance, accrued interest received from the Purchasers of the Certificates, if any, and premium in the amount, if any, specified in the Pricing Certificate) shall be deposited to the credit of a construction account maintained on the books and records of the City and, if not immediately invested, in a fund kept at a depository bank of the City. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of V.T.C.A., Government Code, Chapter 2256, including guaranteed investment contracts permitted in V.T.C.A., Section 2256.015, et seq, and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Interest and Sinking Fund as shall be determined by the City Council. Accrued interest and premium in the amount, if any, specified in the Pricing Certificate received from the sale of the Certificates and any excess certificate proceeds, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Interest and Sinking Fund.

**SECTION 27: Notices to Holders-Waiver.** Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case in which 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 or the Pricing Certificate 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 28: 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 29: Bond Counsel Opinion.** The obligation of the Purchasers to accept delivery of the Certificates is subject to being furnished a final opinion of Fulbright & Jaworski

L.L.P., Bond Counsel to the City, approving the Certificates as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for the Certificates. A true and correct reproduction of said opinion is hereby authorized to be printed on the Certificates, or an executed counterpart thereof is hereby authorized to be either printed on definitive printed obligations or deposited with DTC along with the global certificates for the implementation and use of the Book-Entry-Only System used in the settlement and transfer of the Certificates.

**SECTION 30: Further Procedures.** The Mayor, Mayor Pro Tern, City Manager, Deputy City Manager for Finance and Administrative Services, Chief Financial Officer and City Clerk 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 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 or the Pricing Certificate, 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 or the Pricing Certificate, this Ordinance and all of its provisions and the Pricing Certificate 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 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 of Texas and the United States of America.

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

**SECTION 36: Construction of Terms.** If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

**SECTION 37: Severability.** If any provision of this Ordinance or the Pricing Certificate or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the Pricing Certificate and the application thereof to other circumstances shall nevertheless be valid, and the City Council of the City hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 38: Incorporation of Findings and Determinations.** The findings and determinations of the City Council of the City 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 39: 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 or officially interpreted by the SEC.

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

“SID” means any person designated by the State of Texas 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 (beginning with the fiscal year stated in the Pricing Certificate) financial information and operating data with respect to the City of the general type included in the final Official Statement approved by the Pricing Officer and described in the Pricing Certificate. Financial statements to be provided shall be (1) prepared in

accordance with the accounting principles described in the notes to such Official Statement 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 available at the time the financial information and operating data must be provided, then the City shall provide unaudited financial statements for the applicable fiscal year to each NRMSIR and any SID with the financial information and operating data and will file the annual audit report when and if the same becomes 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 subsection (b) of this Section 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 with respect to the City and the Certificates while, but only while, 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 subsection (c) hereof 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 financial results, condition, or prospects of the City or the State of Texas 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 this 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 resulting 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 and the State of Texas (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. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. 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 subsection (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 40:** Municipal Bond Insurance. The Certificates may be sold with the principal of and interest thereon being insured by a municipal bond insurance provider authorized to transact business in the State of Texas. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Certificates and make the determination of the provisions of any commitment therefor.

**SECTION 41:** 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 42:** Effective Date. This Ordinance shall take effect and be in full force immediately from and after its adoption on the date hereof in accordance with the provisions of V.T.C.A., Government Code, Section 1201.028.

*[Remainder of page left blank intentionally.]*

APPROVED AND ADOPTED this 14<sup>th</sup> day of April, 2009.

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

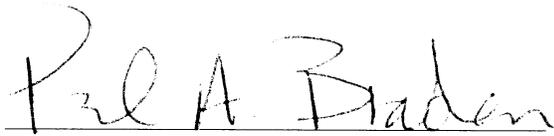
ATTEST:

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

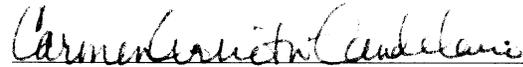
(SEAL)

APPROVED AS TO FORM:



Paul A. Braden  
Attorney for the City

APPROVED AS TO CONTENT:



Carmen Arrieta-Candelaria  
Chief Financial Officer  
City of El Paso, Texas

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Bertha A. Ontiveros  
Assistant City Attorney  
City of El Paso, Texas

# FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

[WWW.FULBRIGHT.COM](http://WWW.FULBRIGHT.COM)

## MEMORANDUM

**TO:** Richarda Duffy Momsen, City Clerk (*via Hand Delivery*)  
Joyce Wilson, City Manager (*via Electronic Mail*)

**FROM:** Paul A. Braden

**DATE:** April 3, 2009

**RE:** An Ordinance authorizing the issuance of “City of El Paso, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2009A”; and resolve matters which are necessary to effectuate said issuance, including a delegation of authority [Paul A. Braden, Bond Counsel (915) 351-6053] [Public Hearing Date: April 14, 2009]

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### INTRODUCTION AND PUBLIC HEARING OF ORDINANCE – City Council Meeting, Tuesday, April 14, 2009

As requested, please accept the enclosed Ordinance for introduction and public hearing by the City Council at its regular City Council meeting to be held on April 14, 2009. On March 10, 2009, the City Council authorized the publication of a notice of intention to issue the Certificates. As required by law, such notice was published once a week for two consecutive weeks and no citizens petition objecting to the issuance of the Certificates has been filed with the City. The proceeds from the sale of the Certificates will be used to fund various public improvements, including City streets, flood control, municipal administrative facilities, municipally owned international bridge facilities, public art projects, motor vehicles, transportation and terminal facilities.

Pursuant to Chapter 1371 of the Texas Government Code, the Ordinance authorizes each of the City Manager or the Deputy City Manager for Finance and Administrative Services to finalize the terms of the Certificates within certain specified parameters. The parameters are set forth in Section 4 of the Ordinance. In addition, if such pricing officer determines it is economically advantageous to issue all or a portion of the Certificates as “Build America Bonds” under the federal stimulus legislation, the Ordinance authorizes the pricing officer to do so. Pursuant to Section 1201.028 of the Texas Government Code, this Ordinance is scheduled to be approved at a single meeting of the City Council. Notice of this public hearing is being published as required by the City Charter.

I will attend the City Council meeting to answer questions concerning this item. In the meantime, please do not hesitate to call me at 351-6053 if you need additional information.

Thank you for your attention to this matter.

#### Enclosures

cc: Charles McNabb, City Attorney (*via electronic mail*)  
William F. Studer, Jr., Deputy City Manager (*via electronic mail*)  
Carmen Arrieta-Candelaria, Chief Financial Officer (*via electronic mail*)  
Bertha A. Ontiveros, Assistant City Attorney (*via electronic mail*)  
George Williford, First Southwest Company (*via electronic mail*)



# City of *El Paso*, Texas

## Certificate of Obligation Authorization Process

April 14, 2009

 | **First Southwest Company**

# Certificate of Obligation Notice and Authorization Process

- Council passed Resolution to publish Notice of intention to issue certificates of obligation
  - Resolution passed March 10, 2009
  - 1<sup>st</sup> publication of Notice must precede date of authorization by at least 31 days
- Council acts on parameter Ordinance authorizing issuance of certificates of obligation
  - April 14, 2009

# Parameter Authorization

- Parameter authorization will enable sale of certificates of obligation at optimum timing and structure within 6 month period
  - Interest rates are volatile (see page 8)
- Council delegates final pricing authority to Pricing Officer(s)
- Council will establish sale parameters in Ordinance
  - Maximum Interest Rate – 6.5%
  - Aggregate Principal Amount of Issue - \$79.5 million
  - Final Maturity Date – 30 years
  - Expiration of Delegated Authority
    - 6 Months – October 14, 2009
- Pricing Officer can only approve sale if Council parameters are met.

# Projects and Sizing of Certificate of Obligation Issue

<u>Purpose</u>	<u>Project Amount</u>	<u>Repayment Term</u>
General Projects (2006 Authorization)	\$ 50,000,000	25 Years
General Projects (2008 Authorization)	5,000,000	25 Years
Fleet Replacement (2008 Authorization)	10,000,000	7 Years
Sun Metro* (2008 Authorization)	12,000,000	25 Years
	<u>77,000,000</u>	

\*Self-supported by Sun Metro Revenues

Maximum Issue Size: \$79,500,000\*\*

\*\*includes all costs of issuance and capitalized interest

# Summary of Existing and Projected Council Authorized Debt for Projects Funded with Certificates of Obligation

	<u>January 2006</u>	<u>August 2006</u>	<u>December 2008</u>		
			<u>General Projects <sup>(1)</sup></u>	<u>SunMetro <sup>(2)</sup></u>	<u>Total</u>
<b>Beginning Authorized Amount</b>	<b>\$ 100,000,000</b>	<b>\$ 100,000,000</b>	<b>\$ 35,519,181</b>	<b>\$ 37,608,956</b>	<b>\$ 73,128,137</b>
LESS: May 2007 Proceeds	35,000,000	-	-	-	-
LESS: January 2009 Proceeds	<u>5,000,000</u>	<u>45,000,000</u>	<u>-</u>	<u>-</u>	<u>-</u>
Remaining Balance after May 2007 & January 2009 Issuances	\$ 60,000,000	\$ 55,000,000	\$ 35,519,181	\$ 37,608,956	\$ 73,128,137
<b>LESS: Summer/Fall 2009 Proceeds</b>	<b><u>15,000,000</u></b>	<b><u>35,000,000</u></b>	<b><u>15,000,000</u></b>	<b><u>12,000,000</u></b>	<b><u>27,000,000</u></b>
Remaining Balance after Summer/Fall 2009 Issuance	\$ 45,000,000	\$ 20,000,000	\$ 20,519,181	\$ 25,608,956	\$ 46,128,137
LESS: Projected Spring 2010 Proceeds	45,000,000	5,000,000	-	-	-
LESS: Projected Fall 2010 Proceeds	<u>-</u>	<u>15,000,000</u>	<u>20,519,181</u>	<u>-</u>	<u>20,519,181</u>
	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 25,608,956 <sup>(3)</sup></u>	<u>\$ 25,608,956</u>

(1) Includes \$10,000,000 of Fleet Replacement.

(2) Includes \$16,000,000 of Bus Acquisition; associated debt service to be self-supported from SunMetro revenues.

(3) Projected timing of Sun Metro issuance not included above.

# Planned Certificate of Obligation Issuance

- All projected issuances in the preceding schedule must be approved by the City Council at a later time; accordingly, the amounts and timing illustrated in the schedule are for planning purposes
- Projected tax rate for overall tax-supported debt service, including all projected issues, is modeled not to exceed \$0.25

## Potential Benefit of Economic Recovery Act for City's issuance of Certificates of Obligation

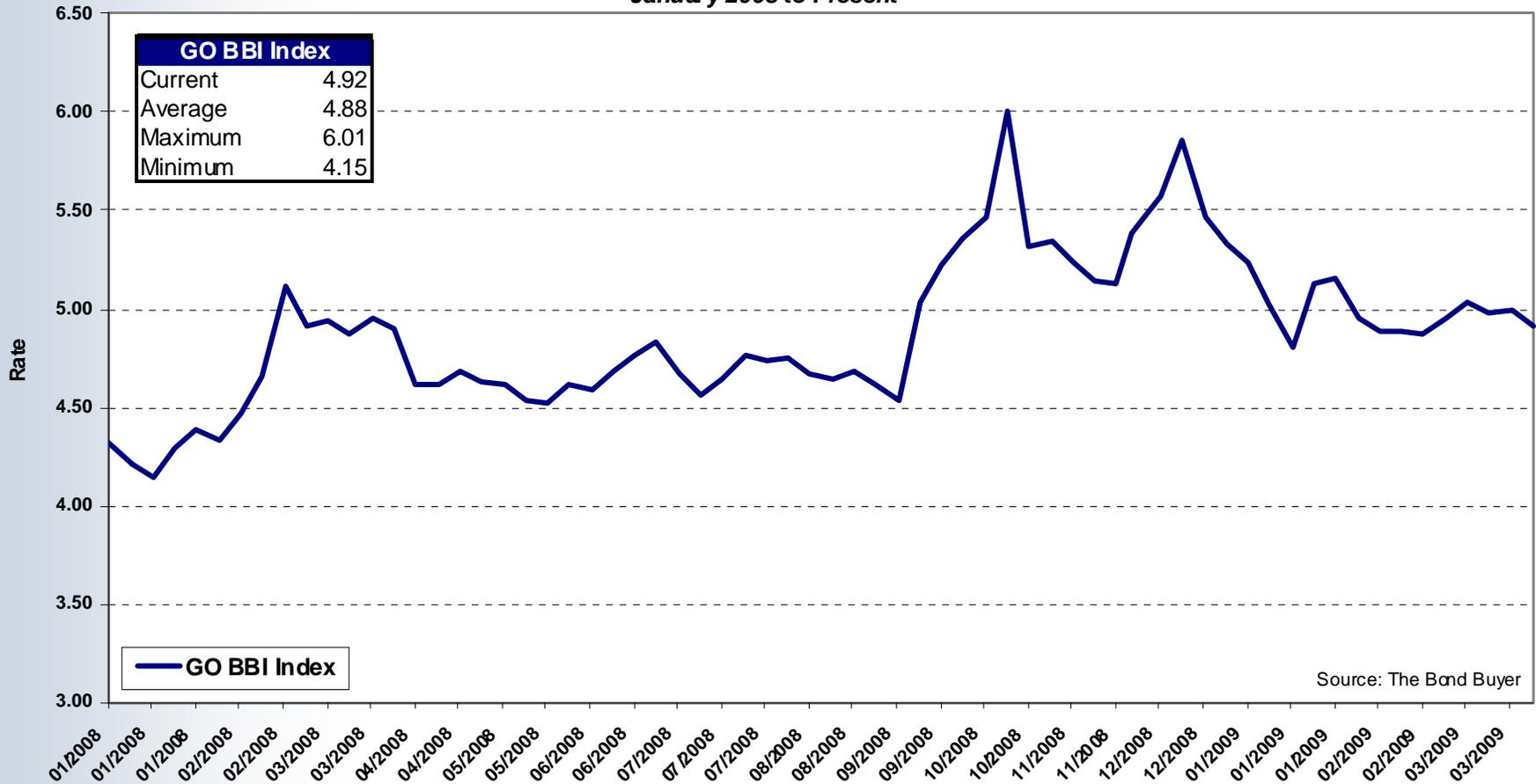
“Build America Bonds” are authorized to be issued for certain capital and infrastructure improvements

- Taxable bonds in which either the purchaser receives a federal tax credit or the issuer receives a payment equal to 35% of taxable interest cost
- Based on current interest rates, receipt of 35% of taxable interest cost possibly has benefit for longer portion of debt issuance, compared to issuance of tax-exempt debt

First Southwest Company will assist the City in determining whether issuance of “Build America Bonds” has economic benefit for a portion of upcoming certificate of obligation issuances, versus issuance of tax-exempt certificates of obligation

# Historical Interest Rates

**Historical Interest Rates**  
**General Obligation Bond Buyer Index**  
*January 2008 to Present*



This graph depicts historical interest rates and their respective relationships. Future interest rates are dependent upon many factors such as, but not limited to, interest rate trends, tax rates, supply, changes in laws, rules and regulations, as well as changes in credit quality and rating agency considerations. The effect of such changes in such assumptions may be material and could effect the projected results. These results should be viewed with these potential changes in mind as well as the understanding that there may be interruptions in the short term market or no market may exist at all.

# Recommendation for action by the City Council

City Administrative Staff recommends approval of the Ordinance authorizing issuance of the Certificates of Obligation