

deliver and exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered.

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

Section 4.04. Notice of Redemption to Holders.

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

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

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

Section 4.05. Payment Upon Redemption.

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

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

Section 4.06. Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04. of this Ordinance, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in the payment of the principal thereof, premium, if any, or accrued interest thereon, such Bonds or portions

thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

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

## ARTICLE V

### PAYING AGENT/REGISTRAR

#### Section 5.01. Appointment of Initial Paying Agent/Registrar.

(a) The City hereby appoints The First National Bank, Anderson, Texas, as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfer and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each Bond to which payments with respect to the Bonds shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Bonds, and of all conversions and exchanges of such Bonds, all conversions and replacements of such Bonds, as provided in the Ordinance. Notwithstanding the above, for so long as the Bonds are held by the United States of America, the City may make payments directly to the United States of America, by and through Rural Utilities Service, or its successor agency, at its servicing office which is currently located in Bryan, Texas.

Section 5.02. Qualifications. Each Paying Agent/Registrar shall be (i) a bank, trust company, financial institution, or other entity duly qualified and legally authorized under the laws of the United States or of any state thereof, (ii) authorized under such laws to exercise trust powers, (iii) subject to supervision or examination by a federal or state governmental authority, and (iv) a single entity.

Section 5.03. Maintaining Paying Agent/Registrar.

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

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

(c) The execution and delivery of a Paying Agent/Registrar Agreement, in form and content as set forth in Exhibit A attached hereto, specifying the duties and responsibilities of the City and the Paying Agent/Registrar, is hereby approved with such changes as may be approved by the Mayor of the City, and the Mayor of said City is hereby authorized to execute such agreement.

Section 5.04. Termination. The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated a certified copy of a resolution of the City (i) giving notice of the termination of the appointment and of the Paying Agent/Registrar Agreement, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar.

Section 5.05. Notice of Change to Holders. Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Holder by first class United States mail, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement to Perform Duties and Functions. By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby.

Section 5.07. Delivery of Records to Successor. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE BONDS

Section 6.01. Form Generally.

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

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

(c) The Bonds shall be typed, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof.

Section 6.02. Form of Bond. The form of Bonds, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds, shall be substantially as follows:

(a) [Form of Bond]

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

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

United States of America  
State of Texas  
TOWN OF ANDERSON, TEXAS  
SEWER SYSTEM REVENUE BONDS  
SERIES 1998

Interest Rate:

Original Issue Date:

Delivery Date:

Maturity Date:

\_\_\_\_\_ % \_\_\_\_\_, 1998 \_\_\_\_\_

Registered Owner:

Principal Amount: DOLLARS

The Town of Anderson, Texas (the "City") in the County of Grimes, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or registered assigns, on the 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 later of the Delivery Date to the Initial Purchaser, or the most recent date to which the interest has been paid by check or duly provided for, at the per annum rate of interest specified above computed on the basis of a 365-day year, such interest to be paid semiannually on February 1 and August 1 of each year, commencing with the February 1 or August 1 immediately following the Delivery Date.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the principal corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon. Interest on this Bond is payable by check dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid; provided, however, that such person shall bear all risk and expenses of such customary banking arrangements. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the fifteenth day of the month next preceding such interest payment date.

Notwithstanding any provision of this Bond or the Ordinance to the contrary, as long as the registered owner is the United States of America, payment shall be made by the Issuer directly to the current servicing office as directed by the owner.

Reference is hereby made to the further provisions of this Bond set forth on the reverse side hereof, and such further provisions shall for all purposes have the same effect as if set forth on the face hereof.

If a day for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the City in which the 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 a Saturday, Sunday, legal

holiday, or day on which such banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a series of fully registered Bonds specified in the title hereof issued in the aggregate principal amount of \$260,000 (herein referred to as the "Bonds") and issued pursuant to a certain Ordinance of the City Council of the City (the "Ordinance") for the purpose of constructing a sewer system for the City, and professional services related thereto.

This Bond and all the Bonds of the series of which it is a part are payable as to both principal and interest from a first lien on and pledge of the Net Revenues of the City's Sewer System; for a more complete statement of the covenants and provisions securing the payment of this Bond and the series of which it is one, reference is hereby made to the Ordinance authorizing this series of Bonds.

The holder hereof shall never have the right to demand payment of this obligation out of any funds raised by taxation.

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

The City has reserved the option to redeem the Bonds before their respective scheduled maturities in whole or in part and in inverse order of the maturities thereof then outstanding, in integral multiples of \$1,000 on any date hereafter, at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the redemption date.

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

As provided in the Ordinance, and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the principal corporate trust

office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar and, thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

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

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law.

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

\_\_\_\_\_  
City Secretary  
Town of Anderson, Texas

\_\_\_\_\_  
Mayor  
Town of Anderson, Texas

[SEAL]

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

CERTIFICATE OF PAYING AGENT/REGISTRAR

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

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

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

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

(c) [Form of Assignment]

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto  
\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(Please print or typewrite name, address and zip code of Transferee) (Please insert Social Security or other identifying number:)  
\_\_\_\_\_ the within Bond and all rights hereunder and hereby  
irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the  
within Bond on the books kept for registration hereof, with full power of substitution in the  
premises.

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

\_\_\_\_\_

Signature Guaranteed By:

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers.

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

(d) The Initial Bond shall be in the respective form set forth therefor in paragraph (a) of this Section, except as follows:

(1) Heading and paragraph one shall be amended to read as follows:

REGISTERED  
No. T-1

\$260,000

United States of America  
State of Texas  
TOWN OF ANDERSON, TEXAS  
SEWER SYSTEM REVENUE BONDS  
SERIES 1998

Interest Rate: Original Issue Date: Delivery Date: Maturity Date:  
as shown below \_\_\_\_\_, 1998 \_\_\_\_\_ as shown below

Registered Owner: UNITED STATES OF AMERICA

Principal Amount: TWO HUNDRED SIXTY THOUSAND DOLLARS

The Town of Anderson, Texas (the "City") in the County of Grimes, State of Texas, for value received, hereby promises to pay to the order of the Registered Owner named above, or registered assigns, on the Maturity Date specified above, the Principal Amount hereinabove stated on February 1 in the years and in principal installments in accordance with the following schedule:

<u>YEAR</u>	<u>PRINCIPAL AMOUNT</u>	<u>INTEREST RATE</u>
-------------	-----------------------------	--------------------------

(Information to be inserted from  
schedule in Section 3.02 hereof.)

(of so much principal thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal installments hereof from the later of the Delivery Date to the Initial Purchaser, or the most recent date to which the interest has been paid by check or duly provided for, at the per annum rates of interest specified above computed on the basis of a 365-day year; such interest being payable on February 1 and August 1 in each year, commencing February 1 or August 1, immediately following the Delivery Date. Principal installments of this Bond are payable in the year of maturity or on a prepayment date to the Registered Owner hereof by The First National Bank, Anderson, Texas (the "Paying Agent/Registrar"), upon presentation and surrender, at its principal offices in Anderson, Texas. Interest is payable to the Registered Owner of this Bond whose name appears on the "Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the fifteenth day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent by United States mail, first class postage prepaid, to the address of the Registered Owner recorded in the 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 Bond 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.

(ii) The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS

THE STATE OF TEXAS

§  
§  
§  
§  
§

REGISTER NO. \_\_\_\_\_

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

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

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

[SEAL]

Section 6.03. CUSIP Registration. The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

ARTICLE VII

FUNDS AND ACCOUNTS, INITIAL DEPOSITS  
AND APPLICATION OF MONEY

Section 7.01. Funds. All revenues of the System shall be kept separate and apart from all other funds of the City, and the following special funds heretofore created and established by the Ordinance authorizing the issuance of the Bonds are hereby confirmed and shall be established and maintained in an official depository bank of the City, so long as any of the Bonds, Additional Bonds, or interest thereon, are outstanding and unpaid:

- (a) Town of Anderson, Texas Sewer System Revenue Bonds, Series 1998 Revenue Fund, hereinafter called "Revenue Fund."

(b) Town of Anderson, Texas Sewer System Revenue Bonds, Series 1998 Interest and Sinking Fund, hereinafter called "Interest and Sinking Fund."

(c) Town of Anderson, Texas Sewer System Revenue Bonds, Series 1998 Reserve Fund, hereinafter called "Reserve Fund."

Section 7.02. Revenue Fund. All gross revenues of every nature received from the operation and ownership of the System shall be deposited from day to day as collected into the Revenue Fund, and the reasonable, necessary and proper expenses of operation and maintenance of the System shall be paid from the Revenue Fund. The revenues of the System not actually required to pay said expenses shall be deposited from the Revenue Fund into other Funds created by this Ordinance, in the manner and amounts hereinafter provided, and each of such Funds shall have priority as to such deposits in the order in which they are treated in the following Sections.

Section 7.03. Interest and Sinking Fund. There shall be deposited into the Interest and Sinking Fund the following:

(a) Concurrently with the delivery of the Bonds, there shall be deposited in the Interest and Sinking Fund the sum of \$7,500 from the proceeds of the sale of the Bonds for the purpose of making payments to capitalized interest during construction of the Sewer System Project.

(b) such amounts, in equal monthly installments, made on or before the 10th day of each month hereafter, as will be sufficient to pay the interest scheduled to come due on the Bonds on the next interest payment date; and

(c) such amounts, in equal monthly installments, made on or before the 10th day of each month hereafter, as will be sufficient to pay the next maturing principal of the Bonds.

The Interest and Sinking Fund shall be used to pay the principal of and interest on the Bonds as such principal matures and such interest comes due.

Section 7.04. Reserve Fund. The aggregate amount to be accumulated and maintained in the Reserve Fund shall be increased by an additional amount equal to the average annual principal and interest requirements for the Bonds, and such additional amount shall be accumulated within 121 months from the Original Issue Date by the deposit in the Reserve Fund of the necessary sums in equal monthly installments on or before the 10th day of each month after the Original Issue Date. No deposits shall be required to be made into the Reserve Fund as long as the Reserve Fund contains said aggregate amount, but if and whenever said Reserve Fund is reduced below said aggregate amount, the aforesaid monthly deposits into the Reserve Fund shall be resumed

and continued until such time as the Reserve Fund has been restored to said aggregate amount. The Reserve Fund shall be used to pay the principal of or interest on the Outstanding Bonds, Bonds and Additional Bonds, at any time when there is not sufficient money available in the Interest and Sinking Fund for such purpose. Money in the Reserve Fund may, upon authorization by the City Council, be invested, to the extent permitted by law, in direct obligations of, or obligations, the principal of and interest on which are guaranteed, by the United States of America, or invested in direct obligations of the Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, or Banks for Cooperatives, provided that each of the aforesaid obligations must mature, or be subject to redemption at the option of the holder thereof, within not more than ten years from the date of the making of such investment. Any obligations in which money in the Reserve Fund is so invested shall be kept and held in escrow and in trust for the benefit of the holders of the Outstanding Bonds, Bonds, and any Additional Bonds, and shall be promptly sold and the proceeds of sale applied to making of payments all required to be made from the Reserve Fund.

Section 7.05. Deficiencies in Funds. If in any month the City shall fail to deposit into any Fund created by this Ordinance the full amounts required, amounts equivalent to such deficiencies shall be set apart and paid into said Funds from the first available and unallocated Net Revenues of the System for the following month or months, and such payments shall be in addition to the amounts otherwise required to be paid into said Funds during such month or months. To the extent necessary, the City shall increase the rates and charges for services of the System to make up for any such deficiencies.

Section 7.06. Security for Funds. All funds created by this Ordinance shall be secured in the manner and to the fullest extent permitted by law for the security of public funds, and such funds shall be used solely for the purposes permitted by this Ordinance; provided, however, that the Bond proceeds shall be placed in a state or federal depository institution that has federally insured accounts.

Section 7.07. Excess Revenues and Final Payment.

(a) The Net Revenues of the System, in excess of those necessary to establish and maintain the funds as required in this Ordinance authorizing the Bonds, or as hereafter may be required in connection with the issuance of Additional Bonds, may only be used to make prepayments on the Bonds; provided, however, this Section shall not affect any outstanding surplus revenue pledge made prior to this Ordinance.

(b) Whenever the total amount in the Interest and Sinking Fund and the Reserve Fund shall be equivalent to (i) the aggregate principal amount of all Additional Bonds plus (ii) the aggregate amount of all unpaid coupons thereto appertaining unmatured and matured, no further payments need be made into the Interest and Sinking Fund or the Reserve Fund.

Section 7.08. Construction Fund. The Construction Fund shall be capitalized from proceeds of the sale of the Bonds in an amount to cover contractual obligations associated with the construction of the System.

Section 7.09. Initial Deposits. On each Delivery Date, the City shall cause the proceeds from the sale of the Bonds then delivered to be deposited to the credit of a construction fund or funds.

## ARTICLE VIII

### ADDITIONAL BONDS

Section 8.01. Additional Bonds. The City reserves the right to issue additional parity revenue bonds, to be known as Additional Bonds, which when issued and delivered, shall be payable from and secured by a lien on and pledge of the Net Revenues of the System, in the same manner and to the same extent as the Bonds; and the Bonds and all Additional Bonds shall in all respects be on a parity and of equal dignity. The Additional Bonds may be issued in one or more installments or series, provided, however, that no installment or series of Additional Bonds shall be issued unless:

(a) A certificate is executed by the Mayor and City Secretary of the City to the effect that no default exists in connection with any of the covenants or requirements of the ordinance or ordinances authorizing the issuance of all Bonds and Additional Bonds then outstanding;

(b) A certificate is executed by the Mayor and City Secretary of the City to the effect that the Interest and Sinking Fund and Reserve Fund contain the amounts then required to be on deposit therein;

(c) A certificate is executed by a Certified Public Accountant to the effect that, in his opinion, the Net Earnings of the System for the fiscal year of the City following the year in which the proposed Additional Bonds are to be issued will be at least 120% times the average annual principal and interest requirements for all then Outstanding Bonds, Additional Bonds, if any, and the proposed Additional Bonds;

(d) The Additional Bonds are scheduled to mature only on February 1 in each of the years in which they are scheduled to mature;

(e) Except for Additional Bonds to complete the project, the Ordinance authorizing the issuance of such installment or series of Additional Bonds provides that the aggregate amount to be accumulated and maintained in the Reserve Fund shall be increased by an additional amount not less than the average annual principal and interest requirements for said Additional Bonds, and that such additional amount shall be so

accumulated within 121 months from the date of the Additional Bonds, by the deposit in the Reserve Fund of the necessary sums in equal monthly installments; provided, however, that the aggregate amount to be accumulated in the Reserve Fund shall never be required to exceed the average annual principal and interest requirements for all then Outstanding Bonds, Additional Bonds, if any, and for the installment or series of Additional Bonds then proposed to be issued;

(f) All calculations of average annual principal and interest requirements made pursuant to this Section are made as of and from the date of the Additional Bonds then proposed to be issued.

The term "Net Earnings of the System" shall mean the gross revenues of the entire System, together with all present and future improvements, extensions, additions thereto, and replacements thereof, after deducting the expenses of operation and maintenance of the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service. Only such repairs and extensions as in the judgment of the City Council of the City, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the City and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which might otherwise impair the Outstanding Bonds, or any Additional Bonds, shall be deducted in determining the "Net Earnings of the System." Provided, however, that in calculating Net Revenues there shall not be deducted as an expense of operation and maintenance any charge or disbursement for repairs or extensions which, under standard accounting practice, should be charged to capital expenditures. Notwithstanding the foregoing, it shall not be necessary for the City to meet the above requirements to issue Additional Bonds if the City obtains the written consent of the holders of at least 75% of each of the then Outstanding Bonds, Bonds and Additional Bond issues.

Section 8.02. Subordinate Lien Bonds. Except as otherwise permitted by applicable Texas law, so long as the United States of America holds any Bonds, the City will not issue any Bonds, notes, or pledge of Net Revenues that are junior and subordinate to the lien on pledge of Net Revenues securing payment of the Bonds without the prior written consent of the United States of America. Otherwise, the City may issue such subordinate lien indebtedness subject only to any restrictions as may be imposed by law.

## ARTICLE IX

### PARTICULAR REPRESENTATIONS AND COVENANTS

Section 9.01. Rates. The City further covenants and agrees with the Holders of the Bonds and Additional Bonds as follows:

(a) that it will at all times charge and collect for services rendered by the System, rates sufficient to pay all the operating, maintenance, depreciation, replacement and betterment expenses, and other costs deductible in determining "Net Revenues", as herein defined, and to produce each month Net Revenues in an amount not less than the amounts required to accumulate and maintain the Funds herein created; and

(b) that if the System should become legally liable for any other obligations or indebtedness, the City shall fix, maintain, charge and collect additional rates and charges for services rendered by the System sufficient to establish and maintain funds for the payment thereof.

Section 9.02. Maintenance and Operation; Insurance. While any of the Bonds are outstanding, the City covenants and agrees to maintain the System in good condition and operate the same in an efficient manner and at reasonable expense, and to maintain insurance on the System, for the benefit of the holder or holders of the Bonds, of a kind in an amount which usually would be carried by private companies engaged in a similar type of business. Nothing in this Ordinance shall be construed as requiring the City to expend any funds which are derived from sources other than the System, but nothing herein shall be construed as preventing the City from doing so.

Section 9.03. Accounts and Fiscal Year. The City shall keep proper books of records and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and shall have said books audited once each fiscal year by a certified public accountant. The City agrees to operate the System and keep its books of records and accounts pertaining thereto on the basis of its current fiscal year; provided, however, that the City Council may change such fiscal year by ordinance duly passed, if such change is deemed necessary by the City Council.

Section 9.04. Accounting Reports. Within 90 days after the close of each fiscal year hereafter, the City will furnish, without cost to any holder of any outstanding Bonds who may so request, a signed or certified copy of a report by a certified public accountant, covering the next preceding fiscal year, showing the following information:

- (a) A detailed statement of all gross revenues of the System and all expenses of operation and maintenance thereof for said fiscal year;
- (b) Balance sheet as of the end of said fiscal year;
- (c) Accountant's comments regarding the manner in which the City has complied with the requirements of this Ordinance and his recommendations, if any, for any changes or improvements in the operation of the System;

(d) List of insurance policies in force at the end of said fiscal year, showing as to each policy, the risk covered, the amount of the policy, the name of the insurer, and the expiration date;

(e) The number of properties served by the System, and the gross revenues from the System for said fiscal year;

Provided, however, for as long as the Bonds are held by the United States of America, the City will mail a copy of this information within the 90 day period without the necessity of a request to the United States of America, Rural Utilities Service, at its servicing office which is currently located in Bryan, Texas.

Section 9.05. Performance of Duties. The City further covenants and agrees that it will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State of Texas, including the making and collecting of reasonable and sufficient rates for sewer services supplied by the System, and the segregating and application of the revenues of the System as required by the provisions of this Ordinance.

Section 9.06. Inspection. Any holder or holders of any Bonds shall have the right at all reasonable times to inspect the System and all records, accounts, and data of the City relating thereto.

Section 9.07. Competition. That so far as it legally may, the City covenants and agrees, for the protection and security of the Bonds and Additional Bonds and the holders thereof from time to time, that it will not grant a franchise for the operation of any competing sewer system in the City, until all Bonds and Additional Bonds shall have been retired.

Section 9.08. Special Covenants. The City further covenants and agrees by and through this Ordinance as follows:

(a) That it has the lawful power to pledge the revenues supporting this issue of Bonds and has lawfully exercised said power under the Constitution and laws of the State of Texas, including power existing under Articles 1111, et seq., Tex. Rev. Civ. Stat. Ann.

(b) That other than for the payment of the Bonds, the Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the City or of the System that is on a parity with the Bonds.

(c) That it will duly and punctually keep, observe and perform each and every undertaking, covenant and condition on its part to be kept, observed and performed, contained in this Ordinance and in the ordinances authorizing any Additional Bonds, and that it will prior to the maturity of each installment of interest and prior to the maturity of

each Bond and Additional Bond issued thereunder, make available at the principal office of the Paying Agent/Registrar, but only from the Interest and Sinking Fund, sufficient funds to promptly pay such principal and interest.

(d) That it will from time to time promptly pay and discharge all taxes, assessments, and other governmental charges, the lien of which would prior to the lien hereof, lawfully imposed upon the System or any part thereof or upon the income and proceeds thereof, so that the lien of the Outstanding Bonds, Bonds or Additional Bonds, when issued, shall at all time be wholly preserved at the cost of the City and without expense to the holders thereof; provided, however, that nothing in this Section contained shall require the City to pay or discharge any such tax, assessment or governmental charge so long as the validity thereof be by it in good faith contested.

(e) That while any of the Bonds are outstanding, the City will not sell or encumber the System or any substantial part thereof, and it will not encumber the revenues and income of the System except as provided by this Ordinance with respect to the issuance of Additional Bonds, unless such encumbrance is made junior or subordinate in all respects to the Bonds and all liens and pledges in connection therewith.

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

(g) That nothing herein shall be construed to prevent the City from making contracts with a district, as authorized by Chapter 30, Texas Water Code, under which a district will make a disposal system available to the City, and will furnish waste collection, transportation, treatment, and disposal services to the City, a group of public agencies, or other persons through the district's disposal system. Such contracts may provide for the operation, or the acquisition by purchase or lease, of the City's waste treatment and disposal facilities or system, in whole or in part, by the district.

Section 9.09. Covenants Regarding Tax Exemption. The City covenants to refrain from taking any action which would adversely affect, and to take any required action to ensure, the treatment of the Bonds as obligations described in Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in Section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used,

such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of Section 141(b)(2) of the Code;

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

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

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

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

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

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

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

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

(g) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise

contravene the requirements of Section 148 of the Code (relating to arbitrage) and, to the extent applicable, Section 149(d) of the Code (relating to advance refundings);

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

(i) to maintain such records as will enable the City to fulfill its responsibilities under this Section and Section 148 of the Code, and to retain such records for at least six years following the final payment of principal and interest on the Bonds.

In order to facilitate compliance with the above covenants (g), (h) and (i), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with Section 148 of the Code. To the extent this issue remains under \$5,000,000, the City will rely on the small issuer exception under Section 148(f)(4)(D).

It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

Section 9.10. Additional Certifications. Proper officers of the City charged with the responsibility of issuing the Bonds are hereby directed to make, execute and deliver certifications as to facts, estimates and circumstances in existence as of the Closing Date and stating whether there are any facts, estimates or circumstances that would materially change the City's current expectations.