



**AGENDA  
TOWN OF SUNNYVALE  
SUNNYVALE TOWN COUNCIL  
SPECIALLY CALLED MEETING  
APRIL 11, 2011  
6:00 P.M.**

THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS WILL CONDUCT A SPECIALLY CALLED MEETING ON APRIL 11, 2011 AT 6:00 P.M. IN THE COUNCIL CHAMBERS OF THE SUNNYVALE TOWN HALL LOCATED AT 127 N. COLLINS ROAD, SUNNYVALE, TEXAS UNDER V.T.C.A., GOVERNMENT CODE SECTION 551.041 AND GOVERNMENT CODE SECTION 551.071. ITEMS TO BE DISCUSSED:

- **CALL MEETING TO ORDER**
- **CONVENE INTO EXECUTIVE SESSION PURSUANT TO V.T.C.A. GOVERNMENT CODE SECTION 551.071 - LITIGATION**  
**EXECUTIVE SESSION AGENDA:**
  1. **LITIGATION - DEWS VS TOWN OF SUNNYVALE**
  2. **LITIGATION - VULCAN LANDS, LLC VS TOWN OF SUNNYVALE**
  3. **LITIGATION - LAWRENCE EDWARD BOYD AND DALE BRIAN GRAVES  
PETITION FOR WRIT OF MANDAMUS**
- **RECONVENE INTO OPEN SESSION AND TAKE ANY ACTION NECESSARY AS A RESULT OF THE EXECUTIVE SESSION**

- **ADJOURN**

*ALL LOCATIONS IDENTIFIED ARE IN THE TOWN OF SUNNYVALE UNLESS OTHERWISE INDICATED. FOR A DETAILED PROPERTY DESCRIPTION, PLEASE CONTACT THE BUILDING OFFICIAL AT TOWN HALL. ALL ITEMS ON THE AGENDA ARE FOR POSSIBLE DISCUSSION AND ACTION. PLEASE TURN OFF ALL TELEPHONES AND HANDHELD COMMUNICATION DEVICES WHILE IN ATTENDANCE AT THIS MEETING. MEMBERS OF THE PUBLIC ARE REQUESTED TO LIMIT THEIR COMMENTS, WHETHER AT THE PUBLIC FORUM OR DURING A PUBLIC HEARING, TO NO MORE THAN FIVE (5) MINUTES.*

*THE SUNNYVALE TOWN COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AT ANY TIME DURING THE COURSE OF THIS MEETING TO DISCUSS ANY OF THE MATTERS LISTED ABOVE, AS AUTHORIZED BY TEXAS GOVERNMENT CODE SECTION 551.071 (CONSULTATION WITH ATTORNEY), 551.072 (DELIBERATION ABOUT REAL PROPERTY), 551.073 (DELIBERATIONS ABOUT GIFTS AND DONATIONS), 551.074 (PERSONNEL MATTERS), 551.076 (DELIBERATIONS ABOUT SECURITY DEVICES), AND 551.086 (ECONOMIC DEVELOPMENT).*

*THE TOWN OF SUNNYVALE IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). REASONABLE ACCOMMODATIONS AND EQUAL ACCESS TO COMMUNICATIONS WILL BE PROVIDED TO THOSE WHO PROVIDE NOTICE TO THE DIRECTOR OF COMMUNITY SERVICES AT 972-226-7177 AT LEAST 48 HOURS PRIOR TO THE MEETING.*

**I HEREBY CERTIFY THAT THE FOREGOING NOTICE WAS POSTED ON THIS THE 7TH DAY OF APRIL 2011 IN THE FOLLOWING LOCATIONS**

**TOWN HALL AT 127 N. COLLINS ROAD                      SUNNYVALE ISD 417 E. TRIPP ROAD  
SUNNYVALE LIBRARY AT 402 TOWER PLACE**

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**KATHRYN DEWEY, TOWN SECRETARY**



**AGENDA  
TOWN OF SUNNYVALE  
SUNNYVALE TOWN COUNCIL  
REGULAR MEETING  
APRIL 11, 2011  
7:00 P.M.**

THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS WILL CONDUCT A REGULAR MEETING ON APRIL 11, 2011 AT 7:00 P.M. IN THE COUNCIL CHAMBERS OF THE SUNNYVALE TOWN HALL LOCATED AT 127 N. COLLINS ROAD, SUNNYVALE, TEXAS UNDER V.T.C.A., GOVERNMENT CODE SECTION 551.041. ITEMS TO BE DISCUSSED:

- **CALL MEETING TO ORDER**
- **INVOCATION**
- **PLEDGE OF ALLEGIANCE**

**1. CONSENT AGENDA**

(ALL ITEMS ON THE CONSENT AGENDA ARE ROUTINE ITEMS AND MAY BE APPROVED WITH ONE MOTION; SHOULD ANY MEMBER OF THE TOWN COUNCIL OR ANY INDIVIDUAL WISH TO DISCUSS ANY ITEM, SAID ITEM MAY BE REMOVED FROM THE CONSENT AGENDA BY MOTION OF THE TOWN COUNCIL)

- A. APPROVAL OF MINUTES - SPECIAL MEETING 03-28-11**
- B. APPROVAL OF MINUTES - REGULAR MEETING 03-28-11**

- **PUBLIC FORUM**

(CITIZENS MAY SPEAK ON ANY MATTER OTHER THAN PERSONNEL MATTER OR MATTERS UNDER LITIGATION. NO TOWN COUNCIL ACTIONS OR DISCUSSION WILL BE TAKEN UNTIL SUCH MATTER IS PLACED ON THE AGENDA AND POSTED IN ACCORDANCE WITH LAW.)

- **DISCUSSION/ACTION ITEMS**

**2. ORDINANCE 529, AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS AMENDING CHAPTER FOUR, *BUSINESS REGULATIONS*, OF THE TOWN OF SUNNYVALE CODE OF ORDINANCES BY ADDING ARTICLE 4.300, *FILM PRODUCTION GUIDELINES*, ESTABLISHING GUIDELINES AND PROCEDURES FOR FILMING WITHIN THE TOWN LIMITS OF THE TOWN OF SUNNYVALE AND ESTABLISHING AN EFFECTIVE DATE**

**3. ORDINANCE 530, CONSIDER ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF "TOWN OF SUNNYVALE, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2011", INCLUDING THE ADOPTION OF ORDINANCE 530, AN ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH CERTIFICATES OF OBLIGATION.**

**• ADJOURN**

*ALL LOCATIONS IDENTIFIED ARE IN THE TOWN OF SUNNYVALE UNLESS OTHERWISE INDICATED. FOR A DETAILED PROPERTY DESCRIPTION, PLEASE CONTACT THE BUILDING OFFICIAL AT TOWN HALL. ALL ITEMS ON THE AGENDA ARE FOR POSSIBLE DISCUSSION AND ACTION. PLEASE TURN OFF ALL TELEPHONES AND HANDHELD COMMUNICATION DEVICES WHILE IN ATTENDANCE AT THIS MEETING. MEMBERS OF THE PUBLIC ARE REQUESTED TO LIMIT THEIR COMMENTS, WHETHER AT THE PUBLIC FORUM OR DURING A PUBLIC HEARING, TO NO MORE THAN FIVE (5) MINUTES.*

*THE SUNNYVALE TOWN COUNCIL RESERVES THE RIGHT TO ADJOURN INTO EXECUTIVE SESSION AT ANY TIME DURING THE COURSE OF THIS MEETING TO DISCUSS ANY OF THE MATTERS LISTED ABOVE, AS AUTHORIZED BY TEXAS GOVERNMENT CODE SECTION 551.071 (CONSULTATION WITH ATTORNEY), 551.072 (DELIBERATION ABOUT REAL PROPERTY), 551.073 (DELIBERATIONS ABOUT GIFTS AND DONATIONS), 551.074 (PERSONNEL MATTERS), 551.076 (DELIBERATIONS ABOUT SECURITY DEVICES), AND 551.086 (ECONOMIC DEVELOPMENT).*

*THE TOWN OF SUNNYVALE IS COMMITTED TO COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). REASONABLE ACCOMMODATIONS AND EQUAL ACCESS TO COMMUNICATIONS WILL BE PROVIDED TO THOSE WHO PROVIDE NOTICE TO THE DIRECTOR OF COMMUNITY SERVICES AT 972-226-7177 AT LEAST 48 HOURS PRIOR TO THE MEETING.*

**I HEREBY CERTIFY THAT THE FOREGOING NOTICE WAS POSTED ON THIS THE 7TH DAY OF APRIL 2011 IN THE FOLLOWING LOCATIONS:**

**TOWN HALL AT 127 N. COLLINS ROAD                      SUNNYVALE ISD 417 E. TRIPP ROAD  
SUNNYVALE LIBRARY AT 402 TOWER PLACE**

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**KATHRYN DEWEY, TOWN SECRETARY**



## AGENDA ITEM SUMMARY

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TO: Town Council

FROM: Scott Campbell, Town Manager *SC*

RE: **ITEM 1: Consent Items**

DATE: April 7, 2011

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Item A: Minutes



**MINUTES  
TOWN OF SUNNYVALE  
SUNNYVALE TOWN COUNCIL  
SPECIALLY CALLED MEETING  
MARCH 28, 2011  
6:00 P.M.**

THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS CONDUCTED A SPECIALLY CALLED MEETING ON MARCH 28, 2011 AT 6:00 P.M. IN THE COUNCIL CHAMBERS OF THE SUNNYVALE TOWN HALL LOCATED AT 127 N. COLLINS ROAD, SUNNYVALE, TEXAS UNDER V.T.C.A., GOVERNMENT CODE SECTION 551.041 AND GOVERNMENT CODE SECTION 551.071. THOSE PRESENT WERE:

MAYOR	DAVID BYRD
MAYOR PRO-TEM	KAREN HILL
COUNCILMEMBER	PAULA YATES
COUNCILMEMBER	SAJI GEORGE
COUNCILMEMBER	RONNIE HENDERSON, JR
COUNCILMEMBER	PAT WILEY

- **CALL MEETING TO ORDER**

Mayor Byrd called the meeting to order at 6:05 p.m.

- **CONVENE INTO EXECUTIVE SESSION PURSUANT TO V.T.C.A. GOVERNMENT CODE SECTION 551.071 - LITIGATION**

**EXECUTIVE SESSION AGENDA:**

1. **LITIGATION - DEWS VS TOWN OF SUNNYVALE**
2. **LITIGATION - VULCAN LANDS, LLC VS TOWN OF SUNNYVALE**
3. **LITIGATION - MEET WITH LEGAL COUNSEL TO DISCUSS THREATENED LITIGATION CONCERNING TOWN'S COMPLIANCE WITH ELECTION CODE**

Motion was made by Councilmember George to adjourn into executive session. Motion seconded by Councilmember Wiley. Motion carried unanimously.

Mayor Byrd adjourned into executive session at 6:06 p.m.

Mayor Byrd reconvened into regular session at 7:05 p.m. and advised that all items had not been covered and the executive session would be continued at the conclusion of the regularly scheduled town council meeting.

Mayor Byrd called the meeting to order at 7:59 p.m.

Mayor Byrd adjourned into executive session at 7:59 p.m.

Mayor Byrd reconvened into regular session at

- **RECONVENE INTO OPEN SESSION AND TAKE ANY ACTION NECESSARY AS A RESULT OF THE EXECUTIVE SESSION**

- **ADJOURN**

Mayor Byrd adjourned the meeting at

*The undersigned presiding officer certifies that this is a true and correct record of the proceedings.*

Mayor David Byrd

ATTEST:

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Kathryn Dewey, Town Secretary

A TAPE RECORDING OF THIS MEETING IS ON FILE AT TOWN HALL. THESE MINUTES ARE CONDENSED THEREFROM



**MINUTES  
TOWN OF SUNNYVALE  
SUNNYVALE TOWN COUNCIL  
REGULAR MEETING  
MARCH 28, 2011  
7:00 P.M.**

THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS CONDUCTED A REGULAR MEETING ON MARCH 28, 2011 AT 7:00 P.M. IN THE COUNCIL CHAMBERS OF THE SUNNYVALE TOWN HALL LOCATED AT 127 N. COLLINS ROAD, SUNNYVALE, TEXAS UNDER V.T.C.A., GOVERNMENT CODE SECTION 551.041. THOSE PRESENT WERE:

MAYOR	DAVID BYRD
MAYOR PRO-TEM	KAREN HILL
COUNCILMEMBER	PAULA YATES
COUNCILMEMBER	SAJI GEORGE
COUNCILMEMBER	RONNIE HENDERSON, JR
COUNCILMEMBER	PAT WILEY

• **CALL TOWN COUNCIL MEETING TO ORDER**

Mayor Byrd called the meeting to order at 7:05 p.m.

• **INVOCATION**

Saji Daniel gave the invocation.

• **PLEDGE OF ALLEGIANCE**

Mayor Byrd led the pledge of allegiance.

**1. CONSENT AGENDA**

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**A. APPROVAL OF MINUTES - SPECIAL MEETING 02-28-11**

**B. APPROVAL OF MINUTES - REGULAR MEETING 02-28-11**

Motion was made by Councilmember Yates to approve the minutes from Special Meeting 02-28-11 and the minutes from Regular Meeting 02-28-11. Motion seconded by Councilmember George. Motion carried unanimously.

• **PUBLIC FORUM**

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Public Comments:

1) **Bubba Titsworth**, 402 E. Tripp Rd., asked if changes were being started on Tripp Rd.

• **COUNCIL APPOINTMENT**

**2. PRESENTATION FROM PAM MUNDO - FILM FRIENDLY DESIGNATION**

Larry Boyd, 4A President, gave information on the advantages and processes for Sunnyvale becoming a "Film Friendly" community.

Terry Reid, 637 E. Tripp Rd, said she felt the film friendly designation was very important to Sunnyvale residents and businesses.

Scott Campbell advised that policies and procedures would be ready for the next regular town council meeting.

• **PUBLIC HEARING**

OPEN OR CONTINUE PUBLIC HEARING, CONSIDER TESTIMONY AND OTHER INFORMATION PROVIDED, CLOSE PUBLIC HEARING, AND TAKE NECESSARY ACTION WITH RESPECT TO THE FOLLOWING:

**3. APPLICATION FOR PRELIMINARY PLAT**

APPLICANT: RKS TEXAS INVESTMENTS, LP

AT OR ABOUT: SW CORNER OF HWY 80 AND COLLINS RD

REQUEST: SUNNYVALE CENTRE PHASE 1

Steve Gilbert, Building Official, stated that preliminary plat application had been received from RKS Texas Investments, LP for Sunnyvale Centre Phase 1. Mr. Gilbert said the application had been heard by the Planning and Zoning Commission where it had received approval. The applicant was not present and Mr. Gilbert offered to answer any questions. He advised the application was exactly the same as previously presented on the concept plan.

Mayor Byrd opened the public hearing. There were no public comments. Mayor Byrd closed the public hearing.

Motion was made by Councilmember Hill to approve the application for preliminary plat for Sunnyvale Centre Phase 1 subject to the final approval by the town engineer for construction plans and landscape plans. Motion seconded by Councilmember Henderson. Motion carried unanimously.

• **DISCUSSION/ACTION ITEMS**

**4. ORDINANCE 527, AN ORDINANCE OF THE TOWN OF SUNNYVALE, TEXAS, AMENDING THE CODE OF ORDINANCES APPENDICES ARTICLE 5.000, MUNICIPAL COURT FEES, TO ADD SECTION 5.450 TO PROVIDE FOR MOVING VIOLATION FINES AND PROVIDING AN EFFECTIVE DATE**

Mayor Byrd read item #4 into the record. Scott Campbell explained the ordinance was brought forward to update the code of ordinances for moving violation fees. David Cranford, Finance Director, explained the current processing of tickets for speeds over 25 mph. He stated Sunnyvale fees and fines were lower than surrounding communities.

Motion was made by Councilmember Hill to approve Ordinance 527 as amended Sec. 5.450 Fines for moving violations stating only “Violations of 25 mph and greater will be assessed a fine of \$200. Motion seconded by Councilmember Henderson. Motion carried unanimously.

**5. RESOLUTION 11-06, A RESOLUTION OF THE TOWN OF SUNNYVALE, TEXAS, AUTHORIZING THE CITIES AGGREGATION POWER PROJECT, INC. (CAPP) TO NEGOTIATE AN EXTENSION TO THE CURRENT ELECTRIC SUPPLY AND NECESSARY RELATED SERVICES AGREEMENT WITH NEXT ERA FOR A FIXED PRICE PER KWH THAT IS LOWER THAN CONTRACT RATES FOR 2011-2013, SAID EXTENSION TO CONTINUE UNTIL DECEMBER 31, 2018; AUTHORIZING CAPP TO ACT AS AN AGENT ON BEHALF OF THE TOWN TO ENTER INTO A CONTRACT FOR ELECTRICITY; AUTHORIZING THE CHAIRMAN OF CAPP TO EXECUTE AN EXTENSION TO THE CURRENT ELECTRIC SUPPLY AGREEMENT FOR DELIVERIES OF ELECTRICITY EFFECTIVE JANUARY 1, 2011 OR AS SOON AFTER FINALIZATION OF A CONTRACT AS POSSIBLE; COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE TOWN’S COMMITMENTS TO PURCHASE POWER THROUGH CAPP FOR ITS ELECTRICAL NEEDS THROUGH DECEMBER 31, 2018.**

Mayor Byrd read item #5 into the record. Scott Campbell stated the Town joined CAPP in 2007 and the current contract would expire in 2013. Resolution 11-06 would provide cost savings.

Motion was made by Councilmember Yates to approve Resolution 11-06 as presented. Motion seconded by Councilmember Wiley. Motion carried unanimously.

**6. ORDINANCE 528, AN ORDINANCE OF THE TOWN OF SUNNYVALE, TEXAS, CALLING TWO JOINT PUBLIC HEARINGS OF THE TOWN PLANNING AND ZONING COMMISSION AND TOWN COUNCIL TO CONSIDER AN AMENDMENT TO THE LAND USE DIAGRAM OF THE COMPREHENSIVE PLAN FROM THE INDUSTRIAL AND COMMERCIAL LAND USE CATEGORIES TO AN URBAN DENSITY RESIDENTIAL LAND USE CATEGORY FOR A 17.25-ACRE TRACT OF LAND 17.2519 ACRE TRACT OF LAND SITUATED IN THE TIMOTHY COHWELL SURVEY, ABSTRACT NO. 335, SUNNYVALE,**

**DALLAS COUNTY, TEXAS, AND BEING PART OF A TRACT OF LAND CONVEYED TO FC PROPERTIES ONE, LTD. BY DEED RECORDED IN VOLUME 96059, PAGE 1966 (A MORE DETAILED LEGAL DESCRIPTION BEING AVAILABLE AT SUNNYVALE TOWN HALL); TO CONSIDER A PARALLEL AMENDMENT TO THE OFFICIAL ZONING MAP FROM INDUSTRIAL AND HIGHWAY COMMERCIAL DISTRICTS TO AN ATTACHED HOUSING COMMERCIAL DISTRICT FOR THE SAME LAND IN ORDER TO AUTHORIZE A FOUR-PLEX RESIDENTIAL PROJECT CONTAINING 96 DWELLING UNITS; CONSIDERING A CONCEPT PLAN FOR THE AHC DISTRICT; CONSIDERING STANDARDS FOR DEVELOPMENT OF THE AHC DISTRICT, INCLUDING ALTERNATIVE PERFORMANCE STANDARDS; CONSIDERING CONDITIONS FOR DEVELOPMENT OF THE AHC DISTRICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

Mayor Byrd read item #6 into the record. Scott Campbell explained an application for a 96-unit, quad-home project off Planters Rd. He stated Ordinance 528 was to schedule a public hearing only.

Motion was made by Councilmember Hill to approve Ordinance 528 to set dates of April 18, 2011 and April 28, 2011 for a joint public hearing of Town Council and Planning and Zoning Commission. Motion seconded by Councilmember Yates. Motion carried unanimously.

• **ADJOURN**

Mayor Byrd adjourned the meeting at

*The undersigned presiding officer certifies that this is a true and correct record of the proceedings.*

\_\_\_\_\_  
Mayor David Byrd

ATTEST:

\_\_\_\_\_  
Kathryn Dewey, Town Secretary

A TAPE RECORDING OF THIS MEETING IS ON FILE AT TOWN HALL. THESE MINUTES ARE CONDENSED THEREFROM



## AGENDA ITEM SUMMARY

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TO: Town Council

FROM: Scott Campbell, Town Manager *SC*

RE: **ITEM 2: Consideration of Ordinance No. 529: Establishing Film Production Guidelines**

DATE: April 7, 2011

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Based on the presentation and discussion at the last council meeting, the attached ordinance adopts guidelines for film production in Sunnyvale. Formal adoption of these guidelines is a prerequisite for certification by the Texas Film Commission as a 'Film Friendly' community.

The ordinance simply adds an article to the Code of Ordinances establishing the guidelines as attached.

## ORDINANCE NO. 529

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS AMENDING CHAPTER FOUR, *BUSINESS REGULATIONS*, OF THE TOWN OF SUNNYVALE CODE OF ORDINANCES BY ADDING ARTICLE 4.300, *FILM PRODUCTION GUIDELINES*, ESTABLISHING GUIDELINES AND PROCEDURES FOR FILMING WITHIN THE TOWN LIMITS OF THE TOWN OF SUNNYVALE AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, it is the desire of the Town Council of the Town of Sunnyvale, Texas to establish fair and reasonable guidelines and procedures for film production in Sunnyvale, and,

**WHEREAS**, it is the desire of the Town of Sunnyvale Town Council to receive the designation of a "Film Friendly Town" from the Texas Film Commission, and

**WHEREAS**, the Town Council believes such designation is beneficial to the Town's economic development efforts and quality of life in Sunnyvale, and

**WHEREAS**, the Town Council believes the guidelines listed below for film production in Sunnyvale (Exhibit A) are reasonable and fair, and promote and support film production projects in Sunnyvale,

Now, Therefore, be it Ordained that Chapter 4, Business Regulations, of the Town of Sunnyvale Code of Ordinances be amended by adding Article 4.300 to read as follows:

### **Article 4.300                      FILM PRODUCTION GUIDELINES**

#### **Sec. 4.301      Purpose and Intent**

The Guidelines contained in this policy are intended to create a program for promoting economic development activity with Sunnyvale and within the vicinity of the Town, in accordance with Chapter 380, Texas Local Government Code. The following Guidelines are also intended to protect the personal and property rights of Sunnyvale, Texas residents and businesses, and to promote the public health, safety and welfare. The Town Manager reserves the right to impose additional regulations in the interest of public health, safety and welfare, or if otherwise deemed appropriate by the Town Manager.

These Guidelines cover requests for commercial use of Town-owned property (including but not limited to streets, rights-of-way, parks, and or public buildings), commercial use of private property which may affect adjacent public or private property, and the use of Town equipment and personnel in the filming of movies, television programs, commercials, training films and related activities.

#### **Sec. 4.302 Town Control/Town Manager Authority**

The Town Manager may authorize the use of any street, right-of-way, park, or public building, equipment or personnel for commercial uses in the filming or taping of movies, television programs, commercials, or training films and related activities. In conjunction with these uses, the Town Manager may require that any or all of the conditions and/or remuneration herein and as specified on the application be met as a prerequisite to that use.

The Applicant agrees that the Town of Sunnyvale shall have exclusive authority to grant the Applicant the use of public streets, right-of-way, parks and public buildings of the Town, as well as authority to regulate the hours of production and the general location of the production. The Town reserves the full and absolute right to prohibit all filming or to order cessation of filming in order to promote the public health, safety or welfare.

The Applicant shall allow Town departments (e.g. Police, Fire, Building) to inspect all structures, property, devices and equipment to be used in connection with the filming and taping, as deemed appropriate by the Town Manager.

#### **Sec. 4.303 Permit Requirements**

Before filing an application for filming in Sunnyvale, the Office of the Town Manager must be contacted to discuss the production's specific filming requirements and the feasibility of filming in Sunnyvale, Texas.

Any commercial producer who desires to undertake a commercial production in Sunnyvale is required to complete and return the attached application for filming to the Office of the Town Manager, within the time frames below:

- **Commercials or episodic television:** a minimum of two (2) business days prior to the commencement of filming or any substantial activity related to the project.
- **Feature films:** a minimum of five (5) business days prior to the commencement of filming or any substantial activity related to the project.

#### **Sec. 4.304 Fees**

An application processing fee of \$25.00 should accompany each application for filming in Sunnyvale.

The Town Manager may waive this fee upon proof of an organization's non-profit status, or for any other reason deemed appropriate by the Town Manager.

#### **Sec. 4.305 Use of Town Equipment and Personnel**

The Applicant shall pay for all costs of any Police, Fire, Public Works, or other city personnel assigned to the project (whether or not specifically requested by the production). Remuneration rates for the use of any Town equipment, including police cars and fire equipment, will be established on a case-by-case basis as determined by the Town Manager. The Applicant shall pay all costs in full within ten (10) days after receipt of an invoice for said costs. The Town Manager may at his discretion, require an advance deposit for all costs related Town personnel and/or use of Town equipment.

The Town Manager, in consultation with the Town Public Safety (Dallas County Sherriff) and the Town Fire Chief, shall have the authority to stipulate additional fire or police requirements and level of staffing for same, at any time during a film project if it is determined to be in the best interest of public health, safety and welfare, which cost shall be borne entirely by the Applicant. Off-duty police and firefighters shall be paid by the production company at a rate no less than one and one-half times their hourly rate.

**Sec. 4.306 Use of Town Property**

The Town Manager may authorize the use of any street, right-of-way, park or public building, use of Sunnyvale, Texas name, trademark or logo and/or use of Town equipment and/or personnel for commercial uses in the production of movies, television programs, commercials, or training films and related activities. In conjunction with these uses, the Town Manager may require that any or all of the conditions and/or remuneration as specified herein and on the application be met as a prerequisite to that use. A security or damage deposit may be required within the discretion of the Town Manager.

The Applicant shall reimburse the Town for inconveniences when using public property. Following is the rate schedule:

Activity	Cost (per Calendar Day)-maximum of 12 hours/day
Total or disruptive use (regular operating hours) of a public building, park, right-of-way or public area.	\$500
Partial non-disruptive use of a public building, park, right-of-way or public area	\$250
Total closure or obstruction of public street or right-of-way, including parking lots and on-street parking (for filming purposes)	\$50 per block
Partial closure or obstruction or public street or right-of-way, including parking lots and on-street parking (for filming purposes)	\$25 per block
Use of Town parking lots, parking areas, and Town streets (for the purpose of parking film trailers, buses, catering trucks	\$50 per block or lot

and other large vehicles)	
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The Applicant acknowledges and agrees that the Town of Sunnyvale, Texas, possesses and retains exclusive authority to grant the Applicant a revocable licenses for the use of its name, trademark, and logo, public streets, rights-of-way, parks and buildings of the Town as well as control over the hours of production and the general location of the production, The Town reserves the full and absolute right to prohibit all filming or to order cessation of filming activity in order to promote the public health, safety and /or welfare.

**Sec. 4.307 Special Equipment and Vehicles**

The Applicant shall provide a report listing the number of vehicles and types of equipment to be used during the filming, including proposed hours of use and proposed parking locations. Such location will need to be specifically approved by the Town Manager. On-street parking or use of public parking lots is subject to Town approval. The use of exterior lighting, power generators or any other noise-or-light Producing equipment requires on-site approval of the Town Manager.

**Sec. 4.308 Hours of Filming**

Unless express written permission has been obtained from the Town Manager in advance and affected property owners, tenants and residents have been notified, filming will be limited to the following hours. Monday through Friday 7:00 a.m. to 9:00 p.m. and Saturday, Sunday and holidays, 8:00 a.m. to 8:00 p.m.

**Sec. 4.309 Notification of Neighbors**

The Applicant shall provide a short written description, approved by the Town Manager, of the schedule for the proposed production to the owners, tenants and residents of each property in the affected neighborhoods (s). The Applicant, or his or her designee, shall use their best efforts to notify each owner, tenant and resident of all such property, and shall submit, as part of this application, a report noting each owner, tenant or resident's comments, along with their signatures, addresses and phone numbers. Based on this community feedback, and other appropriate factors considered by the Town Manager, the Town Manager may grant or deny the filming application.

**Sec. 4.310 Certificate of Insurance**

The applicant shall attach a valid certificate of insurance, issued by a company authorized to conduct business in the State of Texas, naming the Town of Sunnyvale and its agents, officers, elected officials, employees and assigns, as additional insured, in an amount not less than \$1,000,000 general liability, including bodily injury and property damage with a \$5,000,000 umbrella; and automobile liability (if applicable) in an amount not less than \$1,000,000 including bodily injury and property damage.

**Sec. 4.311      Damage to Public or Private Property**

The Applicant shall pay in full, within ten (10) days of receipt of an invoice, the costs of repair for any and all damage to public or private property, resulting from or in connection with, the production, and restore the property to its original condition prior to the production, or to better than original condition.

**Sec. 4.312      Hold Harmless Agreement**

The Applicant shall sign the following Hold Harmless Agreement holding the city harmless from any claim that may arise from their use of designated public property, right-of-way, or equipment in conjunction with the permitted use:

*I certify that I represent the firm which will be performing the filming/taping at the locations specified on the attached permit application. I further certify that I and my firm will perform in accordance with the directions and specifications of the Town of Sunnyvale, and that I and my firm will indemnify and hold harmless the Town of Sunnyvale, Texas and its elected officials, officers, servants, employees, successors agents, departments and assigns from any and all losses, damages, expenses, costs and/or claims, of every nature and kind arising out of or in connection with the filming/taping and other related activities engaged in pursuant to this Application.*

*I further certify that the information provided on this Application is true and correct to the best of my knowledge, and that I possess the authority to sign this and other contracts and agreements with the Town of Sunnyvale, Texas on behalf of the firm.*

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

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

**PASSED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS on this the 11th day of April, 2011.**

APPROVED:

\_\_\_\_\_  
David Byrd, Mayor

ATTEST:

\_\_\_\_\_  
Kathryn Dewey, Town Secretary

**THE TOWN OF SUNNYVALE, TX**  
**APPLICATION FOR COMMERCIAL FILMING**

Title of project: \_\_\_\_\_

Type of production    Commercial \_\_\_\_\_    Feature Film \_\_\_\_\_  
   Television \_\_\_\_\_    Training Film \_\_\_\_\_  
   Public Service \_\_\_\_\_    Other \_\_\_\_\_

Location of filming: \_\_\_\_\_

Date(s) of filming: \_\_\_\_\_

**CONTACTS**

Production Office:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Producer:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Location Manager:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Texas Film Commission Representative: \_\_\_\_\_

**PRODUCTION** (Attach additional sheets if necessary.)

1. Production schedule and activities to include stunts, pyrotechnics, special effects, aerial photography, amplified sound or use of animals. (Give dates and times and rain dates. Hours should include set-up, holding of sets and restoration.)
2. Number of persons involved with the production, including cast and crew.
3. Anticipated need of Town personnel, equipment or property.
4. Describe any areas in which public access will be restricted during production.
5. Describe alterations to property.
6. Number and type of production vehicles to be used and location(s) where vehicle will be parked.
7. Location where crew will be fed, if not at production location.
8. Location where extras will be held, if not at production location.
9. Map of anticipated street closures(s) or other public area use.

**Application completed by:**

Name/Title: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

The "Guidelines for Filming in Sunnyvale, Texas" apply to all filming activities, and the Office of the City Manager may require the applicant to acknowledge receipt of the guidelines prior to approving this application.



## AGENDA ITEM SUMMARY

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TO: Town Council

FROM: Scott Campbell, Town Manager *SC*

RE: **ITEM 3: Consideration Ordinance # 530: Authorizing Issuance of Certificates of Obligation**

DATE: April 7, 2011

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This is the required ordinance to sell debt for the water tower project. As you can see, the ordinance authorizes the issuance of certificates of obligation in an amount not to exceed 3,100,000 as previously discussed. You will notice certain areas left blank in this ordinance, as it was prepared prior to knowing our achieved interest rate. Staff learned today that we achieved a rate of 3.83%, which results in an average annual debt payment of \$221,000 (our last estimate was \$230,000). Our financial advisors will provide an updated copy of the ordinance Monday night.

Upon approval of this ordinance, the Town anticipates receipt of bond proceeds within 30 days. We are reviewing a proposal from our consultant engineer for the design of the water tower, and anticipate making a recommendation to council at our next meeting. As discussed previously, we anticipate the design and specifications for the distribution lines for the tower will be prepared by our staff engineer. At our April 25 meeting we will provide a projected timeline for all phases of the project.

ORDINANCE NO. 530

AN ORDINANCE authorizing the issuance of “TOWN OF SUNNYVALE, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2011”; specifying the terms and features of said certificates; providing for the payment of said certificates of obligation by the levy of an ad valorem tax upon all taxable property within the Town and a limited pledge of the net revenues derived from the operation of the Town’s Waterworks and Sewer System; providing the terms and features of such certificates and resolving other matters incident and relating to the issuance, payment, security, sale and delivery of said Certificates, including the approval and execution of a Paying Agent/Registrar Agreement and a Purchase Agreement and the approval and distribution of an Official Statement pertaining thereto; and providing an effective date.

WHEREAS, the Town Council (the “Council”) of the Town of Sunnyvale, Texas (the “Town”), has heretofore determined that certificates of obligation should be issued in the maximum principal amount of \$3,100,000 for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing, acquiring, purchasing, renovating, enlarging, equipping and improving water system properties and facilities, including the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in connection with such projects and the financing thereof; and

WHEREAS, a “Notice of Intention to Issue Town of Sunnyvale, Texas, Certificates of Obligation” was duly published in the *Dallas Morning News*, on March 4, 2011 and March 11, 2011, the date of the first publication of such notice in each newspaper being not less than thirty-one (31) days prior to the tentative date stated therein for the passage and adoption of this Ordinance; and

WHEREAS, no petition protesting the issuance of such certificates of obligation and bearing valid petition signatures of at least 5% of the qualified electors of the Town, has been presented to or filed with the Mayor, Town Secretary or any other official of the Town on or prior to the date of the passage of this Ordinance; and

WHEREAS, the Council hereby finds and determines that the certificates of obligation described in the aforesaid notice should be issued and sold at this time in the amount and manner as hereinafter provided; now, therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SUNNYVALE, TEXAS:

SECTION 1: Authorization - Designation - Principal Amount - Purpose. Certificates of obligation of the Town shall be and are hereby authorized to be issued in the aggregate principal amount of \$\_\_\_\_, to be designated and bear the title “TOWN OF SUNNYVALE, TEXAS, COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2011” (hereinafter referred to as the “Certificates”), for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing, acquiring, purchasing, renovating, enlarging, equipping and improving water system properties and facilities, including the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in

connection with such projects and the financing thereof; pursuant to authority conferred by and in conformity with the Constitution and laws of the State of Texas, including V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended.

SECTION 2: Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Certificate Date. The Certificates are issuable in fully registered form only; shall be dated April 15, 2011 (the “Certificate Date”) and shall be in denominations of \$5,000 or any integral multiple thereof (within a Stated Maturity) and the Certificates shall become due and payable on February 15 in each of the years and in principal amounts (the “Stated Maturities”) and bear interest at per annum rates in accordance with the following schedule:

<u>Year of Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rates</u>
2012		
2013		
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		

The Certificates shall bear interest on the unpaid principal amounts from the Certificate Date at the rates per annum shown above in this Section (calculated on the basis of a 360-day year of twelve 30-day months), and such interest shall be payable on February 15 and August 15 of each year, commencing February 15, 2012, until maturity or prior redemption.

SECTION 3: Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Certificates, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Certificates (hereinafter called the “Holders”) appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of BOKF, NA dba Bank of Texas, Dallas, Texas, to serve as Paying Agent/Registrar for the Certificates is hereby approved and confirmed. Books and records relating to the registration, payment, transfer and exchange of the Certificates (the "Security Register") shall at all times be kept and maintained on behalf of the Town by the Paying Agent/Registrar, as provided herein and in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as **Exhibit A**, and such reasonable rules and regulations as the Paying Agent/Registrar and the Town may prescribe. The Mayor or Mayor Pro Tem and Town Secretary are hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Certificates. The Town covenants to maintain and provide a Paying Agent/Registrar at all times until the Certificates are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Certificates, the Town agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

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

In the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

#### SECTION 4: Redemption.

(a) Optional Redemption. The Certificates maturing on and after February 15, 20\_\_ shall be subject to redemption prior to maturity, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by

lot by the Paying Agent/Registrar), on February 15, 20\_\_ or any date thereafter, at the redemption price of par plus accrued interest to the date of redemption.

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

(b) Mandatory Redemption. The Certificates maturing on February 15 in each of the years 20\_\_ and 20\_\_ (the "Term Certificates") shall be subject to mandatory redemption in part prior to maturity at the redemption price of par and accrued interest to the date of redemption on the respective dates and in principal amounts as follows:

<u>Term Certificates due February 15, 20__</u>	<u>Term Certificates due February 15, 20__</u>
<u>Redemption Date</u>	<u>Redemption Date</u>
<u>Principal Amount</u>	<u>Principal Amount</u>
February 15, 20__	February 15, 20__
February 15, 20__*	February 15, 20__*

\* Stated maturity.

Approximately forty-five (45) days prior to each mandatory redemption date for the Term Certificates, the Paying Agent/Registrar shall select by lot the numbers of the Term Certificates within the applicable Stated Maturity to be redeemed on the next following February 15 from moneys set aside for that purpose in the Certificate Fund (as hereinafter defined). Any Term Certificate not selected for prior redemption shall be paid on the date of their Stated Maturity.

The principal amount of the Term Certificates for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the Town, by the principal amount of Term Certificates of like Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the Town at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions set forth in subsection (a) of this Section and not theretofore credited against a mandatory redemption requirement.

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

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

any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder.

All notices of redemption shall (i) specify the date of redemption for the Certificates, (ii) identify the Certificates to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Certificates, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Certificates, or the principal amount thereof to be redeemed, shall be made at the Designated Payment/Transfer Office of the Paying Agent/Registrar only upon presentation and surrender of the Certificates. If a Certificate is subject by its terms to prior redemption and has been called for redemption and notice of redemption has been duly given as hereinabove provided, such Certificate (or the principal amount thereof to be redeemed) shall become due and payable and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys sufficient for the payment of such Certificate (or of the principal amount thereof to be redeemed) at the then applicable redemption price are held for the purpose of such payment by the Paying Agent/Registrar.

(e) Conditional Notice of Redemption. With respect to any optional redemption of the Certificates, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Certificates to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the Town shall not redeem such Certificates and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Certificates have not been redeemed.

SECTION 5: Registration - Transfer - Exchange of Certificates - Predecessor Certificates. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Certificates issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. Any Certificate may be transferred or exchanged for Certificates of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Certificate to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

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

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

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

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

Certificates cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Certificates", evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Certificate or Certificates registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Certificates" shall include any mutilated, lost, destroyed or stolen Certificate for which a replacement Certificate has been issued, registered and delivered in lieu thereof pursuant to the provisions of Section 23 hereof and such new replacement Certificate shall be deemed to evidence the same obligation as the mutilated, lost, destroyed or stolen Certificate.

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

**SECTION 6: Book-Entry-Only Transfers and Transactions.** Notwithstanding the provisions contained in Sections 3, 4 and 5 hereof relating to the payment, and transfer/exchange of the Certificates, the Town hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the operational arrangements referenced in the Blanket Issuer Letter of Representations by and between the Town and DTC (the "Depository Agreement").

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

owner of each Certificate (the “Beneficial Owners”) being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Certificates or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the Town determines that DTC is incapable of properly discharging its duties as securities depository for the Certificates, the Town covenants and agrees with the Holders of the Certificates to cause Certificates to be printed in definitive form and issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Certificates in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Certificates shall be made in accordance with the provisions of Sections 3, 4 and 5 hereof.

**SECTION 7: Execution - Registration.** The Certificates shall be executed on behalf of the Town by the Mayor under its seal reproduced or impressed thereon and countersigned by the Town Secretary. The signature of said officers on the Certificates may be manual or facsimile. Certificates bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Town on the Certificate Date shall be deemed to be duly executed on behalf of the Town, notwithstanding that one or more of the individuals executing the same shall cease to be such officer at the time of delivery of the Certificates to the initial purchaser(s) and with respect to Certificates delivered in subsequent exchanges and transfers, all as authorized and provided in V.T.C.A., Government Code, Chapter 1201, as amended.

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

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

thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 9: Forms.

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

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

(b) Form of Definitive Certificate.

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

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

UNITED STATES OF AMERICA  
STATE OF TEXAS  
TOWN OF SUNNYVALE, TEXAS  
COMBINATION TAX AND REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2011

Certificate Date:            Interest Rate:            Stated Maturity:            CUSIP No.:  
April 15, 2011            \_\_\_\_\_%            February 15, 20\_\_            \_\_\_\_\_

Registered Owner:

Principal Amount:

The Town of Sunnyvale (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the County of Dallas, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Certificate appearing below (unless this Certificate bears a

“Registration Date” as of an interest payment date, in which case it shall bear interest from such date, or unless the “Registration Date” of this Certificate is prior to the initial interest payment date in which case it shall bear interest from the Certificate Date) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing February 15, 2012, until maturity or prior redemption. Principal of this Certificate is payable at its Stated Maturity or on a redemption date to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided, however, while this Certificate is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Certificate. Interest is payable to the registered owner of this Certificate (or one or more Predecessor Certificates, as defined in the Ordinance hereinafter referenced) whose name appears on the “Security Register” maintained by the Paying Agent/Registrar at the close of business on the “Record Date”, which is the last business day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Certificate is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the “Certificates”) for the purpose of paying contractual obligations to be incurred for (i) the construction of public works, to wit: constructing, acquiring, purchasing, renovating, enlarging, equipping and improving water system properties and facilities, including the acquisition of land and rights-of-way therefor, and (ii) professional services rendered in connection with such projects and the financing thereof; under and in strict conformity with the Constitution and laws of the State of Texas, particularly V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, and pursuant to an ordinance adopted by the governing body of the Town (hereinafter referred to as the “Ordinance”).

The Certificates maturing on the dates hereinafter identified (the “Term Certificates”) are subject to mandatory redemption prior to maturity with funds on deposit in the Certificate Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the mandatory redemption date on the respective dates and in principal amounts as follows:

Term Certificates due February 15, 20__	Term Certificates due February 15, 20__
<u>Redemption Date</u> <u>Principal Amount</u>	<u>Redemption Date</u> <u>Principal Amount</u>
February 15, 20__	February 15, 20__
February 15, 20__*	February 15, 20__*

\* Stated maturity.

The particular Term Certificates of a stated maturity to be redeemed on each redemption date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Certificates for a Stated Maturity required to be redeemed on a mandatory redemption date may be reduced, at the option of the Town, by the principal amount of Term Certificates of like Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date, (1) shall have been acquired by the Town at a price not exceeding the principal amount of such Term Certificates plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.

The Certificates maturing on and after February 15, 20\_\_ may be redeemed prior to their Stated Maturities, at the option of the Town, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the Paying Agent/Registrar), on February 15, 20\_\_, or any date thereafter at the redemption price of par, together with accrued interest to the date of redemption.

At least thirty (30) days prior to a redemption date, the Town shall cause a written notice of such redemption to be sent by United States Mail, first class postage prepaid, to the registered owners of each Certificate to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Ordinance. If a Certificate (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon the redemption date such Certificate (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount redeemed.

In the event a portion of the principal amount of a Certificate is to be redeemed and the registered owner is someone other than Cede & Co., payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of such Certificate to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and a new Certificate or Certificates of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum thereof will be issued to the registered owner, without charge. If a Certificate is selected for redemption, in whole or in part, the Town and the Paying Agent/Registrar shall not be required to transfer such Certificate to an assignee of the registered owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance of a Certificate redeemed in part.

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

The Certificates are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the Town and from a limited pledge of the Net Revenues of the Town's combined Waterworks and Sewer System (the "System"), such pledge being limited to an amount of \$1,000 and, together with a parity pledge securing the payment of the Previously Issued Certificates, being junior and subordinate to the lien on and pledge of such Net Revenues securing the payment of Prior Lien Obligations hereafter issued by the Town. In the Ordinance, the Town reserves and retains the right to issue Prior Lien Obligations without limitation as to principal amount but subject to any applicable terms, conditions or restrictions under law or otherwise, as well as the right to issue Additional Certificates payable from the same sources as the Certificates and, together with the Previously Issued Certificates and the Certificates, equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System.

Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all the provisions of which the owner or holder of this Certificate by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Certificates; the Net Revenues pledged to the payment of the principal of and interest on the Certificates; the nature and extent and manner of enforcement of the pledge; the terms and conditions relating to the transfer or exchange of this Certificate; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Town and the Paying Agent/Registrar; the terms and provisions upon which the tax levy and the pledges, charges and covenants made therein may be discharged at or prior to the maturity of this Certificate, and this Certificate deemed to be no longer Outstanding thereunder; and for the other terms and provisions contained therein. Capitalized terms used herein and not otherwise defined have the meanings assigned in the Ordinance.

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

The Town and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Certificate as the owner entitled to payment of principal hereof at its Stated Maturity or upon its prior redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Town nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Town. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

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

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

TOWN OF SUNNYVALE, TEXAS

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Mayor

COUNTERSIGNED:

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Town Secretary

(Town Seal)

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

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

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

I HEREBY CERTIFY that this Certificate has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this \_\_\_\_\_,

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

(SEAL)

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

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

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

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

BOKF, NA DBA BANK OF TEXAS,  
Dallas, Texas  
as Paying Agent/Registrar

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

Registration date:

\_\_\_\_\_

(e) Form of Assignment

ASSIGNMENT

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

\_\_\_\_\_  
(Social Security or other identifying number \_\_\_\_\_) the within Certificate of Obligation and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

\_\_\_\_\_  
Signature Guaranteed:

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

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

Heading and first paragraph shall be modified to read as follows:

REGISTERED  
NO. T-1

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

UNITED STATES OF AMERICA  
STATE OF TEXAS  
TOWN OF SUNNYVALE, TEXAS  
COMBINATION TAX AND REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2011

Certificate Date: April 15, 2011

Registered Owner:

Principal Amount:

DOLLARS

The Town of Sunnyvale (hereinafter referred to as the "Town"), a body corporate and municipal corporation in the County of Dallas, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on February 15 in each of the years and in principal installments in accordance with the following schedule:

YEAR OF  
MATURITY

PRINCIPAL  
INSTALLMENTS

INTEREST  
RATES

(Information to be inserted from schedule in Section 2 hereof)

(or so much thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid principal amounts hereof from the Certificate Date at the per annum rate(s) of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing February 15, 2012, until maturity or prior redemption. Principal installments of this Certificate are payable on the Stated Maturity dates or on a redemption date to the registered owner hereof by BOKF, NA dba Bank of Texas, Dallas, Texas (the "Paying Agent/Registrar"), upon its presentation and surrender at its designated offices, initially in Houston, Texas, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Certificate whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date hereof and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Certificates shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Certificate shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

SECTION 10: Definitions. For purposes of this Ordinance and for clarity with respect to the issuance of the Certificates herein authorized, and the levy of taxes and appropriation of Net Revenues therefor, the following words or terms, whenever the same appear herein without qualifying language, are defined to mean as follows:

(a) The term "Additional Certificates" shall mean tax and revenue obligations hereafter issued under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271, or other law and payable from ad valorem taxes and additionally payable from and secured by a lien on and pledge of the Net Revenues of the System on a parity with and of equal rank and dignity with the lien and pledge securing the payment of the Previously Issued Certificates and the Certificates.

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

(c) The term "Certificates" shall mean the "Town of Sunnyvale, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2011" authorized by this Ordinance.

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

(e) The term “Fiscal Year” shall mean the twelve month period ending on September 30 of each year.

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

(g) The term “Net Revenues” shall mean the gross revenues of the System, less the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions, as in the judgment of the Council, reasonably and fairly exercised, are necessary to keep the System in operation and render adequate service to the Town and the inhabitants thereof, or such as might be necessary to meet some physical accident or condition which would otherwise impair the security of any obligations payable from and secured by a lien on the Net Revenues of the System, shall be deducted in determining “Net Revenues”.

(h) 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:

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

(ii) those Certificates deemed to be duly paid by the Town in accordance with the provisions of Section 22 hereof; and

(iii) those Certificates that have been mutilated, destroyed, lost, or stolen and replacement Certificates have been registered and delivered in lieu thereof as provided in Section 23 hereof.

(i) The term “Previously Issued Certificates” shall mean the outstanding and unpaid (i) “Town of Sunnyvale, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2003”, dated January 1, 2003, originally issued in the principal amount of \$2,500,000, and (ii) “Town of Sunnyvale, Texas, Combination Tax and Revenue Certificates of Obligation, Series 2008”, dated July 15, 2008, originally issued in the principal amount of \$7,000,000.

(j) The term “Prior Lien Obligations” shall mean all bonds or other similar obligations hereafter issued that are payable from and secured by a lien on and pledge of the Net Revenues of the System, which is prior in right and claim to the lien on and pledge of the Net Revenues securing the payment of the Previously Issued Certificates and the Certificates.

(k) The term “System” shall mean the combined Waterworks and Sewer System of the Town including, but not limited to, all properties, facilities and plants currently owned, operated and maintained by the Town for the supply, treatment and transportation of treated potable water and for the collection, treatment and disposal of water-carried wastes, together with all future extensions, improvements, replacements and additions thereto.

SECTION 11: Certificate Fund. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Certificates, there shall be and is hereby created a special account on the books of the Town to be designated “SPECIAL 2011 TAX AND REVENUE CERTIFICATE OF OBLIGATION FUND”, and all moneys deposited to the credit of such account shall be kept and maintained in a banking fund maintained at the Town’s depository. The Mayor, Mayor Pro Tem, Town Manager, Finance Administrator and Town Secretary of the Town, individually or jointly, are hereby authorized and directed to make withdrawals from the Certificate Fund sufficient to pay the principal of and interest on the Certificates as the same become due and payable, and, shall cause to be transferred to the Paying Agent/Registrar from moneys on deposit in the Certificate Fund an amount sufficient to pay the amount of principal and/or interest falling due on the Certificates, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the last business day next preceding each interest and principal payment date for the Certificates.

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

SECTION 12: Tax Levy. To provide for the payment of the “Debt Service Requirements” on the Certificates being (i) the interest on said Certificates and (ii) a sinking fund for their redemption at maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied for the current year and each succeeding year thereafter while said Certificates or any interest thereon shall remain Outstanding, a sufficient tax on each one hundred dollars’ valuation of taxable property in said Town, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Certificate Fund. The Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the said Debt Service Requirements, it having been determined that the existing and available taxing authority of the

Town for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness.

Any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes.

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

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

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

(ii) The amount of Net Revenues of the System, together with any other lawfully available revenues of the Town, appropriated and to be set aside for the payment of the Debt Service Requirements on the Certificates between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

(iii) The amount of Debt Service Requirements to become due and payable on the Certificates (or a sinking fund of 2% if greater than the amount due and payable on the Certificates) between the Collection Date for the taxes then to be levied and the Collection Date for the taxes to be levied during the next succeeding calendar year.

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

**SECTION 13: Limited Pledge of Net Revenues.** The Town hereby covenants and agrees that, subject to the prior lien on and pledge of the Net Revenues of the System to the payment and security of Prior Lien Obligations, the Net Revenues of the System in an amount equal to \$1,000 are hereby irrevocably pledged to the payment of the principal of and interest on the Certificates, and the limited pledge of \$1,000 of the Net Revenues of the System herein made for the payment of the Certificates shall constitute a lien on the Net Revenues of the System (until such time as the Town shall pay all of such \$1,000, after which time the pledge shall cease) in accordance with the terms and provisions hereof and shall be on a parity in all respects with the lien on the Net Revenues securing the payment of the Previously Issued Certificates and any Additional Certificates, if issued. Furthermore, such lien on and pledge of the Net Revenues securing the payment of the Certificates shall be valid and binding and fully perfected from and after the date of adoption of this Ordinance without physical delivery or transfer or transfer of

control of the Net Revenues, the filing of this Ordinance or any other act; all as provided in Chapter 1208 of the Texas Government Code (“Chapter 1208”).

Chapter 1208 applies to the issuance of the Certificates and the pledge of the Net Revenues of the System granted by the Town under this Section 13, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Certificates are Outstanding such that the pledge of the Net Revenues of the System granted by the Town under this Section 13 is to be subject to the filing requirements of Chapter 9 of the Texas Business and Commerce Code, as amended, then in order to preserve to the registered owners of the Certificates the perfection of the security interest in said pledge, the Town agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9 of the Texas Business and Commerce Code, as amended, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 14: Revenue Fund. The Town hereby covenants and agrees that all revenues derived from the operation of the System shall be kept separate and apart from all other funds, accounts and moneys of the Town, and all such revenues shall be deposited as collected into the “Town of Sunnyvale, Texas, Water Utility System and Sanitary Sewer System Fund” (heretofore created and established and hereinafter called the “Revenue Fund”). All moneys deposited to the credit of the Revenue Fund shall be pledged and appropriated to the extent required for the following purposes and in the order of priority shown, to wit:

First: To the payment of the reasonable and proper operating and maintenance expenses as defined herein or required by statute to be a first charge on and claim against the gross revenues of the System.

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

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

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

SECTION 15: Deposits to Certificate Fund. Subject to the provisions of Section 13 hereof, the Town hereby covenants and agrees to cause to be deposited in the Certificate Fund from the pledged Net Revenues of the System in the System Fund, the amount of Net Revenues of the System pledged to the payment of the Certificates.

The Town covenants and agrees that the amount of pledged Net Revenues of the System (\$1,000), together with other lawfully available revenues appropriated by the Town for payment of the debt service requirements on the Certificates and ad valorem taxes levied, collected, and deposited in the Certificate Fund for and on behalf of the Certificates, will be an amount equal to

one hundred percent (100%) of the amount required to fully pay the interest and principal due and payable on the Certificates. In addition, any surplus proceeds from the sale of the Certificates not expended for authorized purposes shall be deposited in the Certificate Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said Fund from ad valorem taxes and the Net Revenues of the System.

SECTION 16: Security of Funds. All moneys on deposit in the Funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds, and moneys on deposit in such Funds shall be used only for the purposes permitted by this Ordinance.

SECTION 17: Special Covenants. The Town hereby further covenants as follows:

(a) It has the lawful power to pledge the Net Revenues of the System supporting this issue of Certificates and has lawfully exercised said powers under the Constitution and laws of the State of Texas, including said power existing under V.T.C.A., Chapter 1502, Texas Government Code and V.T.C.A., Local Government Code, Sections 271.041, et seq.

(b) Other than for the payment of the Previously Issued Certificates and the Certificates, Net Revenues of the System have not in any manner been pledged to the payment of any debt or obligation of the Town or of the System.

(c) While any Certificates remain Outstanding, the Town will not sell, lease or encumber the System or any substantial part thereof, provided that this covenant shall not be construed to prohibit the sale of such machinery, or other properties or equipment which has become obsolete or otherwise unsuited to the efficient operation of the System.

(d) To the extent that it legally may, while any of the Certificates are Outstanding, no franchise shall be granted for the installation or operation of any competing waterworks and sanitary sewer systems other than those owned by the Town, and the operation of any such systems by anyone other than the Town shall be prohibited.

SECTION 18: Issuance of Prior Lien Obligations and Additional Certificates. The Town hereby expressly reserves the right to hereafter issue Prior Lien Obligations, without limitation as to principal amount but subject to any terms, conditions or restrictions applicable thereto under law or otherwise, and, also reserves the right to issue Additional Certificates which, together with the Previously Issued Certificates and the Certificates, shall be secured by a parity lien on and pledge of the Net Revenues of the System.

SECTION 19: Application of Prior Lien Obligations Covenants and Agreements. It is the intention of this governing body and accordingly hereby recognized and stipulated that the provisions, agreements and covenants contained herein bearing upon the management and operations of the System, and the administering and application of revenues derived from the operation thereof, shall to the extent possible be harmonized with like provisions, agreements and covenants contained in the ordinances authorizing the issuance of the Prior Lien Obligations, and to the extent of any irreconcilable conflict between the provisions contained herein and in the ordinances authorizing the issuance of the Prior Lien Obligations, the provisions, agreements and covenants contained therein shall prevail to the extent of such conflict and be applicable to

this Ordinance but in all respects subject to the priority of rights and benefits, if any, conferred thereby to the holders of the Prior Lien Obligations. Notwithstanding the above, any change or modification affecting the application of revenues derived from the operation of the System shall not impair the obligation of contract with respect to the pledge of revenues herein made for the payment and security for the Certificates.

SECTION 20: Notices to Holders - Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the business day next preceding the mailing of such notice.

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

SECTION 21: Cancellation. All Certificates surrendered for payment, redemption transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Town, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Town may at any time deliver to the Paying Agent/Registrar for cancellation any Certificates previously certified or registered and delivered which the Town may have acquired in any manner whatsoever, and all Certificates so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Certificates held by the Paying Agent/Registrar shall be returned to the Town.

SECTION 22: Satisfaction of Obligations of Town. If the Town shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Certificates, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and the Net Revenues of the System (to the extent such pledge of Net Revenues shall not have been discharged or terminated by prior payment of principal of or interest on the Certificates) and all covenants, agreements, and other obligations of the Town to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

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

the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The Town covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Certificates to be treated as "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Certificates, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the Town or deposited as directed by the Town. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Certificates and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Certificates such moneys were deposited and are held in trust to pay shall upon the request of the Town be remitted to the Town against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Town shall be subject to any applicable unclaimed property laws of the State of Texas.

**SECTION 23: Mutilated, Destroyed, Lost and Stolen Certificates.** In case any Certificate shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Certificate of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Certificate, or in lieu of and in substitution for such destroyed, lost or stolen Certificate, only upon the approval of the Town and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Certificate, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the Town and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Certificate shall be borne by the Holder of the Certificate mutilated, or destroyed, lost or stolen.

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

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

**SECTION 24: Ordinance a Contract - Amendments.** This Ordinance shall constitute a contract with the Holders from time to time, be binding on the Town, and shall not be amended or repealed by the Town while any Certificates remain Outstanding except as permitted in this Section and in Section 32 hereof. The Town may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal

defect or omission herein. In addition, the Town may, with the consent of Holders holding a majority in aggregate principal amount of the Certificates then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Holders of Outstanding Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Certificates, reduce the principal amount thereof, the redemption price or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Certificates, (2) give any preference to any Certificate over any other Certificate, or (3) reduce the aggregate principal amount of Certificates required to be held by Holders for consent to any such amendment, addition, or rescission.

SECTION 25: Covenants to Maintain Tax-Exempt Status.

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

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

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

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

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

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

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

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

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

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

(b) Not to Cause Interest to Become Taxable. The Town shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any

Certificate to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Town receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Certificate, the Town shall comply with each of the specific covenants in this Section.

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

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

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

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

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

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the Town shall not take or omit to take any

action which would cause the Certificates to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

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

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

(i) The Town shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Certificate is discharged. However, to the extent permitted by law, the Town may commingle Gross Proceeds of the Certificates with other money of the Town, provided that the Town separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

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

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

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

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

(j) Qualified Tax Exempt Obligations. In accordance with the provisions of paragraph 3 of subsection b of Section 265 of the Code, the Town hereby designates the Certificates to be “qualified tax exempt obligations” in that the Certificates are not “private activity bonds” as defined in the Code and the reasonably anticipated amount of “qualified tax exempt obligations” to be issued by the Town (including all subordinate entities of the Town) for the calendar year 2011 will not exceed \$10,000,000.

SECTION 26: Sale of Certificates - Official Statement Approval. The sale of the Certificates authorized by this Ordinance to Raymond James & Associates, Inc. (the “Purchasers”) in accordance with the terms of the Purchase Agreement, dated April 11, 2011 (the “Purchase Agreement”), attached hereto as **Exhibit B** and incorporated herein by reference as a part of this Ordinance for all purposes, which terms the Town has determined and does determine to be in the Town’s best interests. The Mayor or Mayor Pro Tem are hereby authorized and directed to execute the Purchase Agreement for and on behalf of the Town and as the act and deed of this Council, and in regard to the approval and execution of the Purchase Agreement, the Council hereby finds, determines and declares that the representations, warranties and covenants of the Town contained in the Purchase Agreement are true and correct in all material respects and shall be honored and performed by the Town.

The use of the Preliminary Official Statement by the Purchasers in connection with the public offering and sale of the Certificates is hereby ratified, confirmed and approved in all respects. The final Official Statement, which reflects the terms of sale (together with such changes approved by the Mayor, Town Manager, Finance Administrator and Town Secretary, any one or more of said officials), shall be and is hereby in all respects approved and the Purchasers are hereby authorized to use and distribute said final Official Statement, dated April 11, 2011, in the reoffering, sale and delivery of the Certificates to the public. The Mayor or Mayor Pro Tem and Town Secretary are further authorized to deliver for and on behalf of the Town copies of said Official Statement in final form as may be required by the Purchasers, and such final Official Statement in the form and content authorized to be delivered by said officials shall be deemed to be approved by the Council and constitute the Official Statement authorized for distribution and use by the Purchasers.

SECTION 27: Proceeds of Sale. The proceeds of sale of the Certificates, excluding accrued interest and amounts to pay costs of issuance, shall be deposited in a construction fund maintained at the Town’s depository bank. Pending expenditure for authorized projects and purposes, such proceeds of sale may be invested in authorized investments in accordance with the provisions of V.T.C.A., Government Code, Chapter 2256, as amended, including specifically guaranteed investment contracts permitted in V.T.C.A., Section 2256.015, et seq., and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Certificate Fund as shall be determined by the Council. Accrued interest and all surplus proceeds of sale of the Certificates, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the Certificate Fund. [Premium is being used to pay \_\_\_\_\_.]

SECTION 28: Control and Custody of Certificates. The Mayor of the Town shall be and is hereby authorized to take and have charge of all necessary orders and records pending the sale of the Certificates, the investigation by the Attorney General of the State of Texas, including the printing and supply of definitive Certificates, and shall take and have charge and control of the Initial Certificate(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

SECTION 29: CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Certificates. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Certificates shall be of no significance or effect as regards the legality thereof and neither the Town nor attorneys approving the Certificates as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Certificates.

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

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

SECTION 32: Continuing Disclosure Undertaking.

(a) Definitions. As used in this Section, the following terms have the meanings ascribed to such terms below:

“*MSRB*” means the Municipal Securities Rulemaking Board.

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

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

(b) Annual Reports. The Town shall provide annually to the MSRB (1) within six months after the end of each fiscal year, beginning in or after 2010, financial information and operating data with respect to the Town of the general type included in Official Statement and described in **Exhibit C** hereto, and (2) if not provided as part of such financial information and operating data, audited financial statements of the Town, when and if available. Any financial statements so provided shall be prepared in accordance with the accounting principles described in **Exhibit C** hereto, or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and audited, if the Town commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the Town changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Town 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 available to the public on the MSRB's Internet Web site or filed with the SEC.

(c) Notice of Certain Events. The Town shall provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) 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 status of the Certificates;
- (vii) Modifications to rights of holders of the Certificates, if material;
- (viii) Certificate calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution, or sale of property securing repayment of the Certificates, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of 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

- (xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)12 is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Town in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town.

The Town shall notify the MSRB, in a timely manner, of any failure by the Town to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such Section.

(d) Filings with the MSRB. All financial information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

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

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Town undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Town’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The Town 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 TOWN 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 TOWN, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

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

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

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the Town 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 Town, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Certificates consent to such amendment or (b) a Person that is unaffiliated with the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Certificates. The provisions of this Section may also be amended from time to time or repealed by the Town if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the Town's right to do so would not prevent underwriters of the initial public offering of the Certificates from lawfully purchasing or selling Certificates in such offering. If the Town so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided pursuant to subsection (b) of this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

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

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

SECTION 35: Further Procedures. Any one or more of the Mayor, Town Manager, Finance Administrator and Town Secretary are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Town all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Certificates. In addition, prior to the initial delivery of the Certificates, the Mayor, Town Manager or Finance Administrator or Bond Counsel to the Town are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event

that any officer of the Town whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 36: Severability. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance or the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 37: Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 38: Incorporation of Findings and Determinations. The findings and determinations of the Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.

SECTION 39: Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

SECTION 40: Effective Date. This Ordinance shall take effect and be in full force from and after its adoption on the date shown below in accordance with V.T.C.A., Government Code, Section 1201.028, as amended.

*[Remainder of page left blank intentionally]*

PASSED AND ADOPTED, this April 11, 2011.

TOWN OF SUNNYVALE, TEXAS

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Mayor

ATTEST:

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Town Secretary

(Town Seal)

**EXHIBIT A**

**PAYING AGENT/REGISTRAR AGREEMENT**

**EXHIBIT B**  
**PURCHASE AGREEMENT**

## EXHIBIT C

### DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 32 of this Ordinance.

#### Annual Financial Statements and Operating Data

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

1. Financial information of the general type included in the Official Statement as Appendix B for the most recently concluded fiscal year.
2. The information contained in Tables 1 through 6 and 8 through 16 in the Official Statement.

#### Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Governmental Accounting Standards Board from time to time.