

ORDINANCE NO. 2012-24

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$110,000 "CITY OF BURNET, TEXAS COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2012A"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES**

**WHEREAS**, on September 22, 2011, the Texas Water Development Board (the "Board") approved and authorized financial assistance in the amount of \$1,375,000 to the City of Burnet, Texas (the "City") consisting of a loan to finance the improvements to its water system pursuant to the Drinking Water State Revolving Fund; and

**WHEREAS**, in accordance with the provisions of the Texas Water Code and the approval of the City Council, such financial assistance is to be evidenced by the Board's purchase of obligations of the City payable from a combination of the levy and collection of a direct and continuing ad valorem tax, within the limits prescribed by law, on all taxable property within the City and the pledge of Surplus Revenues of the City's Waterworks and Sewer System; and

**WHEREAS**, the City Council determined that certificates of obligation should be issued in accordance with the provisions of the Certificate of Obligation Act of 1971, TEXAS LOCAL GOVERNMENT CODE, §§ 271.041, et seq. and the Texas Public Security Procedures Act, CHAPTER 1201, TEXAS GOVERNMENT CODE, for the purpose of paying contractual obligations to be incurred for construction, installation and acquisition of improvements to the City's water system, and the payment of professional services and costs of issuance related thereto; and

**WHEREAS**, notice of intention to issue said certificates of obligation has been published in the *Burnet Bulletin*, a newspaper of general circulation in the City of Burnet, Texas, on May 23, 2012 and May 30, 2012, respectively, the date of the first publication of such notice being before the thirtieth (30th) day prior to the tentative date stated therein for the passage of this ordinance; and

**WHEREAS**, on the 26th day of June, 2012, pursuant to the published notice of intention, the City Council of the City of Burnet, Texas, convened to consider passage of an Ordinance (the "Ordinance") authorizing the issuance of said certificates of obligation, but deferred passage of the Ordinance until a later date;

**WHEREAS**, on the 24th of July, the City Council reconvened to consider passage of the Ordinance authorizing the issuance of said certificates of obligation; and

**WHEREAS**, the certificates of obligation should be sold for cash in accordance with the provisions of TEXAS LOCAL GOVERNMENT CODE § 271.052, as amended; 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 Secretary or any other City official on or prior to the date of the passage of this Ordinance; and

**WHEREAS**, this City Council hereby finds and determines that the above specified certificates of obligation described in said notice should be issued at this time;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS:**

## ARTICLE I

### DEFINITIONS AND OTHER PRELIMINARY MATTERS

Section 1.01. Definitions. Unless otherwise expressly provided or unless the context clearly requires otherwise in this Ordinance, the following terms shall have the meanings specified below:

"Certificate" or "Certificates" means the certificates of obligation authorized to be issued by Section 3.01 of this Ordinance and designated as "City of Burnet, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2012A," in the aggregate principal amount of \$110,000.

"City" means the City of Burnet, Texas.

"City Council" means the City Council of the City of Burnet, Texas.

"Closing Date" means the date of the initial delivery of and payment for the Certificates.

"Code" means the Internal Revenue Code of 1986, as amended, including the regulations and published rulings thereunder.

"Date of Delivery" means the date the Certificates are delivered to the Initial Purchaser in exchange for the payment for the Certificates.

"Dated Date" means June 15, 2012.

"Defeasance Securities" means (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or

instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent; or (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent.

"Designated Payment/Transfer Office" means the office of the Paying Agent which is designated for the presentment of the Certificates.

"DTC" means The Depository Trust Company of New York, New York, or any successor securities depository.

"DTC Participant" means any broker, dealer, bank, trust company, clearing corporation or certain other organizations with bonds credited to an account maintained on its behalf by DTC.

"Escrow Agent" means BOKF, NA dba Bank of Texas.

"Escrow Agreement" means the escrow agreement between the City and the Escrow Agent as provided in Article XIII of this Ordinance.

"Event of Default" means any event of default as defined in Section 10.01 of this Ordinance.

"Fiscal Year" means such fiscal year as shall from time to time be set by the City Council.

"Initial Certificate" means the initial certificate described in Sections 3.04(d) and 6.02(e) of this Ordinance.

"Initial Purchaser" means the Texas Water Development Board.

"Interest and Sinking Fund" means the interest and sinking fund established by Section 2.05 of this Ordinance.

"Mayor" means the Mayor of the City of Burnet, Texas.

"Owner" or "Registered Owner" means the person who is the registered owner of a Certificate or Certificates, as shown in the Register.

"Paying Agent/Registrar" means initially BOKF, NA dba Bank of Texas, or any successor thereto as provided in this Ordinance.

"Register" means the register specified in Section 3.06(a) of this Ordinance.

"Surplus Revenues" means those revenues of the City's Waterworks and Sewer System available after deduction of the reasonable expenses of operation and maintenance of said System and payment of all debt service, reserve and other requirements with respect to all of the City's revenue bonds and other obligations, now outstanding or hereafter issued, that are payable from and secured by a lien on and pledge of all or part of the net revenues of said System.

"System" means the City's Waterworks and Sewer System.

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of the principal of the Certificates as the same comes due and payable and remaining unclaimed by the Owners of Certificates for 90 days after the applicable payment or redemption date.

Section 1.02. Findings. The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.03. Table of Contents, Titles and Headings. The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04. Interpretation.

(a) 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.

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

## ARTICLE II

### SECURITY FOR THE CERTIFICATES CREATION OF FUNDS

Section 2.01. Tax Levy for Payment of Certificates. Pursuant to the authority granted by the Constitution and laws of the State of Texas, there shall be levied and there is hereby levied for the current year and each succeeding year thereafter while the Certificates are outstanding and unpaid, an ad valorem tax within legal limitations on

each \$100 valuation of taxable property in the City, at a rate sufficient within the limits prescribed by law to pay the debt service requirements on the Certificates, being a sinking fund for their payment at maturity or a sinking fund of two percent (2%) per annum (whichever amount is the greater), when due and payable, 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. This governing body 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 obligations.

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

(a) The City's annual budget shall reflect the amount of debt service requirements to become due on the Certificates in 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 of the debt service requirements to be paid on the Certificates in the next succeeding Fiscal Year of the City.

(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 the Certificates in the next succeeding Fiscal Year of the City.

If the liens and provisions of this Ordinance shall be released in a manner permitted by Article XI 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 2.02. Revenue Pledge. The Certificates are additionally secured by and shall be payable from a pledge of the Surplus Revenues of the City's Waterworks and Sewer System, such pledge authorized pursuant to Chapter 1502, Texas Government Code.

Section 2.03. Reduction in Tax Levy. Notwithstanding the requirements of Section 2.01:

(a) if Surplus Revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would be required to be levied pursuant to Section 2.01 may be reduced to the extent and by the amount of the Surplus Revenues then on deposit in the Interest and Sinking Fund; or

(b) if the City elects to budget for the revenues to reduce the amount of taxes required to be levied, then

- (i) The City shall transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Certificates until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Certificates; further, that the City shall not transfer any funds from the System to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Certificates for the then-current fiscal year has been deposited in the Interest and Sinking Fund;
- (ii) That for each year that the Certificates are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient Surplus Revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Certificates; and
- (iii) The City shall at all times maintain and collect sufficient System rates and charges in conjunction with any other legally available funds that, after payment of the costs of operating and maintaining the System, produce revenues in an amount not less than 1.10 times the debt service requirements of all outstanding System revenue bonds of the City and other obligations of the City which are secured in whole or in part by a pledge of revenues of the System, for which the City is budgeting the repayment of such obligations from the revenues of the System, or the City shall provide documentation which evidences the levy of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds except System rates and charges, sufficient for the repayment of System debt service requirements.

Section 2.04. Effect of Pledge. Chapter 1208, Texas Government Code, applies to the issuance of the Certificates and the pledge of the taxes and revenues granted by the City under this Article II, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates are outstanding and unpaid such that the pledge of the taxes and revenues granted by the City under Sections 2.01 and 2.02 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Registered Owner 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 Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

Section 2.05. Interest and Sinking Fund.

(a) The City hereby establishes a special fund or account to be designated the "City of Burnet, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2012A Interest and Sinking Fund" (the "Interest and Sinking 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.

(b) Money on deposit in or required by this Ordinance to be deposited to the Interest and Sinking Fund shall be used solely for the purpose of paying the redemption premium, if any, and principal of the Certificates when and as due and payable in accordance with their terms and this Ordinance.

Section 2.06. Construction Fund.

(a) Establishment of Construction Fund. A special fund or account, to be designated the "City of Burnet, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2012A Construction Fund" (the "Construction Fund") is hereby created and shall be established and maintained by the City at the official City depository. The Construction Fund shall be kept separate and apart from all other funds and accounts of the City. The proceeds from the sale of the Certificates shall be deposited first into the Escrow Account, as provided in Section 13.03, prior to transfer to the Construction Fund and payments therefrom shall be made as provided below.

(b) Payments from Construction Fund. Payments from the Construction Fund shall be used solely for the purpose of paying contractual obligations to be incurred for construction, installation and acquisition of improvements to the City's water system, and the payment of professional services and costs of issuance related thereto.

(c) Surplus Construction Funds. Any moneys remaining in the Construction Fund after completion of the entirety of the construction, installation and acquisition of improvements to the City's water system, and the payment of professional services and costs of issuance related thereto, shall be deposited into the Interest and Sinking Fund.

Section 2.07. Security of Funds. All moneys on deposit in the Interest and Sinking Fund and the Construction Fund 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 of Texas in the Public Funds Collateral Act, Chapter 2257, Texas Government Code, as amended, for the security of City funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

ARTICLE III

AUTHORIZATION: GENERAL TERMS AND PROVISIONS  
REGARDING THE CERTIFICATES

Section 3.01. Authorization. The City's certificates of obligation to be designated "City of Burnet, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2012A" (the "Certificates"), are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas. The Certificates shall be issued in the aggregate principal amount of \$110,000 for the purpose of paying contractual obligations to be incurred for construction, installation and acquisition of improvements to the City's water system and the payment of professional services and costs of issuance related thereto.

Section 3.02. Date, Denomination and Maturities.

(a) The Certificates shall be dated June 15, 2012 and shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from R-1 upward, except the Initial Certificate, which shall be numbered T-1.

(b) The Certificates shall mature on August 15 in the years and in the principal amounts set forth in the following schedule:

<u>Year of Maturity</u>	<u>Principal Installments</u>	<u>Interest Rate</u>
2013	\$10,000	0.00
2014	10,000	0.00
2015	10,000	0.00
2016	10,000	0.00
2017	10,000	0.04
2018	10,000	0.35
2019	10,000	0.64
2020	10,000	0.90
2021	15,000	1.11
2022	15,000	1.26



(c) The Certificates shall bear interest from the Delivery Date thereof or the most recent Interest Payment Date to which interest has been paid or provided for at the rates per annum for each respective maturity specified above. Such interest shall be payable semiannually on February 15 and August 15 commencing August 15, 2013.

Section 3.03. Medium, Method and Place of Payment.

(a) The principal of, redemption premium, if any, and interest on the Certificates shall be paid in lawful money of the United States of America.

(b) The principal of each Certificate shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar, which shall initially be BOKF, NA dba Bank of Texas.

(c) Notwithstanding anything in this Section to the contrary, payment to the Texas Water Development Board will be done by wire transfer at no cost to the Texas Water Development Board for so long as the Texas Water Development Board is Owner of the Certificates.

(d) If the date for the payment of the principal of the Certificates shall be a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are required or 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, a legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in this Section.

Section 3.04. Control, Execution and Initial Registration.

(a) The Certificates shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Certificates shall have the same effect as if each of the Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the Certificates ceases to be such officer before the authentication of such Certificates or before the delivery thereof, such facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by her duly authorized agent, which certificate shall be evidence that the Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial Certificate representing the entire principal amount of all Certificates, payable in stated installment to the Initial Purchaser, or its designee, manually signed by the Mayor and City Secretary, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Initial Purchaser or its designee. Upon payment for the Initial Certificate, the Paying Agent/Registrar shall insert the Date of Delivery in the appropriate blank on the face of the Initial Certificate and then shall cancel the Initial Certificate and deliver registered definitive Certificates in accordance with instructions received from the Initial Purchaser or its designee.

#### Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Certificate is registered as the absolute owner of such Certificate for the purpose of making and receiving payment of the principal thereof and redemption premium, if any, thereon, and for all other purposes, whether or not such Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a Certificate shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Certificate to the extent of the sums paid.

#### Section 3.06. Registration, Transfer and Exchange.

(a) So long as any Certificates remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Certificates in accordance with this Ordinance.

(b) Registration of any Certificate may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the Certificates, or any portion thereof in any integral multiple of \$5,000, to the assignee or assignees thereof, and the right of such assignee or assignees thereof to have the Certificate or any portion thereof registered in the name of such assignee or assignees. No transfer of any Certificate shall be effective until entered in the Register. Upon assignment and transfer of any Certificate or portion thereof, a new Certificate or Certificates will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned Certificate. To the extent possible, the Paying Agent/Registrar will issue such new Certificate or Certificates in not more than three (3) business days after receipt of the Certificate to be transferred in proper form and with proper instructions directing such transfer.

(c) Any Certificate may be converted and exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the Owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the Paying Agent/Registrar, for a Certificate or Certificates of the same maturity and in any authorized denomination and in an aggregate principal or maturity amount equal to the unpaid principal or maturity amount of the Certificate presented for exchange. If a portion of any Certificate is redeemed prior to its scheduled maturity as provided herein, a substitute Certificate or Certificates having the same maturity date, in the denomination or denominations of any integral multiple of \$5,000 at the request of the Owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Owner upon surrender thereof for cancellation. To the extent possible, a new Certificate or Certificates will be required to be delivered by the Paying Agent/Registrar to the Owner of the Certificate or Certificates in not more than three (3) business days after receipt of the Certificate to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each Certificate issued in exchange for any Certificate or portion thereof assigned, transferred or converted shall have the same principal maturity date as the Certificate for which it is being exchanged. Each substitute Certificate shall bear a letter and/or number to distinguish it from each other Certificate. The Paying Agent/Registrar shall convert and exchange the Certificates as provided herein, and each substitute Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such substitute Certificate is delivered.

(e) The City will pay the Paying Agent/Registrar's reasonable and customary charge for the initial registration or any subsequent transfer, exchange or conversion of

Certificates, but the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, exchange or conversion of a Certificate. In addition, the City hereby covenants with the Owners of the Certificates that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of the Certificates, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration, conversion and exchange of Certificates as provided herein.

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

#### Section 3.07. Cancellation.

(a) All Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Certificates in lieu of which exchange Certificates or replacement Certificates are authenticated and delivered in accordance with this Ordinance, shall be canceled and destroyed upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall periodically furnish the City with certificates of destruction of such Certificates.

(b) Each substitute Certificate issued in conversion of and exchange for or replacement of (pursuant to the provisions of Sections 3.06, 3.08 and 3.09 hereof) any Certificate or Certificates issued under this Ordinance shall have printed thereon a Certificate of Paying Agent/Registrar, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Certificate, manually sign and date such Certificate of Paying Agent/Registrar, and no such Certificate shall be deemed to be issued or outstanding unless such Certificate of Paying Agent/Registrar is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Certificates in the manner prescribed herein, and said Certificates shall be of customary type and composition and be printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to CHAPTER 1201, TEXAS GOVERNMENT CODE, the duty of conversion and exchange or replacement of Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Certificate of Paying Agent/Registrar, the converted and exchanged or replaced Certificates shall be valid, incontestable, and enforceable in the same manner and with the same effect as the

Initial Certificate which was originally delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) Certificates issued in conversion and exchange or replacement of any other Certificate or portion thereof (i) shall be issued in fully registered form, without interest coupons, with the principal of such Certificates to be payable only to the Owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other Certificates, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) the principal of the Certificates shall be payable, all as provided, and in the manner required or indicated, in the Form of Certificates set forth in this Ordinance.

#### Section 3.08. Temporary Certificates.

(a) Following the delivery and registration of the Initial Certificate and pending the preparation of definitive Certificates, the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Certificates that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Certificates in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Certificates may determine, as evidenced by their signing of such temporary Certificates.

(b) Until exchanged for Certificates in definitive form, such Certificates in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar, and thereupon, upon the presentation and surrender of the Certificate or Certificates in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a Certificate or Certificates of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Certificate or Certificates in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

#### Section 3.09. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected herewith.

(b) In the event that any Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

- (i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such Certificate;
- (ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar, and acceptable to the City, to save the Paying Agent/Registrar and the City harmless;
- (iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and
- (iv) satisfies any other reasonable requirements imposed by the City and Paying Agent/Registrar.

(c) If, after the delivery of such replacement Certificate, a bona fide purchaser of the original Certificate in lieu of which such replacement Certificate was issued presents for payment such original Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Certificate, may pay such Certificate.

(e) Each replacement Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Certificate or Certificates in lieu of which such replacement Certificate is delivered.

### Section 3.10. Book-Entry-Only System.

(a) The definitive Certificates shall be initially issued in the form of a separate single fully registered Certificate for each of the maturities thereof. Upon initial

issuance, the ownership of each such Certificate shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Certificates, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, on the Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Certificate is registered in the Register as the absolute Owner of such Certificate for the purpose of payment of principal of, premium, if any, and interest on the Certificates, for the purpose of giving notices of redemption and other matters with respect to such Certificate, for the purpose of registering transfer with respect to such Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, interest, and premium, if any, on the Certificates only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal, premium, if any, and interest on the Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System. In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter by and between the City, the Paying Agent/Registrar and DTC (the "Representation Letter"), and that it is in the best interest of the Owners of the Certificates that they be able to obtain certificated Certificates, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended; notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities

depository and transfer one or more separate Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Certificates and transfer one or more separate Certificates to DTC Participants having Certificates credited to their DTC accounts, as identified by DTC. In such event, the Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Certificates shall designate, in accordance with the provisions of this Ordinance.

Section 3.12. Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Certificates, and all notices with respect to such Certificates, shall be made and given, respectively, in the manner provided in the Representation Letter.

Section 3.13. Additional Obligations. The City reserves the right to issue any additional obligations authorized by law and such obligations may be payable from ad valorem taxes within the limits prescribed by law. The City further reserves the right to issue any additional obligations secured by the Surplus Revenues of the City's Waterworks and Sewer System, which is senior to the lien and pledge securing payment of the Certificates.

#### ARTICLE IV

##### REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption. The Certificates are not subject to optional redemption prior to stated maturity.

#### ARTICLE V

##### PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar.

(a) The City hereby appoints BOKF, NA dba Bank of 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 transfers 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 Certificate to which payments with respect to the Certificates 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 the Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Certificates, and of all conversions, exchanges and replacements of such Certificates, as provided in the Ordinance.

Section 5.02. Qualifications. Each Paying Agent/Registrar shall be (i) a banking corporation, a banking association or a financial institution organized and doing business 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 DTC Participant.

Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any Certificates are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary.

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

Section 5.04. Termination. The City, upon not less than sixty (60) days notice, reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated written notice of such termination.

Section 5.05. Notice of Change to Owners. 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 Owner 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 thereby.

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 Certificates to the successor Paying Agent/Registrar.

ARTICLE VI

FORM OF THE CERTIFICATES

Section 6.01. Form Generally.

(a) The Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Paying Agent/Registrar, and the Assignment form to appear on each of the Certificates, (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 Certificates, as evidenced by their execution thereof.

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

(c) The Certificates 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 Certificates, as evidenced by their execution thereof.

(d) The Initial Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

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

(a) Form of Certificate.

REGISTERED

REGISTERED

No. R-\_\_

\$\_\_\_\_\_

United States of America  
State of Texas  
CITY OF BURNET, TEXAS  
COMBINATION TAX AND SURPLUS REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2012A



referred to as the "Certificates"), issued pursuant to a certain ordinance of the City (the "Ordinance") for the purpose of paying contractual obligations incurred for construction, installation and acquisition of improvements to the City's water system, and the payment of professional services and costs of issuance related thereto.

THE CERTIFICATES are payable from the levy of a direct and continuing ad valorem tax, within the limits prescribed by law, against all taxable property in the City, and from a pledge of Surplus Revenues (as defined in the Ordinance) from the City's Waterworks and Sewer System.

THE CERTIFICATES are not subject to redemption prior to maturity.

AS PROVIDED IN THE ORDINANCE, and subject to certain limitations therein set forth, this Certificate is transferable upon surrender of this Certificate for transfer at the Designated Payment/Transfer 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 Certificates of the same stated maturity, of authorized denominations 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 Certificate is registered as the Registered Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Certificate 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 Certificate and the series of which it is a part is duly authorized by law; that all acts, conditions and things to be done precedent to and in the issuance of this Certificate, and the series of which it is a part, have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; that proper provisions have been made for the levy and collection annually of taxes upon all taxable property in said City sufficient within the limits prescribed by law, and a pledge of the Surplus Revenues of the Waterworks and Sewer System to provide for the payment of the principal as the same matures; and that the total indebtedness of the City, including the Certificates, does not exceed any constitutional or statutory limitation.

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

---

Mayor  
City of Burnet, Texas

\_\_\_\_\_  
City Secretary  
City of Burnet, Texas

[CITY SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Comptroller's Registration Certificate may be deleted from the definitive Certificates if such certificate on the Initial Certificate is fully executed.

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

I hereby certify that there is on file and of record in my office a Certificate of the Attorney General of the State of Texas to the effect that this Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that this Certificate has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, \_\_\_\_\_.

[SEAL]

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

(c) Form of Certificate of Paying Agent/Registrar.

The following Certificate of Paying Agent/Registrar may be deleted from the Initial Certificate if the Comptroller's Registration Certificate appears thereon.

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Certificate of this series of Certificates was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Certificates referred to in the within-mentioned Ordinance.

BOKF, NA dba Bank of Texas  
Austin, Texas  
As Paying Agent/Registrar

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

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

(d) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto \_\_\_\_\_ /

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

\_\_\_\_\_ the within Certificate and all rights thereunder,  
(Please insert Social Security or Taxpayer Identification Number)

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

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

Signature Guaranteed By:

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

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 and must be guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers

(e) Form of Initial Certificate.

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

REGISTERED  
No. T-1

\$110,000

United States of America  
State of Texas

CITY OF BURNET, TEXAS  
COMBINATION TAX AND SURPLUS REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2012A

DATED DATE:

June 15, 2012

CUSIP NUMBER:

\_\_\_\_\_

Date of Delivery:

Registered Owner: TEXAS WATER DEVELOPMENT BOARD

Principal Amount: ONE HUNDRED TEN THOUSAND DOLLARS

CITY OF BURNET, STATE OF TEXAS (the "City"), 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 August 15 in the years and in principal installments in accordance with the following schedule:

YEAR OF  
MATURITY

PRINCIPAL  
INSTALLMENTS

INTEREST  
RATE

(Information to be inserted from  
Section 3.02(b) to the Ordinance.)

(or so much principal thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the later of the Delivery Date to the 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 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing August 15, 2013. Principal installments of this Certificate are payable as reflected on Schedule A to the Registered Owner hereof by BOKF, NA dba Bank of Texas (the "Paying Agent/Registrar"), upon presentation and surrender, at its Designated Payment/Transfer Office in Austin, Texas. Interest is payable to the Registered Owner of this Certificate whose name appears on the "Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the last calendar 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 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. At Closing, the Paying Agent/Registrar shall complete the Initial Certificate by inserting the actual Date of Delivery to the Initial Purchaser in the appropriate blank on the face of the Initial Certificate.

Section 6.03. CUSIP Registration. The City may secure identification numbers ("CUSIP Numbers") and may authorize the printing of such numbers on the face of the Certificates. It is expressly provided, however, that the presence or absence of CUSIP Numbers on the 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 on the Certificates.

Section 6.04. Legal Opinion. The approving legal opinion of Bickerstaff Heath Delgado Acosta LLP, Bond Counsel, may be printed on the reverse side of each Certificate, which may be executed in facsimile, or may be attached to each Certificate.

## ARTICLE VII

### INVESTMENTS

Section 7.01. Investments.

(a) Money in the Construction Fund and the Interest and Sinking Fund, at the option of the City, may be invested in such securities or obligations as permitted under the Public Funds Investment Act, Chapter 2256, Texas Government Code.

(b) Any securities or obligations in which such money is so invested shall be kept and held in trust for the benefit of the Owners and shall be sold and the proceeds of sale shall be timely applied to the making of all payments required to be made from the fund from which the investment was made.

Section 7.02. Investment Income. Interest and income derived from investment of the Interest and Sinking Fund and the Construction Fund shall be credited to the respective fund.

## ARTICLE VIII

### PARTICULAR REPRESENTATIONS AND COVENANTS

8.01. Rates. The City further covenants and agrees 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 "Surplus Revenues", as herein defined, and in lieu of tax revenues, to produce Surplus Revenues in an amount not less than the amounts required to accumulate and maintain the associated debt service requirements.



8.02. Maintenance and Operation; Insurance. While any of the Certificates 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 adequate insurance coverage on the System, customarily carried by political subdivisions of the State of Texas operating similar properties in an amount adequate to protect the Board's interest.

8.03. 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 their books of record 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.

8.04. Accounting Reports. The City will furnish each year to the Texas Water Development Board as long as the State owns any of the Certificates a copy of its annual audited financial statement.

8.05. Covenant to Comply with Rules and Regulations of Texas Water Development Board. That in compliance with the published rules and regulations of the Texas Water Development Board (the "Board"), the City agrees and covenants that upon completion of the project to be financed with the proceeds of the Certificates issued for construction, installation, and acquisition of improvements to the City's water system, the proper officials of the City shall cause to be prepared and submitted to the Board (i) a final accounting of the total costs of the project and the expenditure of funds therefor, and (ii) a copy of the construction plans for the project as built and completed. In addition to other information required by the Board, said final accounting shall identify (i) all funds utilized or represented to be available in the City's application from whatever source derived, and (ii) all project costs contained and approved in the City's application to the Board or approved in subsequent change orders. If the total cost of the project is less than the amount of the project funds available, then the City shall return to the Board the amount of such excess to the nearest multiple of the authorized denomination for the Certificates, and the Board shall return to the City a like principal amount of Certificates, in inverse order of their Stated Maturities. Any surplus proceeds from the sale of the Certificates remaining after completion of the project and the cancellation of the Certificates by the Board shall be deposited into the Interest and Sinking Fund. The City further covenants and agrees that (i) all proceeds of sale of the Certificates shall be deposited in a "City of Burnet, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2012A Construction Fund" hereby created and established with the City's depository bank, and (ii) all funds deposited in such Fund shall be disbursed only for the project the Certificates are being issued to finance and, as is appropriate, in accordance with the provisions of Chapters 15, 16 or 17 of the Texas Water Code.

The City further agrees and covenants to comply with all applicable laws of the State of Texas and all applicable rules and policies of the Board with respect to the acquisition and construction of the project and the loan of funds to the City by the Board evidenced by the Certificates.

The City further agrees and covenants to:

- (a) implement an approved water conservation plan;
- (b) comply with the executive administrator's environmental determination; and
- (c) comply with Davis-Bacon Act prevailing wage requirements.

8.06. Environmental Indemnification. To the extent permitted by law, the City agrees to indemnify, hold harmless and protect the Board from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport and/or removal and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project.

8.07. Timely and Expeditious Project Implementation. The City agrees to pursue the project and expend the proceeds of the Certificates in a timely and expeditious manner in accordance with the project schedule.

8.08. 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 Certificates 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 Certificates 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 Certificates, in contravention of Section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in Subsection (a) hereof exceeds 5 percent of the proceeds of the Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any), then the amount in excess of 5 percent is used for a "private business use"

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 Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of Section 141(c) of the Code;

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

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

(f) to refrain from using any portion of the proceeds of the Certificates, directly or indirectly, to acquire or to replace funds 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 Certificates, other than investment property acquired with--

- (1) proceeds of the Certificates invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 30 days or less until such proceeds are needed for the purpose for which the Certificates are issued,
- (2) amounts invested in a bona fide debt service fund, within the meaning of Section 1.103-13(b)(12) of the Treasury Regulations, and
- (3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates;

(g) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates do not otherwise contravene the requirements of Section 148 of the Code (relating to arbitrage) and, to the extent applicable, Section 149(d) of the Code (relating to advance refundings);

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of Section 148(f) of the Code, and to pay to the United States of America, not later than 60 days after the

Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under Section 148(f) of the Code;

(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 Certificates; and

(j) to comply with the information reporting requirements of Section 149(e) of the Code.

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 certificate holders. The Rebate Fund is established for the additional purpose of compliance with Section 148 of the Code.

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 Certificates, 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 Certificates 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 Certificates, 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 Certificates 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 Certificates.

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

price or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest in the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Owners for consent to any such amendment, addition, or rescission.

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

- (1) those Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those Certificates deemed to be duly paid by the City in accordance with the provisions of Article XI hereof; and
- (3) those mutilated, destroyed, lost, or stolen Certificates which have been replaced with Certificates registered and delivered in lieu thereof as provided in Section 3.09 hereof.

Notwithstanding anything in this Section to the contrary, the City shall not amend this Ordinance without the approval of the Board for so long as the Board is a Holder of the Certificates.

8.10. Additional Certifications. Proper officers of the City charged with the responsibility of issuing the Certificates 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.

8.11. Benefit of Covenants. The covenants and representations made or required by this Article are for the benefit of the Holders and may be relied upon by the Holders and bond counsel for the City.

## ARTICLE IX

### CONTINUING DISCLOSURE UNDERTAKING

Section 9.01. Definitions. As used in this Article IX, the following terms have the meanings ascribed to such terms below:

"EMMA" means the Electronic Municipal Market Access System established by the MSRB.

"MSRB" means the Municipal Securities Rulemaking Board.

"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.

Section 9.02. Annual Reports. The City shall provide annually to the MSRB through EMMA, within six months after the end of each fiscal year ending in or after 2012, financial information and operating data with respect to the City that is contained in its annual financial statements as is customarily prepared by the City and publicly available. The financial statements so to be provided shall be (1) prepared in accordance with the accounting principles as the City may be required to employ from time to time pursuant to state law or regulation 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 the audit of such financial statements is not complete within such period, then the City shall provide audited financial statements for the applicable fiscal year to the MSRB through EMMA, when and if the audit report on such statements becomes available.

If the City changes its fiscal year, it will notify the MSRB through EMMA 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 the MSRB through EMMA or filed with the SEC).

Section 9.03. Event Notices. The City shall notify the MSRB through EMMA, in a timely manner not in excess of ten business days after the occurrence of any of the following events with respect to the Certificates:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
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, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue

(IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates or other material events affecting the tax-exempt status of the Certificates;

7. Modifications to rights of holders of the Certificates, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with Section 9.02 by the time required by this Section.

Section 9.04. Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Article 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 notice required by Section 9.03 of any bond calls and defeasance that cause the City to no longer be such an "obligated person."

The provisions of this Article are for the sole benefit of the Holders and Beneficial Owners of the Certificates, and nothing in this Article, 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 Article 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 Article 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 ARTICLE, 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 Article shall comprise a breach of or default under the Ordinance for purposes of any other provision of this Ordinance.

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

The provisions of this Article 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 Article, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and Beneficial Owners of the Certificates. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 9.02 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.

## ARTICLE X

### DEFAULT AND REMEDIES

Section 10.01. Events of Default. Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an "Event of Default," to wit:



(i) the failure to make payment of the principal of, redemption premium, if any, on any of the Certificates when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 30 days after notice of such default is given by any Owner to the City.

#### Section 10.02. Remedies for Default.

(a) Upon the happening of any Event of Default, then and in every case any Owner or an authorized representative thereof, including but not limited to, a trustee or trustees therefor, may proceed against the City for the purpose of protecting and enforcing the rights of the Owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Owners hereunder or any combination of such remedies.

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of Certificates then outstanding.

#### Section 10.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(b) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

### ARTICLE XI

#### DISCHARGE AND DEFEASANCE

##### Section 11.01. Defeasance of Certificates.

(a) Any Certificate shall be deemed to be paid, retired and no longer outstanding (a "Defeased Certificate") within the meaning of this Ordinance, except to

the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Certificate, either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of prepayment or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased Certificates shall have become due and payable or (3) any combination of (1) and (2). At such time as a Certificate shall be deemed to be a Defeased Certificate hereunder, as aforesaid, such Certificate shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a Certificate as aforesaid when proper notice of prepayment of such Certificate shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Certificate and premium, if any, with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the Certificate and premium, if any, shall be applied to and used solely for the payment of the particular Certificate and premium, if any, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Certificates the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of the Certificate and such Certificate shall not have in fact

been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the Registered Owner of each Certificate affected thereby.

(e) Notwithstanding the provisions of subsection (a) above, to the extent that, upon the defeasance of any Defeased Certificate to be paid at its maturity, the City retains the right under Texas law to later call that Defeased Certificate for prepayment in accordance with the provisions of this Ordinance, the City may call such Defeased Certificate for prepayment upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) above with respect to such Defeased Certificate as though it was being defeased at the time of the exercise of the option to prepay the Defeased Certificate and the effect of the prepayment is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Certificate.

## ARTICLE XII

### SALE AND DELIVERY OF CERTIFICATES; DEPOSIT OF PROCEEDS

Section 12.01. Sale of the Certificates. The sale of the Certificates to the Texas Water Development Board, the Initial Purchaser ("Board"), pursuant to a loan commitment received from the Initial Purchaser at the price of par and the payment of a loan or origination fee of 2.25% is hereby confirmed. The Mayor and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the Certificates. The Initial Certificate shall be registered in the name of the Texas Water Development Board.

#### Section 12.02. Control and Delivery of Certificates.

(a) The Mayor is hereby authorized to have control of the Initial Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the Certificates shall be made to the Initial Purchaser under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

## ARTICLE XIII

### ESCROW AGREEMENT

Section 13.01. Escrow Agent. The City appoints BOKF, NA dba Bank of Texas, as Escrow Agent.

Section 13.02. Escrow Agreement. The Mayor is hereby authorized and directed to execute and deliver an Escrow Agreement substantially in the form attached hereto as Exhibit A, with such changes as may be approved by the Mayor, such approval to be evidenced by his execution thereof.

Section 13.03. Escrow Account. An escrow account is hereby authorized to be created pursuant to the Escrow Agreement referred to in Section 13.01. Except for the proceeds deposited to the Construction Fund in accordance with Section 2.06 hereof, the proceeds of the Certificates shall be deposited in the escrow account and be transferred to the Construction Fund to pay costs of the project upon the authorized release of the escrowed proceeds by the Board.

#### ARTICLE XIV

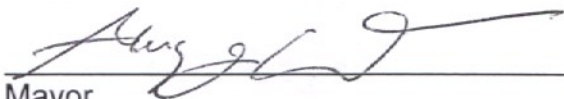
#### MISCELLANEOUS

Section 14.01. Further Procedures. The Mayor, City Secretary 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 to execute, acknowledge and deliver in the name and under the official seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable to carry out the terms and provisions of this Ordinance and the Certificates. In case any officer whose facsimile signature shall appear on any Certificates shall cease to be such officer before the delivery of the Certificates, such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery.


Section 14.02. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance has been read, passed and finally adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Ordinance, was given, all as required by the applicable provisions of the Open Meetings Act, Chapter 551, Texas Government Code.

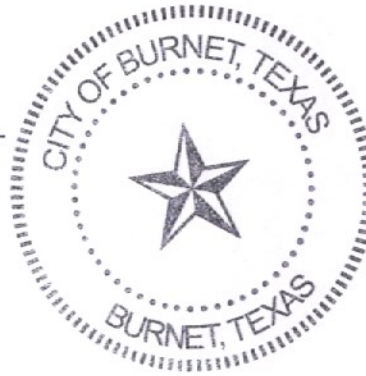
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PASSED AND APPROVED this 24th day of July, 2012.

  
\_\_\_\_\_  
Mayor  
City of Burnet, Texas

ATTEST:

  
\_\_\_\_\_  
City Secretary  
City of Burnet, Texas



[CITY SEAL]

**SEAL**

**EXHIBIT A**

**Escrow Agreement**