



# BRADY

THE CITY OF

# TEXAS

Tony Groves  
Mayor

Rey Garza  
Council Member Place 1

Missi Davis  
Council Member Place 2

Jeffrey Sutton  
Council Member Place 3

Jane Huffman  
Mayor Pro Tem  
Council Member Place 4

Jay May  
Council Member Place 5

Dennis Jobe  
Interim City Manager

Tina Keys  
City Secretary

Sarah Griffin  
City Attorney

## MISSION

The City of Brady strives to share its history and encourage the development of diverse housing, employment, infrastructure, and opportunity through transparent management and financing for all residents and employees.

## CITY OF BRADY COUNCIL AGENDA REGULAR CITY COUNCIL MEETING JULY 2, 2019 AT 6:00 PM

NOTICE is hereby given of a meeting of the City Council of City of Brady, McCulloch County, State of Texas, to be held at 6:00pm on July 2, 2019, at the City of Brady Municipal Court Building, located at 207 S. Elm Street, Brady, Texas, for the purpose of considering the following items. The City Council of the City of Brady, Texas, reserves the right to meet in closed session on any of the items listed below should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

### 1. CALL TO ORDER, ROLL CALL & CERTIFICATION OF A QUORUM

### 2. INVOCATION & PLEDGE OF ALLEGIANCE

### 3. PUBLIC COMMENTS: Reserved for items NOT listed on the agenda

*Please limit individual public comments to three (3) minutes. In accordance with TX AG opinion, any public comment addressing items not on the agenda, will only be heard by the City Council. No formal action, deliberation, discussion, or comment will be made by City Council. State Law prohibits any deliberation or decisions regarding items presented in public comments. City Council may only make a statement of specific factual information given in response to the inquiry; recite an existing policy; or request staff to place the item on an agenda for a subsequent meeting.*

### 4. CONSENT AGENDA: Reserved for routine items to save time

*Any item may be removed from the Consent Agenda at the request of a Council Member and considered separately following the Consent Agenda approval. All items listed on the Consent Agenda are to be with one motion "Move to approve Consent Agenda."*

### A. Approval of Minutes for Regular and Work Session Meetings on June 18, 2019.

### 5. PRESENTATION

North Substation Transformer – Status Report  
Waste Water Treatment Plant Replacement Project

### 6. PUBLIC HEARING:

None Scheduled

### 7. INDIVIDUAL CONCERNS

*City Council Members are to deliberate the following items. Staff will present the item and are prepared to answer City Council Member questions. The Mayor will recognize Council Members as the council discussed the item so everyone is heard. Once the City Council Members finish discussion, the Mayor will recognize attendees who have comments. Attendees and council members need to direct comments to the Mayor as they are recognized. When all comments are complete, the Mayor will call for a motion.*

### A. Discussion, consideration and possible action regarding the second and final reading of Ordinance 1276 to establish new building permit fees.

- B. Discussion, consideration and possible action regarding the second and final reading of Ordinance 1277 amending FY 2018-19 Budget, including transfers.
- C. Discussion, consideration and possible action regarding Ordinance 1278 authorizing the issuance of \$8,400,000 "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A"; authorizing the sale thereof; enacting provisions incident and related to the issuance of said certificates.
- D. Discussion, consideration and possible action regarding Ordinance 1279 authorizing the issuance of \$2,035,000 "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019B"; authorizing the sale thereof; enacting provisions incident and related to the issuance of said certificates.
- E. Discussion, consideration and possible action regarding Resolution 2019-029 concerning a principal forgiveness agreement with the Texas Water Development Board in the approximate amount of \$4,250,000; accepting the terms of the financial assistance from the state agency; and, authorizing officials of the City to execute the agreement.
- F. Discussion, consideration and possible action authorizing the city manager to execute an engineering amendment with *Freese and Nichols, Inc.* for construction phase services related to the construction and startup of the proposed new WWTP.
- G. Discussion and summary of City Council action and if procedures and processes worked.
- H. Discussion by City Council of City improvements to be recognized.

## **8. STAFF REPORTS**

### **A. Upcoming Special Events/Meetings:**

July 6 – 10am - 93<sup>rd</sup> July Jubilee Parade – Downtown Square  
July 26, 2019 – Denton Navarro HOG WILD, Live Oak, Texas

### **B. Upcoming City Calendar:**

July 16 – 4:00 p.m. - Open Meetings board Training  
July 16, 18, 23<sup>rd</sup> – 9:00 a.m. – 4:00 p.m. Budget Work Sessions  
July 24<sup>th</sup> & 25<sup>th</sup> – Budget Work Sessions, if necessary  
August 29 – Annual Goat Cook-off Employee Appreciation Luncheon

## **9. ANNOUNCEMENTS**

Pursuant to the Texas Government Code § 551.0415, City Council Members and City staff may make reports about items of community interest during a meeting of the governing body without having given notice of the report. Items of community interest include: Expressions of thanks, congratulations, or condolence; an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision; Information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and announcements involving an imminent threat to public health and safety of people in the municipality that has arisen after the posting of the agenda.

## **10. EXECUTIVE SESSION**

None scheduled

## **11. OPEN SESSION ACTION ON ANY ITEMS COMING OUT OF EXECUTIVE SESSION**

## **12. ADJOURNMENT**

*I certify that this is a true and correct copy of the City of Brady City Council Meeting Agenda and that this notice as posted on the designated bulletin board at Brady City Hall, 201 E. Main St., Brady, Texas 76825; a place convenient and readily accessible to the public at all times, and said notice was posted on \_\_\_\_\_ by 6:00 p.m. and will remain posted continuously for 72 hours prior to the scheduled meeting pursuant to Chapter 551 of the Texas Government Code.*

**Tina Keys, City Secretary**

In compliance with the American with Disabilities Act, the City of Brady will provide for reasonable accommodations for persons attending public meetings at City facilities. Requests for accommodations or interpretive services must be received at least 48 hours prior to the meeting. Please contact the City Secretary at 325-597-2152 or [citysec@bradytx.us](mailto:citysec@bradytx.us).

**Attendance by Other Elected or Appointed Officials:** It is anticipated that members of other governmental bodies, and/or city boards, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the body, board, commission and/or committee. The members of the boards, commissions and/or committees may be permitted to participate in discussion on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless item and action is specifically provided for on an agenda for that body, board, commission or committee subject to the Texas Open Meetings Act.

The City Council of the City of Brady reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on this agenda as authorized by the Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations regarding Real Property), 551.073 (Deliberations regarding prospective Gifts or Donations), 551.074 (Personnel Matters), 551.076 (Deliberations regarding Security Devices), 551.086 (Deliberate, vote or take final action on competitive matters of the public power utility), and 551.087 (Deliberation regarding Economic Development).

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes written interpretation of the Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.104(c) and the meeting is conducted by all participants in reliance on this opinion.

STATE OF TEXAS

COUNTY OF McCULLOCH

CITY OF BRADY

The City Council of the City of Brady, Texas met in a Work Session on Tuesday, June 18, 2019 at 4:00 pm at the City of Brady Municipal Court Building located at 207 S. Elm Street, Brady, Texas with Mayor Anthony Groves presiding. Council Members present were Jane Huffman, Missi Davis, Jeffrey Sutton, Jay May, and Rey Garza. City staff present were Interim City Manager Dennis Jobe, Public Works Director Steven Miller, Finance Director Lisa Remini, Fire Chief Lloyd Perrin, Police Chief Steve Thomas, and City Secretary Tina Keys.

**1. CALL TO ORDER, ROLL CALL & CERTIFICATION OF A QUORUM**

Mayor Groves called the meeting to order at 4:01 p.m. Council quorum was certified.

**2. Discussion regarding Capital Improvement Projects**

Different projects were discussed and prioritized and will be brought back at a future meeting

**3. Adjournment**

There being no further business, the Mayor adjourned the meeting at 5:35 p.m.

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Mayor Anthony Groves

Attest: \_\_\_\_\_

Tina Keys, City Secretary

20 STATE OF TEXAS

COUNTY OF McCULLOCH

CITY OF BRADY

The City Council of the City of Brady, Texas met in a Regular Meeting on Tuesday, June 18, 2019 at 6:00 pm at the City of Brady Municipal Court Building located at 207 S. Elm Street, Brady, Texas with Mayor Anthony Groves presiding. Council Members present were Jane Huffman, Jay May, Missi Davis Rey Garza, and Jeffrey Sutton. City staff present were Interim City Manager Dennis Jobe, Finance Director Lisa Remini, Public Works Director Steve Miller, Police Chief Steve Thomas, Electric Superintendent Joe Solis and City Secretary Tina Keys. Also in attendance were Lisa & T. Don Dodd and Jason Valdez.

**1. CALL TO ORDER, ROLL CALL & CERTIFICATION OF A QUORUM**

Mayor Groves called the meeting to order at 6:01 p.m. Council quorum was certified.

**2. INVOCATION AND PLEDGE OF ALLEGIANCE**

Council Member May gave the invocation and the Pledge of Allegiance was recited.

**3. PUBLIC COMMENTS**

Lisa Dodd asked about policies and procedures for code violations and said conditions on Bombay are still ongoing.

Rey Garza commented that he and the family appreciated the City sending City vehicles and staff to the funeral of Vicente Castanuela, a City employee for 45 years.

**4. CONSENT AGENDA**

- a. Approval of Minutes for Regular and and Special Meetings on June 4, 2019

Council Member Davis moved to approve the Consent Agenda. Seconded by Council Member Garza. All Council Members voted "aye" and none "nay". Motion passed with a 5 – 0 vote.

**5. PRESENTATIONS:**

North Transformer Status Report – Steven Miller presented

**6. PUBLIC HEARINGS:**

There were no public hearings

**7. INDIVIDUAL CONCERNS**

- A. Discussion, consideration and possible action regarding the approval of Brady Economic Development grant request in the amount of \$5,000 to Boondocks for improved signage. Jason Valdez asked for the Council's consent for the grant. Council Member Davis moved to approve. Seconded by Council Member Garza. Four Council Members voted "aye" and one Council Member, Jay May, voting "nay". Motion carried with a 4 - 1 vote.
- B. Discussion, consideration and possible action regarding approving the first reading of Ordinance 1276 to establish new building permit fees. Dennis Jobe presented. Council Member Davis moved to approve the first reading of Ordinance 1276. Seconded by Council Member Huffman. All Council Members voted "aye" and none voted "nay". Motion carried with a 5 - 0 vote.

- C. Discussion, consideration, and possible action regarding the first reading of Ordinance 1277 amending FY 2018-19 Budget, including fund transfers. Lisa Remini presented. Council Member Huffman moved to approve the first reading of Ordinance 1277. Seconded by Council Member Davis. All Council Members voted "aye" and none voted "nay". Motion passed with a 5 - 0 vote.
- D. Discussion, consideration and possible action regarding approval of the sale of City-owned Real Property – Davee Lake Lots. Council Member May moved to approve the sale of the city owned property. Seconded by Council Member Garza. All Council Members voted "aye" and none "nay". Motion passed with a 5 - 0.
- E. Discussion and summary of City Council action and if procedures and processes worked. Council Member Garza commended Dennis Jobe for getting the sale of the lake lot leases underway.
- F. Discussion of a City improvement recognized by City Council. Mayor Groves commented that the Fish House is open. He also discussed sales tax revenues.

## 8. STAFF REPORTS

- A. Monthly Financial / Utility Reports:
- B. Monthly Activity Reports: Visit Brady Report, Seniors, Golf, BPD, Fire-EMS Calls, BVFD Expense Report, Animal Control, Airport, Code Enforcement, Chronic Code Complaints, and Structures Inhabited without utilities
- C. Upcoming Special Events/Meetings:
  - June 29 – 9:00 a.m. Keep Brady Beautiful - Adopt a Highway cleanup
  - July 6 – 10am - 93<sup>rd</sup> July Jubilee Parade – Downtown Square
  - July 26, 2019 – Denton Navarro HOG WILD, Live Oak, Texas
- D. Upcoming City Calendar:
  - June 21-22 – Juneteenth, Willie Washington Park
  - July 16, 18, 23<sup>rd</sup> – 9:00 a.m. – 4:00 p.m. Budget Work Sessions
  - July 24<sup>th</sup> & 25<sup>th</sup> – Budget Work Sessions, if necessary
  - August 7 – 8, West Texas Legislative Summit, San Angelo

## 9. ANNOUNCEMENTS

## 10. EXECUTIVE SESSION

The City Council of the City of Brady will adjourn into Executive Session for the following:

- A. Pursuant to Section 551.074 (Personnel Matters) City Council will meet to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee: City Manager

Regular Session was closed at 7:24 p.m.

Executive Session was opened at \_\_\_\_ p.m. and closed at \_\_\_\_ p.m.

## 11. OPEN SESSION ACTION

Regular Session was opened at \_\_\_\_ p.m. No action was taken

**12. ADJOURNMENT**

There being no further business, the Mayor adjourned the meeting at \_\_\_\_ p.m.

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Mayor Anthony Groves

Attest: \_\_\_\_\_

Tina Keys, City Secretary

**City Council  
City of Brady, Texas  
Agenda Action Form for Ordinance**

<b>AGENDA DATE:</b>	07/02/2019	<b>AGENDA ITEM</b>	7.A.
<b>AGENDA SUBJECT:</b>	Discussion, consideration and possible action regarding the <b>second and final reading of Ordinance 1276</b> of the City of Brady, Texas, establishing new building permit and inspection fees		
<b>PREPARED BY:</b>	Tina Keys	<b>Date Submitted:</b>	06/11/2019
<b>EXHIBITS:</b>	Ordinance 1276 Current Fee Schedule Proposed Fee Schedule		
<b>BUDGETARY IMPACT:</b>	<b>Required Expenditure:</b>	\$00.00	
	<b>Amount Budgeted:</b>	\$00.00	
	<b>Appropriation Required:</b>	\$00.00	
<b>CITY MANAGER APPROVAL:</b>			

**SUMMARY:**

On May 21, 2019, House Bill 852 was signed by the Governor of Texas providing that the value or cost of construction of a dwelling may not be used to determine the amount of a building permit or inspection fee requiring the City of Brady to re-evaluate the fee structures for building permits and fees. Most cities have now adopted Building Permit Fees for Residential based on square footage costs. These costs are shown in the chart provided.

**RECOMMENDED ACTION:**

**Mayor will ask:** "Madam City Secretary please read the Ordinance Preamble for the record in accordance with the City Charter." "Secretary reads preamble"

**Mayor calls for a motion:** Move to approve the **second and final** reading of Ordinance 1276.

**ORDINANCE NO. 1276**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRADY, TEXAS,  
UPDATING ORDINANCE NUMBER 1258 A SCHEDULE OF FEES, IN  
RELATION TO BUILDING PERMIT PLAN REVIEW AND INSPECTION FEES  
ONLY, ESTABLISHING NEW BUILDING PERMIT AND INSPECTION FEES,  
AND PROVIDING A SEVERANCE CLAUSE**

**WHEREAS**, on May 21, 2019 the Governor of Texas signed HB 852, effective immediately, which provides that municipalities may not base their building permit or inspection fees for a residential dwelling based on the value of the dwelling or the cost of constructing or improving the dwelling; and

**WHEREAS**, the City Council of the City of Brady, Texas desires to amend its ordinance to conform to the new statutory requirements.

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

**Section 1.** That the fee schedule as adopted by Ordinance 1258 on September 18, 2018, as it relates to residential dwellings only, and Codified as City Code, Article A5.001 "Building permits", subsections (a) and (b), are hereby repealed, and replaced with Article A5.001 "Building permits", subsections (a), (b), and (c) as shown in Exhibit A, attached hereto and made a part of this Ordinance by reference.

**Section 2.** All other parts of said Ordinance and all other parts of Article A5.000 "Building and Development Related Fees" shall remain in full force and effect.

**Section 3.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

**Section 4.** This Ordinance shall take effect immediately upon passage, approval, and publication as provided by law.

**Passed and approved on the FIRST READING this \_\_\_\_ day of June, 2019.**

**Passed and approved on the SECOND READING this \_\_\_\_ day of July, 2019.**

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Anthony Groves, Mayor

**ATTEST:**

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Tina Keys, City Secretary

Ordinance No. 1276  
Exhibit A

**ARTICLE A5.000 BUILDING AND DEVELOPMENT RELATED FEES**

**"Sec. A5.001 Building permits**

**(a) Commercial and multifamily construction plan review:**

<u>Valuation</u>	<u>Fee</u>
\$1.00 to \$10,000	\$50.00
\$10,001 to \$25,000	\$70.69 for the first \$10,000 plus \$5.46 for each additional \$1,000
\$25,001 to \$50,000	\$152.59 for the first \$25,000 plus \$3.94 for each additional \$1,000
\$50,001 to \$100,000	\$251.09 for the first \$50,000 plus \$2.73 for each additional \$1,000
\$100,001 to \$500,000	\$387.59 for the first \$100,000 plus \$2.19 for each additional \$1,000
\$500,001 to \$1,000,000	\$1,263.59 for the first \$500,000 plus \$1.85 for each additional \$1,000
\$1,000,001 and up	\$2,188.59 for the first \$1,000,000 plus \$1.23 for each additional \$1,000

\* Valuation is based on construction valuation for project

**(b) Commercial construction Inspection**

<u>Valuation</u>	<u>Fee</u>
<u>\$1.00 to \$10,000</u>	<u>\$76.92</u>
<u>\$10,001 to \$25,000</u>	<u>\$108.75 for the first \$10,000 plus \$8.40 for each additional \$1,000</u>
<u>\$25,001 to \$50,000</u>	<u>\$234.75 for the first \$25,000 plus \$6.06 for each additional \$1,000</u>
<u>\$50,001 to \$100,000</u>	<u>\$386.25 for the first \$50,000 plus \$4.20 for each additional \$1,000</u>
<u>\$100,001 to \$500,000</u>	<u>\$596.25 for the first \$100,000 plus \$3.36 for each additional \$1,000</u>
<u>\$500,001 to \$1,000,000</u>	<u>\$1,940.25 for the first \$500,000 plus \$2.85 for each additional \$1,000</u>
<u>\$1,000,001 and up</u>	<u>\$3,365.25 for the first \$1,000,000 plus \$1.89 for each additional \$1,000</u>

\* Valuation is based on construction valuation for project

(c) Single-family and multi-family residential construction plan review and inspection:

<u>City of Brady</u>			
<u>Square Footage</u>	<u>Fee</u>	<u>Plan Review</u>	<u>Alterations by Trade</u>
<u>800-1,500</u>	<u>\$500.00</u>	<u>\$75</u>	<u>\$75 per trade</u>
<u>1,501-10,000</u>	<u>\$500 for the first 1,500 s.f. plus \$0.35 for ea add'l s.f. up to 10,000 s.f.</u>	<u>\$75</u>	<u>Building, Mechanical, Electrical, Plumbing</u>
<u>Over 10,000</u>	<u>\$3,300 for the first 10,000 plus \$0.15 for ea add'l s.f.</u>	<u>Included</u>	

  

<u>Bureau Veritas</u>			
<u>800-1,500</u>	<u>\$785.00</u>	<u>Included</u>	<u>\$100 per listed trade</u>
<u>1,500-10,000</u>	<u>\$785 for the first 1,500 s.f. plus \$0.35 for ea add'l s.f. up to 10,000 s.f.</u>	<u>Included</u>	<u>Building, Mechanical, Electrical, Plumbing</u>
<u>Over 10,000</u>	<u>\$3,760 for the first 10,000 plus \$0.15 for each additional s.f.</u>	<u>Included</u>	<u>\$160 for all other project types not listed"</u>

**City Council**  
**City of Brady, Texas**  
**Agenda Action Form for Ordinance**

AGENDA DATE:	7-2-2019	AGENDA ITEM	7.B.
AGENDA SUBJECT:	Discussion, consideration and possible action regarding the second and final reading of Ordinance #1277 of the City of Brady, Texas amending FY 2018-2019 Budget, including fund transfers.		
PREPARED BY:	Lisa Remini	Date Submitted:	6-19-2019
EXHIBITS:	Ordinance #1277		
BUDGETARY IMPACT:	Required Expenditure:		
	Amount Budgeted:		
	Appropriation Required:	\$503,408	
CITY MANAGER APPROVAL:			
<b>SUMMARY:</b>			
<p>The Finance Director and City Manager met and discussed with each Division the progress of actual performance compared to the current budget through the first 6 months of the fiscal year and determined amendment recommendations to provide for the remaining fiscal year goals. Attached exhibits detail the amendment requests.</p> <p>Fund Balance Reserves were verified for compliance with the City's adopted Fund Balance Reserve policy. All balances for each fund, including amendments, meet the required minimum levels for unrestricted reserves.</p> <p><b>General Fund:</b> Strong interest earnings are expected to produce \$125,000 more in revenues this fiscal year than original projections; however, EMS service collections are down and are projected to be \$125,000 less than historical collections. Administrative payroll obligations and attorney fees are also significantly higher than original budget projections. A reduction in transfers from the Electric fund is promoted to provide for fund balance level requirements in the Electric fund. Overall, staff recommends amendments to the General Fund budget that reflects a reduction in revenue sources of \$429,785 and an increase in net expenditures of \$103,354.</p> <p><b>Electric Fund:</b> Early estimates indicate \$750,000 may be needed for a repair/replacement of the North Substation Transformer, and due to the loss of sand plant sales in May, projection estimates indicate a reduction of \$58,000 in industrial revenues. Therefore, transfers to the General fund will need to be reduced by \$380,000 to meet fund level requirements and support the transformer cost. Overall, staff recommends amendments to the Electric Fund budget that reflects a reduction in revenue sources of \$58,000 and an increase in net expenditures of \$370,000.</p> <p><b>Water/Sewer Fund:</b> The council approved sewer jetter purchase was more than original budget quotes by \$10,000. Overall, staff recommends amendments to the Water/Sewer Fund budget that reflects an increase in revenue sources of \$10,950 and an increase in expenditures of \$13,058.</p>			

Gas Fund: An additional transfer of funds to the Senior Citizens budget is needed to replace an air-conditioner that unexpectedly went out. Although gas sales exceeded residential and commercial budget projections, due to the loss in sand plant sales in May, current estimates indicate total sales revenues will be \$13,200 less for the fiscal year. \$20,000 in cost savings are recognized with approved capital purchases. Overall, staff recommends amendments to the Gas Fund budget that reflects a decrease in revenue sources of \$13,200 and a decrease in net expenditures of \$10,000.

Street Sanitation: The street sweeper machine needed some extensive repair work. Street sanitation fees will cover this cost. Overall, staff recommends amendments to the Street Sanitation Fund budget that reflects an increase in expenditures of \$7,000.

Special Revenue and Hotel Motel Tax Funds: The City created a new fund in FY 19 to reflect the HOT tax funds separately. Not all expenditures budgeted in FY 18 materialized, so the transfer of HOT money from Special Revenue to the new H/M Tax fund was more than originally budgeted by \$71,396. Additionally, collection of HOT tax money is significantly down. Current estimates indicate that the collections could be \$70,000 less than budgeted; therefore, the payment to the Chamber could be reduced by \$63,500.

DW and CW Construction Funds: Proposed amendments to these funds reflect actual funding received from the TWDB and that only a portion of the funding will be spent this fiscal year.

**RECOMMENDED ACTION:**

**Mayor will ask:** “Madam City Secretary please read the Ordinance Preamble for the record in accordance with the City Charter.” “Secretary reads preamble”

**Mayor calls for a motion:** Move to approve second and final reading of Ordinance 1277.

**ORDINANCE NO. 1277**

**AN ORDINANCE OF THE CITY OF BRADY, TEXAS AMENDING THE FISCAL  
YEAR 2018-2019 BUDGET**

An ordinance amending the 2018-2019 Fiscal Year Budget as follows:

Increasing total City core program expenditures by \$503,408, for an expenditure budget of \$26,830,811 per attached summary, made a part of this ordinance.

These amendments recognize that additional attorney services and payroll obligations have been required, additional airport fuel purchases to meet expected sales are anticipated, pool maintenance is higher, police body camera purchases will be made with the recent award of grant funding, an air-conditioner is needed at the senior center, payments to the Chamber Tourism Board will be less, various utility equipment costs have increased, and an emergency purchase of Electric system infrastructure will be required to correct damage resulting from adverse weather.

Further, decreasing the Construction budgets for the Drinking Water project by \$15,014,463 and Clean Water project by \$10,455,000 to recognize that these expenditures will be realized in next Fiscal Year 2020.

Adopted amendments will result in a total City Budget for Fiscal Year 2019 of \$44,766,348.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
BRADY TEXAS** that the FY 2018-2019 budget be amended accordingly for municipal purposes.

**APPROVED UPON FIRST READING THIS THE 18th DAY OF June 2019,**

**APPROVED AND PASSED UPON SECOND READING THIS THE \_\_\_\_\_ DAY OF  
2019.**

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Anthony Groves, Mayor

**ATTEST:**

\_\_\_\_\_  
Tina Keys, City Secretary

**City Council  
City of Brady, Texas**

## **Agenda Action Form for Ordinance**

<b>AGENDA DATE:</b>	7-2-19	<b>AGENDA ITEM</b>	7.C
<b>AGENDA SUBJECT:</b>	Discussion, consideration and possible action REGARDING ORDINANCE 1278 AUTHORIZING THE ISSUANCE OF \$8,400,000 "CITY OF BRADY, TEXAS COMBINATION TAX AND SURPLUS WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2019A"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES (Waste Water Treatment Plant Project).		
<b>PREPARED BY:</b>	Lisa Remini	<b>Date Submitted:</b>	6-27-19
<b>EXHIBITS:</b>	Summary prepared by Hilltop Securities Financial Advisor Erick Macha Section 1208.028 of the Government Code Ordinance #1278		
<b>BUDGETARY IMPACT:</b>	<b>Required Expenditure:</b>	\$00.00	
	<b>Amount Budgeted:</b>	\$00.00	
	<b>Appropriation Required:</b>	\$00.00	
<b>CITY MANAGER APPROVAL:</b>			

### **SUMMARY:**

COs are a commonly used debt instrument that allows Council to issue debt for a critical public need on a shorter timeline rather than waiting for the next uniform election date on the calendar. The city has published a notice to issue debt twice, on 5-29-2019 and 6-5-2019 as mandated by law.

The Texas Water Development Board (TWDB) has given the City of Brady a financial commitment to fund a loan amount at 0.62 percent interest not to exceed \$8,400,000 through the Clean Water State Revolving Fund program. The City qualified for the below market interest rate due to the City's AA- credit rating.

The loan proceeds along with an additional \$2,035,000 zero percent loan and \$4,250,000 in loan forgiveness from the TWDB will be used to fund the required estimated \$14,685,000 needed to construct a new Waste Water Treatment Plant to replace the current 50-year old plant that has reached its useful life. This type of debt is in compliance with the City's Debt Management Policy adopted during the City's last budgeting cycle.

This is the final "leg" of the City's efforts to provide sewer treatment service at the lowest possible cost to the citizens of Brady.

**The City Council may approve the ordinance authorizing issuance of the stated COs on one reading at a single meeting. Section 1208.028 of the Government Code states that an issuer may authorize the sale of securities at a single meeting without the need for a subsequent meeting even if the city charter states otherwise.**

By utilizing the TWDB funding opportunities, the city achieved \$11,600,000 in overall debt service savings compared to a market issuance.

Funds will be delivered to BOK, Financial as the city's escrow agent. Monies will be invested in accordance with the City's investment policy.

**RECOMMENDED ACTION:**

**Mayor will ask: "Madam City Secretary please read the Ordinance Preamble for the record in accordance with the City Charter." "Secretary reads preamble"**

**Mayor calls for a motion:**

**Move to approve the first and final reading of Ordinance 1278**

**AUTHORIZING THE ISSUANCE OF \$8,400,000 "CITY OF BRADY, TEXAS COMBINATION TAX AND SURPLUS WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2019A"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES**

**City of Brady, Texas**  
**Financing Through the Texas Water Development Board (TWDB)**  
**July 2, 2019**

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**Clean Water State Revolving Fund (CWSRF) Program**

- The City received funding commitment on May 9, 2019
  - Commitment expires November 30, 2019
- Commitment totaling \$14,685,000 in funding
  - \$8,400,000 Clean Water State Revolving Fund (CWSRF) Loan
  - \$2,035,000 Clean Water State Revolving Fund (CWSRF) 0% Loan
  - \$4,250,000 Clean Water State Revolving Fund (CWSRF) Principal Forgiveness
- Calculated Overall Debt Service Savings Compared to Market Issuance: \$11,600,000

**Series 2019 CWSRF Financing Terms**

**\$8,400,000 Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation,  
Series 2019A**

- Closing date: 8/8/2019 (subject to change)
- Construction proceeds: \$8,201,303
- **True Interest Cost: 0.62%**
- First Interest payment due (semi-annual): 3/1/2020
- First principal payment due (annual): 9/1/2021
- Final payment due: 9/1/2050
- Optional call feature: 9/1/2029 at par

**\$2,035,000 Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation,  
Series 2019B**

- Closing date: 8/8/2019 (subject to change)
- Construction proceeds: \$1,961,790
- **True Interest Cost: 0%**
- First principal payment due (annual): 9/1/2021
- Final payment due: 9/1/2050
- Optional call feature: 9/1/2029 at par

**City of Brady, Texas**  
**Financing Through the Texas Water Development Board (TWDB)**  
**July 2, 2019**

A FYE	B Existing Water/Sewer Supported Debt Service	C			D			E			F			G			H			I Aggregate Water/Sewer Supported Debt Service	
		Series 2019A			Series 2019B																
		Principal	Interest	P+I	Principal	Interest	P+I														
2019	\$ 388,903	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -												\$ 388,903		
2020	386,592	-	43,358	43,358	-	-	-												429,951		
2021	718,950	150,000	40,755	190,755	70,000	-	70,000												979,704		
2022	715,595	155,000	40,755	195,755	70,000	-	70,000												981,350		
2023	712,793	150,000	40,755	190,755	70,000	-	70,000												973,547		
2024	708,965	155,000	40,755	195,755	70,000	-	70,000												974,720		
2025	580,000	285,000	40,755	325,755	70,000	-	70,000												975,755		
2026	580,000	285,000	40,755	325,755	70,000	-	70,000												975,755		
2027	580,000	285,000	40,755	325,755	70,000	-	70,000												975,755		
2028	575,000	285,000	40,755	325,755	70,000	-	70,000												970,755		
2029	575,000	285,000	40,698	325,698	70,000	-	70,000												970,698		
2030	575,000	290,000	40,413	330,413	70,000	-	70,000												975,413		
2031	575,000	290,000	39,862	329,862	70,000	-	70,000												974,862		
2032	365,000	290,000	39,079	329,079	70,000	-	70,000												764,079		
2033	365,000	290,000	38,093	328,093	70,000	-	70,000												763,093		
2034	365,000	290,000	36,933	326,933	70,000	-	70,000												761,933		
2035	365,000	290,000	35,628	325,628	70,000	-	70,000												760,628		
2036	365,000	295,000	34,207	329,207	70,000	-	70,000												764,207		
2037	365,000	295,000	32,643	327,643	65,000	-	65,000												757,643		
2038	365,000	295,000	30,962	325,962	65,000	-	65,000												755,962		
2039	365,000	300,000	29,162	329,162	65,000	-	65,000												759,162		
2040	365,000	300,000	27,212	327,212	65,000	-	65,000												757,212		
2041	365,000	305,000	25,142	330,142	65,000	-	65,000												760,142		
2042	365,000	305,000	22,916	327,916	65,000	-	65,000												757,916		
2043	365,000	310,000	20,598	330,598	65,000	-	65,000												760,598		
2044	365,000	310,000	18,180	328,180	65,000	-	65,000												758,180		
2045	365,000	310,000	15,731	325,731	65,000	-	65,000												755,731		
2046	365,000	315,000	13,251	328,251	65,000	-	65,000												758,251		
2047	365,000	315,000	10,699	325,699	65,000	-	65,000												755,699		
2048	365,000	320,000	8,116	328,116	65,000	-	65,000												758,116		
2049	365,000	325,000	5,460	330,460	65,000	-	65,000												760,460		
2050	370,000	325,000	2,730	327,730	70,000	-	70,000												767,730		
	\$ 14,611,798	\$ 8,400,000	\$ 937,102	\$ 9,337,102	\$ 2,035,000	\$ -	\$ 2,035,000												\$ 25,983,900		

**§ 1201.028. Single Meeting of Governing Body Sufficient, TX GOVT § 1201.028**

Vernon's Texas Statutes and Codes Annotated

Government Code (Refs & Annos)

Title 9. Public Securities (Refs & Annos)

Subtitle A. General Provisions

Chapter 1201. Public Security Procedures Act (Refs & Annos)

Subchapter B. Issuance and Approval of Public Security

V.T.C.A., Government Code § 1201.028

**§ 1201.028. Single Meeting of Governing Body Sufficient**

**Effective: September 1, 2001**

Currentness

Notwithstanding any other law, including a provision in a municipal charter, the following actions taken at a meeting of the governing body of an issuer are effective immediately and a subsequent meeting is not required:

(1) a resolution, order, or ordinance calling an election to:

(A) authorize the issuance and sale of a public security; or

(B) approve the resources, revenue, or income of the issuer that may be pledged as security for a public security;

(2) a resolution, order, or ordinance canvassing the results of an election described by Subdivision (1); or

(3) a public security authorization.

**Credits**

Added by Acts 2001, 77th Leg., ch. 769, § 2, eff. Sept. 1, 2001.

V. T. C. A., Government Code § 1201.028, TX GOVT § 1201.028

Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature

End of Document

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**ORDINANCE NO. 1278**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$8,400,000 "CITY OF BRADY, TEXAS COMBINATION TAX AND SURPLUS WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2019A"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES**

**WHEREAS**, on May 9, 2019, the Texas Water Development Board (the "Board") approved and authorized financial assistance in the amount of \$14,685,000 to the City of Brady, Texas (the "City") consisting of a loan in the amount of \$8,400,000, an interest-free loan in the amount of \$2,035,000, and a subsidy in the form of Principal Forgiveness in the amount of \$4,250,000 to finance the construction activities associated with improvements to the City's wastewater system pursuant to the Clean Water State Revolving Fund; and

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

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

**WHEREAS**, notice of intention to issue said certificates of obligation has been published in *The Brady Standard-Herald*, a newspaper of general circulation in the City of Brady, Texas, on May 29, 2019 and June 5, 2019, respectively, the date of the first publication of such notice being before the thirtieth (30th) day prior to the tentative date stated therein for the passage of this ordinance; and

**WHEREAS**, on the 2nd day of July, 2019, pursuant to the published notice of intention, the City Council of the City of Brady, Texas, convened to consider passage of an Ordinance (the "Ordinance") authorizing the issuance of said certificates of obligation; and

**WHEREAS**, the certificates of obligation should be sold for cash in accordance with the provisions of TEXAS LOCAL GOVERNMENT CODE § 271.052, as amended; and

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

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

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

## ARTICLE I

### DEFINITIONS AND OTHER PRELIMINARY MATTERS

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

"2019A Certificate" or "2019A Certificates" means the certificates of obligation authorized to be issued by Section 3.01 of this Ordinance and designated as "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A," in the aggregate principal amount of \$8,400,000.

"2019A Interest and Sinking Fund" means the interest and sinking fund established by Section 2.05 of this Ordinance.

"City" means the City of Brady, Texas.

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

"Closing Date" means the date of the initial delivery of and payment for the 2019A Certificates.

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

"Date of Delivery" means the date the 2019A Certificates are delivered to the Initial Purchaser in exchange for the payment for the 2019A Certificates.

"Dated Date" means July 1, 2019.

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

**"Designated Payment/Transfer Office"** means the office of the Paying Agent which is designated for the presentment of the 2019A Certificates.

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

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

**"Escrow Agent"** means BOKF, NA, Dallas, Texas.

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

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

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

**"Initial 2019A Certificate"** means the initial certificate described in Sections 3.04(d) and 6.02(e) of this Ordinance.

**"Initial Purchaser"** means the Texas Water Development Board.

**"Mayor"** means the Mayor of the City of Brady, Texas.

**"Owner" or "Registered Owner"** means the person who is the registered owner of a 2019A Certificate or 2019A Certificates, as shown in the Register.

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

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

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

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

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of the principal of the 2019A Certificates as the same comes due and payable and remaining unclaimed by the Owners of 2019A Certificates for 90 days after the applicable payment or redemption date.

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

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

Section 1.04. Interpretation.

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

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

ARTICLE II

SECURITY FOR THE CERTIFICATES  
CREATION OF FUNDS

Section 2.01. Tax Levy for Payment of 2019A Certificates. Pursuant to the authority granted by the Constitution and laws of the State of Texas, there shall be levied and there is hereby levied for the current year and each succeeding year thereafter while

the 2019A Certificates are outstanding and unpaid, an ad valorem tax within legal limitations on each \$100 valuation of taxable property in the City, at a rate sufficient within the limits prescribed by law to pay the debt service requirements on the 2019A Certificates, being a sinking fund for their payment at maturity or a sinking fund of two percent (2%) per annum (whichever amount is the greater), when due and payable, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the debt service requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the 2019A Interest and Sinking Fund. This governing body hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the debt service requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding obligations.

The amount of taxes to be provided annually for the payment of principal of the 2019A Certificates shall be determined and accomplished in the following manner:

(a) The City's annual budget shall reflect the amount of debt service requirements to become due on the 2019A Certificates in the next succeeding Fiscal Year of the City.

(b) The amount required to be provided in the succeeding Fiscal Year of the City from ad valorem taxes shall be the amount of the debt service requirements to be paid on the 2019A Certificates in the next succeeding Fiscal Year of the City.

(c) Following the final approval of the annual budget of the City, the governing body of the City shall, by ordinance, levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (b) above, to be utilized for purposes of paying the principal of the 2019A Certificates in the next succeeding Fiscal Year of the City.

If the liens and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the 2019A Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding 2019A Certificates, there shall be subtracted the amount of any 2019A Certificates that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section 2.02. Revenue Pledge. The 2019A Certificates are additionally secured by and shall be payable from a pledge of the Surplus Net Revenues of the City's Waterworks and Sewer System, such pledge authorized pursuant to Chapter 1502, Texas Government Code.

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

(a) if Surplus Net Revenues are actually on deposit in the 2019A Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would be required to be levied pursuant to Section 2.01 may be reduced to the extent and by the amount of the Surplus Net Revenues then on deposit in the 2019A Interest and Sinking Fund; or

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

- (i) The City shall transfer and deposit in the 2019A Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the 2019A Certificates until the amount on deposit in the 2019A Interest and Sinking Fund equals the amount required for annual debt service on the 2019A Certificates; further, that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the 2019A Interest and Sinking Fund until such time as an amount equal to the annual debt service on the 2019A Certificates for the then-current fiscal year has been deposited in the 2019A Interest and Sinking Fund;
- (ii) That for each year that the 2019A Certificates are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient Surplus Net Revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the 2019A Interest and Sinking Fund for the repayment of the 2019A Certificates; and
- (iii) The City shall at all times maintain and collect sufficient System rates and charges in conjunction with any other legally available funds that, after payment of the costs of operating and maintaining the System, produce revenues in an amount not less than 1.10 times the debt service requirements of all outstanding obligations of the City and other obligations of the City which are secured in whole or in part by a pledge of revenues of the System, for which the City is budgeting the repayment of such obligations from the revenues of the System, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the 2019A Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of System debt service requirements.

Section 2.04. Effect of Pledge. Chapter 1208, Texas Government Code, applies to the issuance of the 2019A Certificates and the pledge of the taxes and revenues granted by the City under this Article II, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the 2019A Certificates are outstanding and unpaid such that the pledge of the taxes and revenues granted by the City under Sections 2.01 and 2.02 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Registered Owner of the 2019A Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

Section 2.05. Interest and Sinking Fund.

(a) The City hereby establishes a special fund or account to be designated the "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A Interest and Sinking Fund" (the "2019A Interest and Sinking Fund"), said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City.

(b) Money on deposit in or required by this Ordinance to be deposited to the 2019A Interest and Sinking Fund shall be used solely for the purpose of paying the interest on, redemption premium, if any, and principal of the 2019A Certificates when and as due and payable in accordance with their terms and this Ordinance.

Section 2.06. Construction Fund.

(a) Establishment of Construction Fund. A special fund or account, to be designated the "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A and Series 2019B Construction Fund" (the "Construction Fund") is hereby created and shall be established and maintained by the City at the official City depository. The Construction Fund shall be kept separate and apart from all other funds and accounts of the City. The proceeds from the sale of the 2019A Certificates shall be deposited first into the Escrow Account, as provided in Section 13.03, prior to transfer to the Construction Fund and payments therefrom shall be made as provided below.

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

(c) Surplus Construction Funds. Any moneys remaining in the Construction Fund after completion of the entirety of the construction activities associated with improvements to the City's wastewater system, and the payment of professional services

and costs of issuance related thereto, shall be deposited into the 2019A Interest and Sinking Fund.

Section 2.07. Security of Funds. All moneys on deposit in the 2019A Interest and Sinking Fund and the Construction Fund for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas in the Public Funds Collateral Act, Chapter 2257, Texas Government Code, as amended, for the security of City funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

### ARTICLE III

#### AUTHORIZATION: GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section 3.01. Authorization. The City's certificates of obligation to be designated "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A" (the "2019A Certificates"), are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas. The 2019A Certificates shall be issued in the aggregate principal amount of \$8,400,000 for the purpose of paying contractual obligations to be incurred for construction activities associated with improvements to the City's wastewater system, and the payment of professional services and costs of issuance related thereto.

#### Section 3.02. Date, Denomination and Maturities.

(a) The 2019A Certificates shall be dated July 1, 2019 and shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from R-1 upward, except the Initial 2019A Certificate, which shall be numbered T-1.

(b) The 2019A Certificates shall mature on September 1 in the years and in the principal amounts set forth in the following schedule:

<u>Year of Maturity</u>	<u>Principal Installments</u>	<u>Interest Rate</u>
2022	\$	%
2023		%
2024		%
2025		%
2026		%
2027		%
2028		%
2029		%
2030		%

2031	%
2032	%
2033	%
2034	%
2035	%
2036	%
2037	%
2038	%
2039	%
2040	%
2041	%
2042	%
2043	%
2044	%
2045	%
2046	%
2047	%
2048	%
2049	%
2050	%
2051	%

(c) The 2019A Certificates shall bear interest from the Date of Delivery thereof or the most recent Interest Payment Date to which interest has been paid or provided for at the rates per annum for each respective maturity specified above. Such interest shall be payable semiannually on March 1 and September 1, commencing March 1, 2020.

**Section 3.03. Medium, Method and Place of Payment.**

(a) The principal of and redemption premium, if any, and interest on the 2019A Certificates shall be paid in lawful money of the United States of America.

(b) The principal of each 2019A Certificate shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such 2019A Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar, which shall initially be BOKF, NA, Dallas, Texas.

(c) Notwithstanding anything in this Section to the contrary, payment to the Texas Water Development Board will be done by wire transfer at no cost to the Texas Water Development Board for so long as the Texas Water Development Board is Owner of the 2019A Certificates.

(d) If the date for the payment of the principal of the 2019A Certificates shall be a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city where

the Paying Agent/Registrar is located are required or authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, a legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in this Section.

**Section 3.04. Control, Execution and Initial Registration.**

(a) The 2019A Certificates shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the 2019A Certificates shall have the same effect as if each of the 2019A Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the 2019A Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the 2019A Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the 2019A Certificates ceases to be such officer before the authentication of such 2019A Certificates or before the delivery thereof, such facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no 2019A Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the 2019A Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial 2019A Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which certificate shall be evidence that the 2019A Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial 2019A Certificate representing the entire principal amount of all 2019A Certificates, payable in stated installment to the Initial Purchaser, or its designee, manually signed by the Mayor and City Secretary, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Initial Purchaser or its designee. Upon payment for the Initial 2019A Certificate, the Paying Agent/Registrar shall insert the Date of Delivery in the appropriate blank on the face of the Initial 2019A Certificate and then shall cancel the Initial 2019A Certificate and deliver registered definitive 2019A Certificates in accordance with instructions received from the Initial Purchaser or its designee.

**Section 3.05. Ownership.**

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any 2019A Certificate is registered as the absolute owner of such 2019A Certificate for the purpose of making and receiving payment of the principal thereof and redemption premium, if any, thereon, and for all other purposes, whether or not such 2019A Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a 2019A Certificate shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such 2019A Certificate to the extent of the sums paid.

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

(a) So long as any 2019A Certificates remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of 2019A Certificates in accordance with this Ordinance.

(b) Registration of any 2019A Certificate may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the 2019A Certificates, or any portion thereof in any integral multiple of \$5,000, to the assignee or assignees thereof, and the right of such assignee or assignees thereof to have the 2019A Certificate or any portion thereof registered in the name of such assignee or assignees. No transfer of any 2019A Certificate shall be effective until entered in the Register. Upon assignment and transfer of any 2019A Certificate or portion thereof, a new 2019A Certificate or 2019A Certificates will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned 2019A Certificate. To the extent possible, the Paying Agent/Registrar will issue such new 2019A Certificate or 2019A Certificates in not more than three (3) business days after receipt of the 2019A Certificate to be transferred in proper form and with proper instructions directing such transfer.

(c) Any 2019A Certificate may be converted and exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the Owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the Paying Agent/Registrar, for a 2019A Certificate or 2019A Certificates of the same maturity and in any authorized denomination and in an aggregate principal or maturity amount equal to the

unpaid principal or maturity amount of the 2019A Certificate presented for exchange. If a portion of any 2019A Certificate is redeemed prior to its scheduled maturity as provided herein, a substitute 2019A Certificate or 2019A Certificates having the same maturity date, in the denomination or denominations of any integral multiple of \$5,000 at the request of the Owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the Owner upon surrender thereof for cancellation. To the extent possible, a new 2019A Certificate or 2019A Certificates will be required to be delivered by the Paying Agent/Registrar to the Owner of the 2019A Certificate or 2019A Certificates in not more than three (3) business days after receipt of the 2019A Certificate to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each 2019A Certificate issued in exchange for any 2019A Certificate or portion thereof assigned, transferred or converted shall have the same principal maturity date as the 2019A Certificate for which it is being exchanged. Each substitute 2019A Certificate shall bear a letter and/or number to distinguish it from each other 2019A Certificate. The Paying Agent/Registrar shall convert and exchange the 2019A Certificates as provided herein, and each substitute 2019A Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the 2019A Certificate or 2019A Certificates in lieu of which such substitute 2019A Certificate is delivered.

(e) The City will pay the Paying Agent/Registrar's reasonable and customary charge for the initial registration or any subsequent transfer, exchange or conversion of 2019A Certificates, but the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, exchange or conversion of a 2019A Certificate. In addition, the City hereby covenants with the Owners of the 2019A Certificates that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of the 2019A Certificates, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration, conversion and exchange of 2019A Certificates as provided herein.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any 2019A Certificate called for redemption, in whole or in part, within forty-five (45) days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled balance of a 2019A Certificate.

### Section 3.07. Cancellation.

(a) All 2019A Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all 2019A Certificates in lieu of which exchange 2019A Certificates or replacement 2019A Certificates are authenticated and delivered in accordance with this Ordinance, shall be canceled and destroyed upon the making of

proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall periodically furnish the City with certificates of destruction of such 2019A Certificates.

(b) Each substitute 2019A Certificate issued in conversion of and exchange for or replacement of (pursuant to the provisions of Sections 3.06, 3.08 and 3.09 hereof) any 2019A Certificate or 2019A Certificates issued under this Ordinance shall have printed thereon a Certificate of Paying Agent/Registrar, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such 2019A Certificate, manually sign and date such Certificate of Paying Agent/Registrar, and no such 2019A Certificate shall be deemed to be issued or outstanding unless such Certificate of Paying Agent/Registrar is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any 2019A Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute 2019A Certificates in the manner prescribed herein, and said 2019A Certificates shall be of customary type and composition and be printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to CHAPTER 1201, TEXAS GOVERNMENT CODE, the duty of conversion and exchange or replacement of 2019A Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Certificate of Paying Agent/Registrar, the converted and exchanged or replaced 2019A Certificates shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Initial 2019A Certificate which was originally delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) 2019A Certificates issued in conversion and exchange or replacement of any other 2019A Certificate or portion thereof (i) shall be issued in fully registered form, without interest coupons, with the principal of such 2019A Certificates to be payable only to the Owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other 2019A Certificates, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) the principal of the 2019A Certificates shall be payable, all as provided, and in the manner required or indicated, in the Form of 2019A Certificates set forth in this Ordinance.

### Section 3.08. Temporary Certificates.

(a) Following the delivery and registration of the Initial 2019A Certificate and pending the preparation of definitive 2019A Certificates, the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary 2019A Certificates that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive 2019A Certificates in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary 2019A Certificates may determine, as evidenced by their

signing of such temporary 2019A Certificates.

(b) Until exchanged for 2019A Certificates in definitive form, such 2019A Certificates in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar, and thereupon, upon the presentation and surrender of the 2019A Certificate or 2019A Certificates in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a 2019A Certificate or 2019A Certificates of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the 2019A Certificate or 2019A Certificates in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

### Section 3.09. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated 2019A Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement 2019A Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such 2019A Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected herewith.

(b) In the event that any 2019A Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such 2019A Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement 2019A Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

- (i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such 2019A Certificate;
- (ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar, and acceptable to the City, to save the Paying Agent/Registrar and the City harmless;
- (iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and Paying Agent/Registrar.

(c) If, after the delivery of such replacement 2019A Certificate, a bona fide purchaser of the original 2019A Certificate in lieu of which such replacement 2019A Certificate was issued presents for payment such original 2019A Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement 2019A Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken 2019A Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement 2019A Certificate, may pay such 2019A Certificate.

(e) Each replacement 2019A Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the 2019A Certificate or 2019A Certificates in lieu of which such replacement 2019A Certificate is delivered.

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

(a) The definitive 2019A Certificates shall be initially issued in the form of a separate single fully registered 2019A Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such 2019A Certificate shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding 2019A Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to 2019A Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the 2019A Certificates, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the 2019A Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the 2019A Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, and interest on the 2019A Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in

whose name each 2019A Certificate is registered in the Register as the absolute Owner of such 2019A Certificate for the purpose of payment of principal of and premium, if any, on the 2019A Certificates, for the purpose of giving notices of redemption and other matters with respect to such 2019A Certificate, for the purpose of registering transfer with respect to such 2019A Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, interest, and premium, if any, on the 2019A Certificates only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal, premium, if any, and interest on the 2019A Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

**Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System.** The City shall not discontinue the use of book-entry only system through DTC without prior written approval from the TWDB. In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter by and between the City, the Paying Agent/Registrar and DTC (the "Representation Letter"), and that it is in the best interest of the Owners of the 2019A Certificates that they be able to obtain certificated 2019A Certificates, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended; notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate 2019A Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of 2019A Certificates and transfer one or more separate 2019A Certificates to DTC Participants having 2019A Certificates credited to their DTC accounts, as identified by DTC. In such event, the 2019A Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging 2019A Certificates shall designate, in accordance with the provisions of this Ordinance.

**Section 3.12. Payments to Cede & Co.** Notwithstanding any other provision of this Ordinance to the contrary, so long as any 2019A Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such 2019A Certificates, and all notices with respect to such 2019A Certificates, shall be made and given, respectively, in the manner provided in the Representation Letter.

Section 3.13. Additional Obligations. The City reserves the right to issue any additional obligations authorized by law and such obligations may be payable from ad valorem taxes within the limits prescribed by law. The City further reserves the right to issue any additional obligations secured by the Surplus Net Revenues of the City's Waterworks and Sewer System, which is senior to the lien and pledge securing payment of the 2019A Certificates.

## ARTICLE IV

### REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption. The 2019A Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional Redemption.

(a) The City reserves the option to redeem 2019A Certificates maturing on and after September 1, 2030, in whole or in part, and if less than in whole, in inverse order of the maturities outstanding at the time of such redemption, before their respective scheduled maturity dates, on September 1, 2029, or on any date thereafter, at a price equal to the principal amount of the 2019A Certificates called for redemption plus accrued interest to the date of redemption.

(b) The City, at least forty-five (45) days before the redemption date (unless a shorter period shall be satisfactory to the Paying Agent/Registrar), shall notify the Paying Agent/Registrar of such redemption date and the amounts thereof to be redeemed.

Section 4.03. Partial Redemption.

(a) If less than all of the 2019A Certificates are to be redeemed and if less than all of a maturity is to be redeemed, the Paying Agent/Registrar shall determine by lot the 2019A Certificates, or portions thereof, within such maturity to be redeemed.

(b) A portion of a single 2019A Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a 2019A Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the 2019A Certificate as though it were a single 2019A Certificate for purposes of selection for redemption.

(c) Upon surrender of any 2019A Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange 2019A Certificate or 2019A Certificates in an aggregate principal amount equal to the unredeemed portion of the 2019A Certificate so surrendered, such exchange being without charge, notwithstanding any provision of Section 3.06 to the contrary.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any 2019A Certificate as to which only a portion thereof is to be redeemed.

**Section 4.04. Notice of Redemption to Owners.**

(a) The Paying Agent/Registrar shall give notice of any redemption of 2019A Certificates by sending notice by first class United States mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Owner of each 2019A Certificate (or part thereof) to be redeemed, at the address shown on the Register.

(b) The notice shall state the redemption date, the redemption price, the place at which the 2019A Certificates are to be surrendered for payment, and, if less than all the 2019A Certificates outstanding are to be redeemed, an identification of the 2019A Certificates or portions thereof to be redeemed.

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

**Section 4.05. Payment Upon Redemption.**

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the 2019A Certificates to be redeemed on such date by setting aside and holding in trust such amounts received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of and redemption premium, if any, on the 2019A Certificates being redeemed.

(b) Upon presentation and surrender of any 2019A Certificate called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, on such 2019A Certificates to the date of redemption from the money set aside for such purpose.

**Section 4.06. Effect of Redemption.**

Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the 2019A Certificates or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in its obligation to make provision for the payment of the principal thereof.

**Section 4.07. Lapse of Payment.**

(a) Money set aside for the redemption of 2019A Certificates and remaining unclaimed by the Owners of such 2019A Certificates after the redemption date shall be

segregated in a special escrow account and held in trust, uninvested, without interest, for the account of such Owners.

(b) Amounts held by the Paying Agent, which represent principal of the 2019A Certificates remaining unclaimed by the Owner after the expiration of three years from the date such amounts have become due and payable, shall be reported and disposed of by the Paying Agent in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the TEXAS PROPERTY CODE, as amended.

## ARTICLE V

### PAYING AGENT/REGISTRAR

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

(a) The City hereby appoints BOKF, NA, as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfers and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each 2019A Certificate to which payments with respect to the 2019A Certificates shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of the 2019A Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the 2019A Certificates, and of all conversions, exchanges and replacements of such 2019A Certificates, as provided in the Ordinance.

Section 5.02. Qualifications. Each Paying Agent/Registrar shall be (i) a banking corporation, a banking association or a financial institution organized and doing business under the laws of the United States or of any state thereof, (ii) authorized under such laws to exercise trust powers, (iii) subject to supervision or examination by a federal or state governmental authority, and (iv) a DTC Participant.

#### Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any 2019A Certificates are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary.

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

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

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

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

Section 5.07. Delivery of Records to Successor. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the 2019A Certificates to the successor Paying Agent/Registrar.

## ARTICLE VI

### FORM OF THE CERTIFICATES

#### Section 6.01. Form Generally.

(a) The 2019A Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Paying Agent/Registrar, and the Assignment form to appear on each of the 2019A Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such 2019A Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any 2019A Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the 2019A Certificates.

(c) The 2019A Certificates shall be typed, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such 2019A Certificates, as evidenced by their execution thereof.

(d) The Initial 2019A Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Certificates. The form of the 2019A Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of Paying Agent/Registrar and the form of Assignment appearing on the 2019A Certificates, shall be substantially as follows:

(a) Form of Certificate.

REGISTERED

REGISTERED

No. R-\_\_\_\_\_ \$\_\_\_\_\_

United States of America  
State of Texas  
CITY OF BRADY, TEXAS  
COMBINATION TAX AND SURPLUS  
WATERWORKS AND SEWER SYSTEM REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2019A

Dated Date: Interest Rate: Stated Maturity: CUSIP No.:

July 1, 2019 \_\_\_\_\_% September 1, 20\_\_\_\_\_

Date of Delivery:

Registered Owner:

Principal Amount: DOLLARS

CITY OF BRADY, STATE OF TEXAS (the "City"), for value received, hereby promises to pay to the order of the Registered Owner named above, or registered assigns, on the Maturity Date specified above, the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid principal amount hereof from the later of the Date of Delivery to the Registered Owner, or the most recent date to which the interest has been paid by check or duly provided for, at the per annum rate of interest specified above computed on the

basis of a 360-day year or twelve 30-day months, such interest to be paid semiannually on March 1 and September 1, of each year, commencing March 1, 2020.

THE PRINCIPAL OF THIS 2019A Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this 2019A Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the Certificate of Paying Agent/Registrar appearing hereon. Interest on these 2019A Certificates shall be payable by check dated as of the Interest Payment Date, mailed by the Paying Agent/Registrar to the Registered Owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other customary banking arrangements acceptable to the Paying Agent/Registrar and the person to whom interest is to be paid provided, however, that such person shall bear all risk and expenses of such customary banking arrangements. For the purpose of the payment of interest on this 2019A Certificate, the Registered Owner shall be the person in whose name this 2019A Certificate is registered at the close of business on the "Record Date," which shall be the fifteenth day of the month next preceding such Interest Payment Date.

IF THE DATE FOR THE PAYMENT of the principal or of interest on this 2019A Certificate shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS 2019A CERTIFICATE IS ONE OF A SERIES of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$8,400,000 (herein referred to as the "2019A Certificates"), issued pursuant to a certain ordinance of the City (the "Ordinance") for the purpose of paying contractual obligations incurred for the construction activities associated with improvements to the City's wastewater system, and the payment of professional services and costs of issuance related thereto.

THE 2019A CERTIFICATES are payable from the levy of a direct and continuing ad valorem tax, within the limits prescribed by law, against all taxable property in the City, and from a pledge of Surplus Net Revenues (as defined in the Ordinance) from the City's Waterworks and Sewer System.

THE CITY HAS RESERVED THE OPTION TO REDEEM the 2019A Certificates maturing on or after September 1, 2030, in whole or in part, and if less than in whole, in inverse order of the maturities outstanding at the time of such redemption, in principal amounts of \$5,000 or any integral multiple thereof, on September 1, 2029, or on any date thereafter, at a price equal to the principal amount of the 2019A Certificates called for redemption plus accrued interest to the date of redemption. If less than all of the 2019A Certificates are to be redeemed and if less than all of a maturity is to be redeemed, the

Paying Agent/Registrar shall determine by lot the 2019A Certificates, or portions thereof, within such maturity to be redeemed.

**NOTICE OF SUCH REDEMPTION** or redemptions shall be given by first class mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Registered Owner of each of the 2019A Certificates to be redeemed in whole or in part. Notice having been so given, the 2019A Certificates or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice, and from and after such date, notwithstanding that any of the 2019A Certificates or portions thereof so called for redemption shall not have been surrendered for payment.

AS PROVIDED IN THE ORDINANCE, and subject to certain limitations therein set forth, this 2019A Certificate is transferable upon surrender of this 2019A Certificate for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered 2019A Certificates of the same stated maturity, of authorized denominations and for the same aggregate principal amount will be issued to the designated transferee or transferees.

THE CITY, THE PAYING AGENT/REGISTRAR, and any other person may treat the person in whose name this 2019A Certificate is registered as the Registered Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this 2019A Certificate be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this 2019A Certificate and the series of which it is a part is duly authorized by law; that all acts, conditions and things to be done precedent to and in the issuance of this 2019A Certificate, and the series of which it is a part, have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; that proper provisions have been made for the levy and collection annually of taxes upon all taxable property in said City sufficient within the limits prescribed by law, and a pledge of the Surplus Net Revenues of the Waterworks and Sewer System to provide for the payment of the principal as the same matures; and that the total indebtedness of the City, including the 2019A Certificates, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City has caused this 2019A Certificate to be executed by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly impressed or placed in facsimile on this 2019A Certificate.

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Mayor  
City of Brady, Texas

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**City Secretary  
City of Brady, Texas**

[CITY SEAL]

**(b) Form of Comptroller's Registration Certificate.**

The following Comptroller's Registration Certificate may be deleted from the definitive 2019A Certificates if such certificate on the Initial 2019A Certificate is fully executed.

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS  
OF THE STATE OF TEXAS

§ § §

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

I hereby certify that there is on file and of record in my office an opinion of the Attorney General of the State of Texas to the effect that this 2019A Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that this 2019A Certificate has this day been registered by me.

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

[SEAL]

**Comptroller of Public Accounts  
of the State of Texas**

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

The following Certificate of Paying Agent/Registrar may be deleted from the Initial 2019A Certificate if the Comptroller's Registration Certificate appears thereon.

## CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial 2019A Certificate of this series of 2019A Certificates was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the 2019A Certificates referred to in the within-mentioned Ordinance.

BOKF, NA  
Dallas, Texas  
As Paying Agent/Registrar

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

By: \_\_\_\_\_

Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

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

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

\_\_\_\_\_ the within 2019A Certificate and all rights  
thereunder,

(Please insert Social Security or Taxpayer Identification Number)

and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to  
register the transfer of the within 2019A Certificate on the books kept for registration  
thereof, with full power of substitution in the premises.

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

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment  
must correspond with the name of the  
Registered Owner as it appears on the  
face of the within 2019A Certificate in every  
particular and must be guaranteed by an  
officer of a federal or state bank or a  
member of the National Association of  
Securities Dealers

(e) Form of Initial Certificate.

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

REGISTERED

No. T-1

\$8,400,000

United States of America  
State of Texas  
CITY OF BRADY, TEXAS  
COMBINATION TAX AND SURPLUS  
WATERWORKS AND SEWER SYSTEM REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2019A

DATED DATE:

CUSIP NUMBER:

July 1, 2019

Date of Delivery: \_\_\_\_\_

Registered Owner: TEXAS WATER DEVELOPMENT BOARD

Principal Amount: EIGHT MILLION FOUR HUNDRED THOUSAND DOLLARS

CITY OF BRADY, STATE OF TEXAS (the "City"), for value received, hereby promises to pay to the order of the Registered Owner named above, or registered assigns, on the Maturity Date specified above, the Principal Amount hereinabove stated on September 1 in the years and in principal installments in accordance with the following schedule:

<u>Year of Maturity</u>	<u>Principal Installments</u>	<u>Interest Rate</u>
(Information to be inserted from Section 3.02(b) to the Ordinance.)		

(or so much principal thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal amounts hereof from the later of the Date of Delivery to the Initial Purchaser, or the most recent date to which the interest has been paid by check or duly provided for, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on March 1 and September 1 in each year, commencing March 1, 2020. Principal installments of this 2019A Certificate are payable as specified above to the Registered Owner hereof by BOKF, NA (the "Paying Agent/Registrar"), upon presentation and surrender, at its Designated Payment/Transfer Office in Dallas, Texas. Interest is payable to the Registered Owner of this 2019A Certificate whose name appears on the "Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the fifteenth day of the month next preceding each Interest Payment Date, and interest shall be paid by the Paying Agent/Registrar by check sent by United States mail, first class postage prepaid, to the address of the Registered Owner recorded in the Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. All payments of principal of, premium, if any, and interest on this 2019A Certificate shall be without exchange or collection charges to the Registered Owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. At Closing, the Paying Agent/Registrar shall complete the Initial 2019A Certificate by inserting the actual Date of Delivery to the Initial Purchaser in the appropriate blank on the face of the Initial 2019A Certificate.

Section 6.03. CUSIP Registration. The City may secure identification numbers

("CUSIP Numbers") and may authorize the printing of such numbers on the face of the 2019A Certificates. It is expressly provided, however, that the presence or absence of CUSIP Numbers on the 2019A Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said 2019A Certificates as to legality are to be held responsible for CUSIP Numbers incorrectly printed on the 2019A Certificates.

Section 6.04. Legal Opinion. The approving legal opinion of Bickerstaff Heath Delgado Acosta LLP, Bond Counsel, may be printed on the reverse side of each 2019A Certificate, which may be executed in facsimile, or may be attached to each 2019A Certificate.

## ARTICLE VII

### INVESTMENTS

#### Section 7.01. Investments.

(a) Money in the Construction Fund and the 2019A Interest and Sinking Fund, at the option of the City, may be invested in such securities or obligations as permitted under the Public Funds Investment Act, Chapter 2256, Texas Government Code.

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

(c) The loan proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Chapter 2256, Government Code (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Government Code (the "PFCA").

Section 7.02. Investment Income. Interest and income derived from investment of the 2019A Interest and Sinking Fund and the Construction Fund shall be credited to the respective fund.

## ARTICLE VIII

### PARTICULAR REPRESENTATIONS AND COVENANTS

8.01. Rates. The City further covenants and agrees that it will at all times charge, and collect for services rendered by the System, rates sufficient to pay all the operating, maintenance, depreciation, replacement and betterment expenses, and other costs deductible in determining "Surplus Net Revenues", as herein defined, and in lieu of tax revenues, to produce Surplus Net Revenues in an amount not less than the amounts required to accumulate and maintain the associated debt service requirements.

8.02. Maintenance and Operation; Insurance. While any of the 2019A Certificates are outstanding, the City covenants and agrees to maintain the System in good condition and operate the same in an efficient manner and at reasonable expense, and to maintain adequate insurance coverage on the System, customarily carried by political subdivisions of the State of Texas operating similar properties in an amount adequate to protect the Board's interest.

8.03. Accounts and Fiscal Year. The City will maintain accurate project records and accounts containing financial assistance for planning, design, acquisition or construction, as applicable, in accordance with generally accepted accounting principles (GAAP) as required under 33 U.S.C. § 1382 *et seq.* and 31 TAC 371.70(a)(2)(L). These standards and principles also apply to the reporting of underlying infrastructure assets. The City shall keep the books of records and accounts separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and shall have said books audited once each fiscal year by a certified public accountant. The City agrees to operate the System and keep their books of record and accounts pertaining thereto on the basis of its current fiscal year; provided, however, that the City Council may change such fiscal year by ordinance duly passed, if such change is deemed necessary by the City Council.

8.04. Accounting Reports. The City will furnish each year, within 180 days after the end of each fiscal year, to the Texas Water Development Board as long as the State owns any of the 2019A Certificates a copy of its audit in accordance with generally accepted auditing standards as required under 31 TAC 371.70(a)(2)(M). As required during construction, the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with the Board's outlay report guidelines. Further, the City shall provide the Board with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the 2019A Certificates are outstanding.

8.05. Covenant to Comply with Rules and Regulations of Texas Water Development Board. That in compliance with the published rules and regulations of the Board, the City agrees and covenants that upon completion of the project to be financed with the proceeds of the 2019A Certificates issued for the construction activities associated with improvements to the City's wastewater system, the proper officials of the City shall cause to be prepared and submitted to the Board (i) a final accounting of the total costs of the project and the expenditure of funds therefor, and (ii) a copy of the construction plans for the project as built and completed. In addition to other information required by the Board, said final accounting shall identify (i) all funds utilized or represented to be available in the City's application from whatever source derived, and (ii) all project costs contained and approved in the City's application to the Board or approved in subsequent change orders.

The City shall use any loan proceeds from the 2019A Certificates that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds. The City shall use any loan proceeds from the 2019A Certificates that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the 2019A Certificates owned by the Board; (2) deposit into the 2019A Interest and Sinking Fund or other debt service account for the payment of interest or principal on the 2019A Certificates owned by the Board; or (3) deposit into a reserve fund. The City further covenants and agrees that (i) all proceeds of sale of the 2019A Certificates shall be deposited in a "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A Construction Fund" hereby created and established with the City's depository bank, and (ii) all funds deposited in such Fund shall be disbursed only for the project the 2019A Certificates are being issued to finance and, as is appropriate, in accordance with the provisions of Chapters 15, 16 or 17 of the Texas Water Code.

The City further agrees and covenants to comply with all applicable laws of the State of Texas and all applicable rules and policies of the Board with respect to the construction of the project and the loan of funds to the City by the Board evidenced by the 2019A Certificates.

The City further agrees and covenants to:

- (a) adopt and implement an approved water conservation plan;
- (b) abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;
- (c) comply with Davis-Bacon Act prevailing wage requirements; and
- (d) return any principals forgiveness funds associated with the project that are determined to be surplus funds in a manner determined by the Executive Administrator.

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

8.07. Timely and Expedited Project Implementation. The City agrees to pursue the project and expend the proceeds of the 2019A Certificates in a timely and expeditious manner, as required by 40 CFR Section 35.3135(d), in accordance with the project schedule which shall not be altered except for good cause shown and only with the written approval of the Executive Administrator.

8.08. Covenants Regarding Tax Exemption. The City covenants to refrain from taking any action which would adversely affect, and to take any required action to ensure, the treatment of the 2019A Certificates as obligations described in Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the Holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the 2019A Certificates or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in Section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the 2019A Certificates, in contravention of Section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in Subsection (a) hereof exceeds 5 percent of the proceeds of the 2019A Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any), then the amount in excess of 5 percent is used for a "private business use"

which is "related" and not "disproportionate," within the meaning of Section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the 2019A Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of Section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the 2019A Certificates being treated as "private activity bonds" within the meaning of Section 141 of the Code and the Treasury Regulations promulgated thereunder ("Regulations");

(e) to refrain from taking any action that would result in the 2019A Certificates being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the 2019A Certificates, directly or indirectly, in a manner that would cause the 2019A Certificates to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's 2019A Certificates that are issued to provide financing for the loan ("Source Series Bonds"), other than Nonpurpose Investments acquired with--

(1) proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to 3 years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed,

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

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the 2019A Certificates, 125 percent of average annual debt service on the 2019A Certificates or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the 2019A Certificates;

(g) to otherwise restrict the use of the proceeds of the 2019A Certificates or amounts treated as proceeds of the 2019A Certificates, as may be necessary, so that the 2019A Certificates do not otherwise contravene the requirements of Section 148 of the Code (relating to arbitrage) and, to the extent applicable, Section 149(d) of the Code (relating to advance refundings);

- (1) to account for all Gross Proceeds, as defined in the Code and Regulations, (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 retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
- (2) to calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its Loan, not less frequently than each Computation Date, in accordance with rules set forth in §148(f) of the Code, §1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;
- (3) as additional consideration for the making of the Loan, and in order to induce the making of the Loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, to pay to the United States the amount described in paragraph (2) above within 30 days after each Computation Date; and
- (4) to exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (2) above and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations; and

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the 2019A Certificates) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of Section 148(f) of the Code, and to pay to the United States of America, not later than 60 days after the 2019A Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under Section 148(f) of the Code;

(i) to maintain such records as will enable the City to fulfill its responsibilities under this Section and Section 148 of the Code, and to retain such records for at least six years following the final payment of principal and interest on the 2019A Certificates;

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

(k) to refrain from using the proceeds provided the TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the 2019A Certificates in contravention of the requirements of section 149(d) of the Code.

In order to facilitate compliance with the above covenants, a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the certificate holders. The Rebate Fund is established for the additional purpose of compliance with Section 148 of the Code.

It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the 2019A Certificates, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the 2019A Certificates under Section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the 2019A Certificates, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the 2019A Certificates under Section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the 2019A Certificates.

**8.09. Ordinance a Contract – Amendments – Outstanding Certificates.** This Ordinance shall constitute a contract with the Owners from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any 2019A Certificate remains Outstanding except as permitted in this Section. The City may, without the consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Owners holding a majority in aggregate principal amount of the 2019A Certificates then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Owners of Outstanding 2019A Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and the redemption price or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest in the 2019A Certificates, (2) give any preference to any 2019A Certificate over any other 2019A Certificate, or (3) reduce

the aggregate principal amount of 2019A Certificates required to be held by Owners for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to 2019A Certificates means, as of the date of determination, all 2019A Certificates theretofore issued and delivered under this Ordinance, except:

- (1) those 2019A Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those 2019A Certificates deemed to be duly paid by the City in accordance with the provisions of Article XI hereof; and
- (3) those mutilated, destroyed, lost, or stolen 2019A Certificates which have been replaced with 2019A Certificates registered and delivered in lieu thereof as provided in Section 3.09 hereof.

Notwithstanding anything in this Section to the contrary, the City shall not amend this Ordinance without the approval of the Board for so long as the Board is a Holder of the 2019A Certificates.

The City further covenants that neither it nor a related party will acquire any of the Board's Source Series Bonds in an amount related to the amount of the 2019A Certificates acquired from the City by the Board.

**8.10. Additional Certifications.** Proper officers of the City charged with the responsibility of issuing the 2019A Certificates are hereby directed to make, execute and deliver certifications as to facts, estimates and circumstances in existence as of the Closing Date and stating whether there are any facts, estimates or circumstances that would materially change the City's current expectations.

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

## ARTICLE IX

### CONTINUING DISCLOSURE UNDERTAKING

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

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

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

"SEC" means the United States Securities and Exchange Commission.

**Section 9.02. Annual Reports.** The City shall provide annually to the MSRB through EMMA, within six months after the end of each fiscal year ending in or after 2019, financial information and operating data with respect the City that is contained in its annual financial statements as is customarily prepared by the City and publicly available. The financial statements so to be provided shall be (1) prepared in accordance with the accounting principles as the City may be required to employ from time to time pursuant to state law or regulation and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide audited financial statements for the applicable fiscal year to the MSRB through EMMA, when and if the audit report on such statements becomes available.

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

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

**Section 9.03. Event Notices.** The City shall notify the MSRB through EMMA, in a timely manner not in excess of ten business days after the occurrence of any of the following events with respect to the 2019A Certificates:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2019A Certificates or other material events affecting the tax-exempt status of the 2019A Certificates;
7. Modifications to rights of holders of the 2019A Certificates, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the 2019A Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

For the purposes of the preceding (15) of this Section 9.03 of the Ordinance, the term, "financial obligation" means a: (A) Debt obligation; (B) Derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (C) Guarantee of paragraph (A) or (B). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with Rule 15c2-12 of the Securities Exchange Act of 1934.

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

Section 9.04. Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Article with respect to the City and the 2019A Certificates while, but only while, the City remains an "obligated person" with respect to the 2019A Certificates within the meaning of the Rule, except that the City in any event will give notice required by Section 9.03 of any bond calls and defeasance that cause the City to no longer be such an "obligated person."

The provisions of this Article are for the sole benefit of the Holders and Beneficial Owners of the 2019A Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the financial results, condition, or prospects of the City or the State of Texas or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell 2019A Certificates at any future date.

**UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY 2019A CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.**

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

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

The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell 2019A Certificates in the primary offering of the 2019A 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 2019A Certificates consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and Beneficial Owners of the 2019A Certificates. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 9.02 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

## ARTICLE X

### DEFAULT AND REMEDIES

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

- (i) the failure to make payment of the principal of, redemption premium, if any, on any of the 2019A Certificates when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 30 days after notice of such default is given by any Owner to the City.

**Section 10.02. Remedies for Default.**

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

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of 2019A Certificates then outstanding.

**Section 10.03. Remedies Not Exclusive.**

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the 2019A Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the 2019A Certificates shall not be available as a remedy under this Ordinance.

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

(c) The TWDB may exercise all remedies available to it in law or equity, and any provision of the 2019A Certificates that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect.

**ARTICLE XI**

**DISCHARGE AND DEFEASANCE**

**Section 11.01. Defeasance of Certificates.**

(a) Any 2019A Certificate shall be deemed to be paid, retired and no longer outstanding (a "Defeased 2019A Certificate") within the meaning of this Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such 2019A Certificate, either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of prepayment or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased 2019A Certificates shall have become due and payable or (3) any combination of (1) and (2). At such time as a 2019A Certificate shall be deemed to be a Defeased 2019A Certificate hereunder, as aforesaid, such 2019A Certificate shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a 2019A Certificate as aforesaid when proper notice of prepayment of such 2019A

Certificate shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such 2019A Certificate and premium, if any, with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the 2019A Certificate and premium, if any, shall be applied to and used solely for the payment of the particular 2019A Certificate and premium, if any, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased 2019A Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased 2019A Certificates the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of the 2019A Certificate and such 2019A Certificate shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the Registered Owner of each 2019A Certificate affected thereby.

(e) Notwithstanding the provisions of subsection (a) above, to the extent that, upon the defeasance of any Defeased 2019A Certificate to be paid at its maturity, the City retains the right under Texas law to later call that Defeased 2019A Certificate for prepayment in accordance with the provisions of this Ordinance, the City may call such Defeased 2019A Certificate for prepayment upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) above with respect to such Defeased 2019A Certificate as though it was being defeased at the time of the exercise of the option to prepay the Defeased 2019A Certificate and the effect of the prepayment is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased 2019A Certificate.

## ARTICLE XII

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

Section 12.01. Sale of the Certificates. The sale of the 2019A Certificates to the Texas Water Development Board, the Initial Purchaser, pursuant to a loan commitment received from the Initial Purchaser at the price of par and the payment of a loan or origination fee of 1.75% is hereby confirmed. The Mayor and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the 2019A Certificates. The Initial 2019A Certificate shall be registered in the name of the Texas Water Development Board.

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

(a) The Mayor is hereby authorized to have control of the Initial 2019A Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the 2019A Certificates shall be made to the Initial Purchaser under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

## ARTICLE XIII

### ESCROW AGREEMENT

#### Section 13.01. Escrow Agent. The City appoints BOKF, NA, as Escrow Agent.

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

Section 13.03. Escrow Account. An escrow account separate and apart from all other funds and accounts of the City is hereby authorized to be created pursuant to the Escrow Agreement referred to in Section 13.01. Except for the proceeds deposited to the Construction Fund in accordance with Section 2.06 hereof, the proceeds of the 2019A Certificates shall be deposited in the escrow account and be transferred to the

Construction Fund to pay costs of the project upon the authorized release of the escrowed proceeds by the Board.

## ARTICLE XIV

### MISCELLANEOUS

Section 14.01. Further Procedures. The Mayor, City Secretary and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things to execute, acknowledge and deliver in the name and under the official seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable to carry out the terms and provisions of this Ordinance and the 2019A Certificates. In case any officer whose facsimile signature shall appear on any 2019A Certificates shall cease to be such officer before the delivery of the 2019A Certificates, such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery.

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

*[The remainder of this page intentionally left blank.]*

PASSED AND APPROVED this 2nd day of July, 2019.

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Mayor  
City of Brady, Texas

ATTEST:

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City Secretary  
City of Brady, Texas

[CITY SEAL]

[Signature Page]

**EXHIBIT A**

**Escrow Agreement**

(See complete copy at Tab \_\_\_\_.)

City Council  
City of Brady, Texas

## Agenda Action Form for Ordinance

AGENDA DATE:	7-2-19	AGENDA ITEM	7.D
AGENDA SUBJECT:	Discussion, consideration and possible action REGARDING ORDINANCE 1279 AUTHORIZING THE ISSUANCE OF \$2,035,000 "CITY OF BRADY, TEXAS COMBINATION TAX AND SURPLUS WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2019B"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES (Waste Water Treatment Plant Project).		
PREPARED BY:	Lisa Remini	Date Submitted:	6-27-19
EXHIBITS:	Summary prepared by Hilltop Securities Financial Advisor Erick Macha Section 1208.028 of the Government Code Ordinance #1279		
BUDGETARY IMPACT:	Required Expenditure:	\$00.00	
	Amount Budgeted:	\$00.00	
	Appropriation Required:	\$00.00	
CITY MANAGER APPROVAL:			

### SUMMARY:

COs are a commonly used debt instrument that allows Council to issue debt for a critical public need on a shorter timeline rather than waiting for the next uniform election date on the calendar. The city has published a notice to issue debt twice, on 5-29-2019 and 6-5-2019 as mandated by law.

The Texas Water Development Board (TWDB) has given the City of Brady a financial commitment to fund a loan amount at zero percent interest not to exceed \$2,035,000 through the Clean Water State Revolving Fund program.

The loan proceeds along with an additional \$8,400,000 low interest loan (0.62%) and \$4,250,000 in loan forgiveness from the TWBD will be used to fund the required estimated \$14,685,000 needed to construct a new Waste Water Treatment Plant to replace the current 50-year old plant that has reached its useful life. This type of debt is in compliance with the City's Debt Management Policy adopted during the City's last budgeting cycle.

This is the final "leg" of the City's efforts to provide sewer treatment service at the lowest possible cost to the citizens of Brady.

**The City Council may approve the ordinance authorizing issuance of the stated COs on one reading at a single meeting. Section 1208.028 of the Government Code states that an issuer may authorize the sale of securities at a single meeting without the need for a subsequent meeting even if the city charter states otherwise.**

By utilizing the TWDB funding opportunities, the city achieved \$11,600,000 in overall debt service savings compared to a market issuance.

Funds will be delivered to BOK, Financial as the city's escrow agent. Monies will be invested in accordance with the City's investment policy.

**RECOMMENDED ACTION:**

**Mayor will ask:** "Madam City Secretary please read the Ordinance Preamble for the record in accordance with the City Charter." "Secretary reads preamble"

**Mayor calls for a motion:**

Move to approve the **first and final** reading of Ordinance 1279

**AUTHORIZING THE ISSUANCE OF \$2,035,000 "CITY OF BRADY, TEXAS COMBINATION TAX AND SURPLUS WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2019B"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES**

**City of Brady, Texas**  
**Financing Through the Texas Water Development Board (TWDB)**  
**July 2, 2019**

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**Clean Water State Revolving Fund (CWSRF) Program**

- The City received funding commitment on May 9, 2019
  - Commitment expires November 30, 2019
- Commitment totaling \$14,685,000 in funding
  - \$8,400,000 Clean Water State Revolving Fund (CWSRF) Loan
  - \$2,035,000 Clean Water State Revolving Fund (CWSRF) 0% Loan
  - \$4,250,000 Clean Water State Revolving Fund (CWSRF) Principal Forgiveness
- Calculated Overall Debt Service Savings Compared to Market Issuance: \$11,600,000

**Series 2019 CWSRF Financing Terms**

**\$8,400,000 Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation,  
Series 2019A**

- Closing date: 8/8/2019 (subject to change)
- Construction proceeds: \$8,201,303
- True Interest Cost: 0.62%
- First Interest payment due (semi-annual): 3/1/2020
- First principal payment due (annual): 9/1/2021
- Final payment due: 9/1/2050
- Optional call feature: 9/1/2029 at par

**\$2,035,000 Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation,  
Series 2019B**

- Closing date: 8/8/2019 (subject to change)
- Construction proceeds: \$1,961,790
- True Interest Cost: 0%
- First principal payment due (annual): 9/1/2021
- Final payment due: 9/1/2050
- Optional call feature: 9/1/2029 at par

**City of Brady, Texas**  
**Financing Through the Texas Water Development Board (TWDB)**  
**July 2, 2019**

A FYE	B Existing Water/Sewer Supported Debt Service	C	D	E	F	G	H	I Aggregate Water/Sewer Supported Debt Service
								Aggregate Water/Sewer Supported Debt Service
								\$ 388,903
2019	\$ 388,903			\$ -	\$ -	\$ -		
2020	386,592			-	43,358	43,358		
2021	718,950	150,000	40,755	190,755	70,000	-	70,000	979,704
2022	715,595	155,000	40,755	195,755	70,000	-	70,000	981,350
2023	712,793	150,000	40,755	190,755	70,000	-	70,000	973,547
2024	708,965	155,000	40,755	195,755	70,000	-	70,000	974,720
2025	580,000	285,000	40,755	325,755	70,000	-	70,000	975,755
2026	580,000	285,000	40,755	325,755	70,000	-	70,000	975,755
2027	580,000	285,000	40,755	325,755	70,000	-	70,000	975,755
2028	575,000	285,000	40,755	325,755	70,000	-	70,000	970,755
2029	575,000	285,000	40,698	325,698	70,000	-	70,000	970,698
2030	575,000	290,000	40,413	330,413	70,000	-	70,000	975,413
2031	575,000	290,000	39,862	329,862	70,000	-	70,000	974,862
2032	365,000	290,000	39,079	329,079	70,000	-	70,000	764,079
2033	365,000	290,000	38,093	328,093	70,000	-	70,000	763,093
2034	365,000	290,000	36,933	326,933	70,000	-	70,000	761,933
2035	365,000	290,000	35,628	325,628	70,000	-	70,000	760,628
2036	365,000	295,000	34,207	329,207	70,000	-	70,000	764,207
2037	365,000	295,000	32,643	327,643	65,000	-	65,000	757,643
2038	365,000	295,000	30,962	325,962	65,000	-	65,000	755,962
2039	365,000	300,000	29,162	329,162	65,000	-	65,000	759,162
2040	365,000	300,000	27,212	327,212	65,000	-	65,000	757,212
2041	365,000	305,000	25,142	330,142	65,000	-	65,000	760,142
2042	365,000	305,000	22,916	327,916	65,000	-	65,000	757,916
2043	365,000	310,000	20,598	330,598	65,000	-	65,000	760,598
2044	365,000	310,000	18,180	328,180	65,000	-	65,000	758,180
2045	365,000	310,000	15,731	325,731	65,000	-	65,000	755,731
2046	365,000	315,000	13,251	328,251	65,000	-	65,000	758,251
2047	365,000	315,000	10,699	325,699	65,000	-	65,000	755,699
2048	365,000	320,000	8,116	328,116	65,000	-	65,000	758,116
2049	365,000	325,000	5,460	330,460	65,000	-	65,000	760,460
2050	370,000	325,000	2,730	327,730	70,000	-	70,000	767,730
	\$ 14,611,798	\$ 8,400,000	\$ 937,102	\$ 9,337,102	\$ 2,035,000	\$ -	\$ 2,035,000	\$ 25,983,900

**§ 1201.028. Single Meeting of Governing Body Sufficient, TX GOVT § 1201.028**

**Vernon's Texas Statutes and Codes Annotated**

**Government Code (Refs & Annos)**

**Title 9. Public Securities (Refs & Annos)**

**Subtitle A. General Provisions**

**Chapter 1201. Public Security Procedures Act (Refs & Annos)**

**Subchapter B. Issuance and Approval of Public Security**

**V.T.C.A., Government Code § 1201.028**

**§ 1201.028. Single Meeting of Governing Body Sufficient**

**Effective: September 1, 2001**

**Currentness**

Notwithstanding any other law, including a provision in a municipal charter, the following actions taken at a meeting of the governing body of an issuer are effective immediately and a subsequent meeting is not required:

(1) a resolution, order, or ordinance calling an election to:

(A) authorize the issuance and sale of a public security; or

(B) approve the resources, revenue, or income of the issuer that may be pledged as security for a public security;

(2) a resolution, order, or ordinance canvassing the results of an election described by Subdivision (1); or

(3) a public security authorization.

**Credits**

Added by Acts 2001, 77th Leg., ch. 769, § 2, eff. Sept. 1, 2001.

**V. T. C. A., Government Code § 1201.028, TX GOVT § 1201.028**

**Current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature**

**End of Document**

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**ORDINANCE NO. 1279**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$2,035,000 "CITY OF BRADY, TEXAS COMBINATION TAX AND SURPLUS WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION, SERIES 2019B"; AUTHORIZING THE SALE THEREOF; ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID CERTIFICATES**

**WHEREAS**, on May 9, 2019, the Texas Water Development Board (the "Board") approved and authorized financial assistance in the amount of \$14,685,000 to the City of Brady, Texas (the "City") consisting of a loan in the amount of \$8,400,000, an interest-free loan in the amount of \$2,035,000, and a subsidy in the form of Principal Forgiveness in the amount of \$4,250,000 to finance the construction activities associated with improvements to the City's wastewater system pursuant to the Clean Water State Revolving Fund; and

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

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

**WHEREAS**, notice of intention to issue said certificates of obligation has been published in *The Brady Standard-Herald*, a newspaper of general circulation in the City of Brady, Texas, on May 29, 2019 and June 5, 2019, respectively, the date of the first publication of such notice being before the thirtieth (30th) day prior to the tentative date stated therein for the passage of this ordinance; and

**WHEREAS**, on the 2nd day of July, 2019, pursuant to the published notice of intention, the City Council of the City of Brady, Texas, convened to consider passage of an Ordinance (the "Ordinance") authorizing the issuance of said certificates of obligation; and

**WHEREAS**, the certificates of obligation should be sold for cash in accordance with the provisions of TEXAS LOCAL GOVERNMENT CODE § 271.052, as amended; and

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

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

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

## ARTICLE I

### DEFINITIONS AND OTHER PRELIMINARY MATTERS

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

"2019B Certificate" or "2019B Certificates" means the certificates of obligation authorized to be issued by Section 3.01 of this Ordinance and designated as "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019B," in the aggregate principal amount of \$2,035,000.

"2019B Interest and Sinking Fund" means the interest and sinking fund established by Section 2.05 of this Ordinance.

"City" means the City of Brady, Texas.

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

"Closing Date" means the date of the initial delivery of and payment for the 2019B Certificates.

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

"Date of Delivery" means the date the 2019B Certificates are delivered to the Initial Purchaser in exchange for the payment for the 2019B Certificates.

"Dated Date" means July 1, 2019.

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

**"Designated Payment/Transfer Office"** means the office of the Paying Agent which is designated for the presentment of the 2019B Certificates.

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

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

**"Escrow Agent"** means BOKF, NA, Dallas, Texas.

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

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

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

**"Initial 2019B Certificate"** means the initial certificate described in Sections 3.04(d) and 6.02(e) of this Ordinance.

**"Initial Purchaser"** means the Texas Water Development Board.

**"Mayor"** means the Mayor of the City of Brady, Texas.

**"Owner" or "Registered Owner"** means the person who is the registered owner of a 2019B Certificate or 2019B Certificates, as shown in the Register.

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

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

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

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

"Unclaimed Payments" means money deposited with the Paying Agent/Registrar for the payment of the principal of the 2019B Certificates as the same comes due and payable and remaining unclaimed by the Owners of 2019B Certificates for 90 days after the applicable payment or redemption date.

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

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

Section 1.04. Interpretation.

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

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

ARTICLE II

SECURITY FOR THE CERTIFICATES  
CREATION OF FUNDS

Section 2.01. Tax Levy for Payment of 2019B Certificates. Pursuant to the authority granted by the Constitution and laws of the State of Texas, there shall be levied and there is hereby levied for the current year and each succeeding year thereafter while

the 2019B Certificates are outstanding and unpaid, an ad valorem tax within legal limitations on each \$100 valuation of taxable property in the City, at a rate sufficient within the limits prescribed by law to pay the debt service requirements on the 2019B Certificates, being a sinking fund for their payment at maturity or a sinking fund of two percent (2%) per annum (whichever amount is the greater), when due and payable, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the debt service requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the 2019B Interest and Sinking Fund. This governing body hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay the debt service requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding obligations.

The amount of taxes to be provided annually for the payment of principal of the 2019B Certificates shall be determined and accomplished in the following manner:

(a) The City's annual budget shall reflect the amount of debt service requirements to become due on the 2019B Certificates in the next succeeding Fiscal Year of the City.

(b) The amount required to be provided in the succeeding Fiscal Year of the City from ad valorem taxes shall be the amount of the debt service requirements to be paid on the 2019B Certificates in the next succeeding Fiscal Year of the City.

(c) Following the final approval of the annual budget of the City, the governing body of the City shall, by ordinance, levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (b) above, to be utilized for purposes of paying the principal of the 2019B Certificates in the next succeeding Fiscal Year of the City.

If the liens and provisions of this Ordinance shall be released in a manner permitted by Article XI hereof, then the collection of such ad valorem tax may be suspended or appropriately reduced, as the facts may permit, and further deposits to the 2019B Interest and Sinking Fund may be suspended or appropriately reduced, as the facts may permit. In determining the aggregate principal amount of outstanding 2019B Certificates, there shall be subtracted the amount of any 2019B Certificates that have been duly called for redemption and for which money has been deposited with the Paying Agent/Registrar for such redemption.

Section 2.02. Revenue Pledge. The 2019B Certificates are additionally secured by and shall be payable from a pledge of the Surplus Net Revenues of the City's Waterworks and Sewer System, such pledge authorized pursuant to Chapter 1502, Texas Government Code.

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

(a) if Surplus Net Revenues are actually on deposit in the 2019B Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would be required to be levied pursuant to Section 2.01 may be reduced to the extent and by the amount of the Surplus Net Revenues then on deposit in the 2019B Interest and Sinking Fund; or

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

- (i) The City shall transfer and deposit in the 2019B Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the 2019B Certificates until the amount on deposit in the 2019B Interest and Sinking Fund equals the amount required for annual debt service on the 2019B Certificates; further, that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the 2019B Interest and Sinking Fund until such time as an amount equal to the annual debt service on the 2019B Certificates for the then-current fiscal year has been deposited in the 2019B Interest and Sinking Fund;
- (ii) That for each year that the 2019B Certificates are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient Surplus Net Revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the 2019B Interest and Sinking Fund for the repayment of the 2019B Certificates; and
- (iii) The City shall at all times maintain and collect sufficient System rates and charges in conjunction with any other legally available funds that, after payment of the costs of operating and maintaining the System, produce revenues in an amount not less than 1.10 times the debt service requirements of all outstanding obligations of the City and other obligations of the City which are secured in whole or in part by a pledge of revenues of the System, for which the City is budgeting the repayment of such obligations from the revenues of the System, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the 2019B Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of System debt service requirements.

Section 2.04. Effect of Pledge. Chapter 1208, Texas Government Code, applies to the issuance of the 2019B Certificates and the pledge of the taxes and revenues granted by the City under this Article II, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the 2019B Certificates are outstanding and unpaid such that the pledge of the taxes and revenues granted by the City under Sections 2.01 and 2.02 of this Ordinance is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Registered Owner of the 2019B Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

Section 2.05. Interest and Sinking Fund.

(a) The City hereby establishes a special fund or account to be designated the "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019B Interest and Sinking Fund" (the "2019B Interest and Sinking Fund"), said fund to be maintained at an official depository bank of the City separate and apart from all other funds and accounts of the City.

(b) Money on deposit in or required by this Ordinance to be deposited to the 2019B Interest and Sinking Fund shall be used solely for the purpose of paying the redemption premium, if any, and principal of the 2019B Certificates when and as due and payable in accordance with their terms and this Ordinance.

Section 2.06. Construction Fund.

(a) Establishment of Construction Fund. A special fund or account, to be designated the "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019A and Series 2019B Construction Fund" (the "Construction Fund") is hereby created and shall be established and maintained by the City at the official City depository. The Construction Fund shall be kept separate and apart from all other funds and accounts of the City. The proceeds from the sale of the 2019B Certificates shall be deposited first into the Escrow Account, as provided in Section 13.03, prior to transfer to the Construction Fund and payments therefrom shall be made as provided below.

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

(c) Surplus Construction Funds. Any moneys remaining in the Construction Fund after completion of the entirety of the construction activities associated with improvements to the City's wastewater system, and the payment of professional services

and costs of issuance related thereto, shall be deposited into the 2019B Interest and Sinking Fund.

Section 2.07. Security of Funds. All moneys on deposit in the 2019B Interest and Sinking Fund and the Construction Fund for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas in the Public Funds Collateral Act, Chapter 2257, Texas Government Code, as amended, for the security of City funds, and moneys on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

## ARTICLE III

### AUTHORIZATION: GENERAL TERMS AND PROVISIONS REGARDING THE CERTIFICATES

Section 3.01. Authorization. The City's certificates of obligation to be designated "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019B" (the "2019B Certificates"), are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas. The 2019B Certificates shall be issued in the aggregate principal amount of \$2,035,000 for the purpose of paying contractual obligations to be incurred for construction activities associated with improvements to the City's wastewater system, and the payment of professional services and costs of issuance related thereto.

#### Section 3.02. Date, Denomination and Maturities.

(a) The 2019B Certificates shall be dated July 1, 2019 and shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered separately from R-1 upward, except the Initial 2019B Certificate, which shall be numbered T-1.

(b) The 2019B Certificates shall mature on September 1 in the years and in the principal amounts set forth in the following schedule:

<u>Year of Maturity</u>	<u>Principal Installments</u>	<u>Interest Rate</u>
2022	\$	0.00%
2023		0.00%
2024		0.00%
2025		0.00%
2026		0.00%
2027		0.00%
2028		0.00%
2029		0.00%
2030		0.00%

2031	0.00%
2032	0.00%
2033	0.00%
2034	0.00%
2035	0.00%
2036	0.00%
2037	0.00%
2038	0.00%
2039	0.00%
2040	0.00%
2041	0.00%
2042	0.00%
2043	0.00%
2044	0.00%
2045	0.00%
2046	0.00%
2047	0.00%
2048	0.00%
2049	0.00%
2050	0.00%
2051	0.00%

**Section 3.03. Medium, Method and Place of Payment.**

(a) The principal of and redemption premium, if any, on the 2019B Certificates shall be paid in lawful money of the United States of America.

(b) The principal of each 2019B Certificate shall be paid to the Owner thereof on the due date (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such 2019B Certificate at the Designated Payment/Transfer Office of the Paying Agent/Registrar, which shall initially be BOKF, NA, Dallas, Texas.

(c) Notwithstanding anything in this Section to the contrary, payment to the Texas Water Development Board will be done by wire transfer at no cost to the Texas Water Development Board for so long as the Texas Water Development Board is Owner of the 2019B Certificates.

(d) If the date for the payment of the principal of the 2019B Certificates shall be a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are required or authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, a legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in this Section.

Section 3.04. Control, Execution and Initial Registration.

(a) The 2019B Certificates shall be executed on behalf of the City by the Mayor and the City Secretary, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the 2019B Certificates shall have the same effect as if each of the 2019B Certificates had been signed manually and in person by each of said officers, and such facsimile seal on the 2019B Certificates shall have the same effect as if the official seal of the City had been manually impressed upon each of the 2019B Certificates.

(b) In the event that any officer of the City whose manual or facsimile signature appears on the 2019B Certificates ceases to be such officer before the authentication of such 2019B Certificates or before the delivery thereof, such facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(c) Except as provided below, no 2019B Certificate shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the 2019B Certificates. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial 2019B Certificate delivered at the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which certificate shall be evidence that the 2019B Certificate has been duly approved by the Attorney General of the State of Texas and that it is a valid and binding obligation of the City, and has been registered by the Comptroller of Public Accounts of the State of Texas.

(d) On the Closing Date, one Initial 2019B Certificate representing the entire principal amount of all 2019B Certificates, payable in stated installment to the Initial Purchaser, or its designee, manually signed by the Mayor and City Secretary, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, will be delivered to the Initial Purchaser or its designee. Upon payment for the Initial 2019B Certificate, the Paying Agent/Registrar shall insert the Date of Delivery in the appropriate blank on the face of the Initial 2019B Certificate and then shall cancel the Initial 2019B Certificate and deliver registered definitive 2019B Certificates in accordance with instructions received from the Initial Purchaser or its designee.

Section 3.05. Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any 2019B Certificate is registered as the absolute owner of such

2019B Certificate for the purpose of making and receiving payment of the principal thereof and redemption premium, if any, thereon, and for all other purposes, whether or not such 2019B Certificate is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of a 2019B Certificate shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such 2019B Certificate to the extent of the sums paid.

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

(a) So long as any 2019B Certificates remain outstanding, the City shall cause the Paying Agent/Registrar to keep at its Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of 2019B Certificates in accordance with this Ordinance.

(b) Registration of any 2019B Certificate may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the 2019B Certificates, or any portion thereof in any integral multiple of \$5,000, to the assignee or assignees thereof, and the right of such assignee or assignees thereof to have the 2019B Certificate or any portion thereof registered in the name of such assignee or assignees. No transfer of any 2019B Certificate shall be effective until entered in the Register. Upon assignment and transfer of any 2019B Certificate or portion thereof, a new 2019B Certificate or 2019B Certificates will be issued by the Paying Agent/Registrar in conversion and exchange for such transferred and assigned 2019B Certificate. To the extent possible, the Paying Agent/Registrar will issue such new 2019B Certificate or 2019B Certificates in not more than three (3) business days after receipt of the 2019B Certificate to be transferred in proper form and with proper instructions directing such transfer.

(c) Any 2019B Certificate may be converted and exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the Owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the Paying Agent/Registrar, for a 2019B Certificate or 2019B Certificates of the same maturity and in any authorized denomination and in an aggregate principal or maturity amount equal to the unpaid principal or maturity amount of the 2019B Certificate presented for exchange. If a portion of any 2019B Certificate is redeemed prior to its scheduled maturity as provided herein, a substitute 2019B Certificate or 2019B Certificates having the same maturity date, in the denomination or denominations of any integral multiple of \$5,000 at the request of the Owner, and in an aggregate principal amount equal to the unredeemed

portion thereof, will be issued to the Owner upon surrender thereof for cancellation. To the extent possible, a new 2019B Certificate or 2019B Certificates will be required to be delivered by the Paying Agent/Registrar to the Owner of the 2019B Certificate or 2019B Certificates in not more than three (3) business days after receipt of the 2019B Certificate to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each 2019B Certificate issued in exchange for any 2019B Certificate or portion thereof assigned, transferred or converted shall have the same principal maturity date as the 2019B Certificate for which it is being exchanged. Each substitute 2019B Certificate shall bear a letter and/or number to distinguish it from each other 2019B Certificate. The Paying Agent/Registrar shall convert and exchange the 2019B Certificates as provided herein, and each substitute 2019B Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the 2019B Certificate or 2019B Certificates in lieu of which such substitute 2019B Certificate is delivered.

(e) The City will pay the Paying Agent/Registrar's reasonable and customary charge for the initial registration or any subsequent transfer, exchange or conversion of 2019B Certificates, but the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, exchange or conversion of a 2019B Certificate. In addition, the City hereby covenants with the Owners of the 2019B Certificates that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of the 2019B Certificates, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration, conversion and exchange of 2019B Certificates as provided herein.

(f) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any 2019B Certificate called for redemption, in whole or in part, within forty-five (45) days of the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled balance of a 2019B Certificate.

### Section 3.07. Cancellation.

(a) All 2019B Certificates paid or redeemed before scheduled maturity in accordance with this Ordinance, and all 2019B Certificates in lieu of which exchange 2019B Certificates or replacement 2019B Certificates are authenticated and delivered in accordance with this Ordinance, shall be canceled and destroyed upon the making of proper records regarding such payment, redemption, exchange or replacement. The Paying Agent/Registrar shall periodically furnish the City with certificates of destruction of such 2019B Certificates.

(b) Each substitute 2019B Certificate issued in conversion of and exchange for or replacement of (pursuant to the provisions of Sections 3.06, 3.08 and 3.09 hereof) any 2019B Certificate or 2019B Certificates issued under this Ordinance shall have printed thereon a Certificate of Paying Agent/Registrar, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such 2019B Certificate, manually sign and date such Certificate of Paying Agent/Registrar, and no such 2019B Certificate shall be deemed to be issued or outstanding unless such Certificate of Paying Agent/Registrar is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing conversion and exchange or replacement of any 2019B Certificate or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute 2019B Certificates in the manner prescribed herein, and said 2019B Certificates shall be of customary type and composition and be printed on paper with lithographed or steel engraved borders of customary weight and strength. Pursuant to CHAPTER 1201, TEXAS GOVERNMENT CODE, the duty of conversion and exchange or replacement of 2019B Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Certificate of Paying Agent/Registrar, the converted and exchanged or replaced 2019B Certificates shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Initial 2019B Certificate which was originally delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(c) 2019B Certificates issued in conversion and exchange or replacement of any other 2019B Certificate or portion thereof (i) shall be issued in fully registered form, without interest coupons, with the principal of such 2019B Certificates to be payable only to the Owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be converted and exchanged for other 2019B Certificates, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) the principal of the 2019B Certificates shall be payable, all as provided, and in the manner required or indicated, in the Form of 2019B Certificates set forth in this Ordinance.

### Section 3.08. Temporary Certificates.

(a) Following the delivery and registration of the Initial 2019B Certificate and pending the preparation of definitive 2019B Certificates, the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary 2019B Certificates that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive 2019B Certificates in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary 2019B Certificates may determine, as evidenced by their signing of such temporary 2019B Certificates.

(b) Until exchanged for 2019B Certificates in definitive form, such 2019B Certificates in temporary form shall be entitled to the benefit and security of this Ordinance.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar, and thereupon, upon the presentation and surrender of the 2019B Certificate or 2019B Certificates in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a 2019B Certificate or 2019B Certificates of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the 2019B Certificate or 2019B Certificates in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

### Section 3.09. Replacement Certificates.

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated 2019B Certificate, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement 2019B Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such 2019B Certificate to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected herewith.

(b) In the event that any 2019B Certificate is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such 2019B Certificate has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement 2019B Certificate of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

- (i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership of and the circumstances of the loss, destruction or theft of such 2019B Certificate;
- (ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar, and acceptable to the City, to save the Paying Agent/Registrar and the City harmless;
- (iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and
- (iv) satisfies any other reasonable requirements imposed by the City and Paying Agent/Registrar.

(c) If, after the delivery of such replacement 2019B Certificate, a bona fide purchaser of the original 2019B Certificate in lieu of which such replacement 2019B Certificate was issued presents for payment such original 2019B Certificate, the City and the Paying Agent/Registrar shall be entitled to recover such replacement 2019B Certificate from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken 2019B Certificate has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement 2019B Certificate, may pay such 2019B Certificate.

(e) Each replacement 2019B Certificate delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the 2019B Certificate or 2019B Certificates in lieu of which such replacement 2019B Certificate is delivered.

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

(a) The definitive 2019B Certificates shall be initially issued in the form of a separate single fully registered 2019B Certificate for each of the maturities thereof. Upon initial issuance, the ownership of each such 2019B Certificate shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 3.11 hereof, all of the outstanding 2019B Certificates shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to 2019B Certificates registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the 2019B Certificates, except as provided in this Ordinance. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the 2019B Certificates, (ii) the delivery to any DTC Participant or any other person, other than an Owner, as shown on the Register, of any notice with respect to the 2019B Certificates, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than an Owner, as shown in the Register of any amount with respect to principal of and premium, if any, on the 2019B Certificates. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each 2019B Certificate is registered in the Register as the absolute Owner of such 2019B Certificate for the purpose of payment of principal of and premium, if any, on the 2019B Certificates, for the purpose of giving notices of redemption and other matters with respect

to such 2019B Certificate, for the purpose of registering transfer with respect to such 2019B Certificate, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and premium, if any, on the 2019B Certificates only to or upon the order of the respective Owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal and premium, if any, on the 2019B Certificates to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

**Section 3.11. Successor Securities Depository; Transfer Outside Book-Entry-Only System.** The City shall not discontinue the use of book-entry only system through DTC without prior written approval from the TWDB. In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter by and between the City, the Paying Agent/Registrar and DTC (the "Representation Letter"), and that it is in the best interest of the Owners of the 2019B Certificates that they be able to obtain certificated 2019B Certificates, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended; notify DTC and DTC Participants, as identified by DTC, of the appointment of such successor securities depository and transfer one or more separate 2019B Certificates to such successor securities depository; or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of 2019B Certificates and transfer one or more separate 2019B Certificates to DTC Participants having 2019B Certificates credited to their DTC accounts, as identified by DTC. In such event, the 2019B Certificates shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging 2019B Certificates shall designate, in accordance with the provisions of this Ordinance.

**Section 3.12. Payments to Cede & Co.** Notwithstanding any other provision of this Ordinance to the contrary, so long as any 2019B Certificates are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and premium, if any, on such 2019B Certificates, and all notices with respect to such 2019B Certificates, shall be made and given, respectively, in the manner provided in the Representation Letter.

Section 3.13. Additional Obligations. The City reserves the right to issue any additional obligations authorized by law and such obligations may be payable from ad valorem taxes within the limits prescribed by law. The City further reserves the right to issue any additional obligations secured by the Surplus Net Revenues of the City's Waterworks and Sewer System, which is senior to the lien and pledge securing payment of the 2019B Certificates.

## ARTICLE IV

### REDEMPTION OF CERTIFICATES BEFORE MATURITY

Section 4.01. Limitation on Redemption. The 2019B Certificates shall be subject to redemption before scheduled maturity only as provided in this Article IV.

Section 4.02. Optional Redemption.

(a) The City reserves the option to redeem 2019B Certificates maturing on and after September 1, 2030, in whole or in part, and if less than in whole, in inverse order of the maturities outstanding at the time of such redemption, before their respective scheduled maturity dates, on September 1, 2029, or on any date thereafter, at a price equal to the principal amount of the 2019B Certificates called for redemption.

(b) The City, at least forty-five (45) days before the redemption date (unless a shorter period shall be satisfactory to the Paying Agent/Registrar), shall notify the Paying Agent/Registrar of such redemption date and the amounts thereof to be redeemed.

Section 4.03. Partial Redemption.

(a) If less than all of the 2019B Certificates are to be redeemed and if less than all of a maturity is to be redeemed, the Paying Agent/Registrar shall determine by lot the 2019B Certificates, or portions thereof, within such maturity to be redeemed.

(b) A portion of a single 2019B Certificate of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a 2019B Certificate is to be partially redeemed, the Paying Agent/Registrar shall treat each \$5,000 portion of the 2019B Certificate as though it were a single 2019B Certificate for purposes of selection for redemption.

(c) Upon surrender of any 2019B Certificate for redemption in part, the Paying Agent/Registrar, in accordance with Section 3.06 of this Ordinance, shall authenticate and deliver an exchange 2019B Certificate or 2019B Certificates in an aggregate principal amount equal to the unredeemed portion of the 2019B Certificate so surrendered, such exchange being without charge, notwithstanding any provision of Section 3.06 to the contrary.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any 2019B Certificate as to which only a portion thereof is to be redeemed.

**Section 4.04. Notice of Redemption to Owners.**

(a) The Paying Agent/Registrar shall give notice of any redemption of 2019B Certificates by sending notice by first class United States mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Owner of each 2019B Certificate (or part thereof) to be redeemed, at the address shown on the Register.

(b) The notice shall state the redemption date, the redemption price, the place at which the 2019B Certificates are to be surrendered for payment, and, if less than all the 2019B Certificates outstanding are to be redeemed, an identification of the 2019B Certificates or portions thereof to be redeemed.

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

**Section 4.05. Payment Upon Redemption.**

(a) Before or on each redemption date, the City shall deposit with the Paying Agent/Registrar money sufficient to pay all amounts due on the redemption date and the Paying Agent/Registrar shall make provision for the payment of the 2019B Certificates to be redeemed on such date by setting aside and holding in trust such amounts received by the Paying Agent/Registrar from the City and shall use such funds solely for the purpose of paying the principal of and redemption premium, if any, on the 2019B Certificates being redeemed.

(b) Upon presentation and surrender of any 2019B Certificate called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of, redemption premium, if any, on such 2019B Certificates to the date of redemption from the money set aside for such purpose.

**Section 4.06. Effect of Redemption.**

Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the 2019B Certificates or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in its obligation to make provision for the payment of the principal thereof.

**Section 4.07. Lapse of Payment.**

(a) Money set aside for the redemption of 2019B Certificates and remaining unclaimed by the Owners of such 2019B Certificates after the redemption date shall be

segregated in a special escrow account and held in trust, uninvested, without interest, for the account of such Owners.

(b) Amounts held by the Paying Agent, which represent principal of the 2019B Certificates remaining unclaimed by the Owner after the expiration of three years from the date such amounts have become due and payable, shall be reported and disposed of by the Paying Agent in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the TEXAS PROPERTY CODE, as amended.

## ARTICLE V

### PAYING AGENT/REGISTRAR

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

(a) The City hereby appoints BOKF, NA, as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfers and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the Owners and record in the Register the address of such Owner of each 2019B Certificate to which payments with respect to the 2019B Certificates shall be mailed, as provided herein. The City or its designee shall have the right to inspect the Register during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity.

(b) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of the 2019B Certificates. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the 2019B Certificates, and of all conversions, exchanges and replacements of such 2019B Certificates, as provided in the Ordinance.

Section 5.02. Qualifications. Each Paying Agent/Registrar shall be (i) a banking corporation, a banking association or a financial institution organized and doing business under the laws of the United States or of any state thereof, (ii) authorized under such laws to exercise trust powers, (iii) subject to supervision or examination by a federal or state governmental authority, and (iv) a DTC Participant.

#### Section 5.03. Maintaining Paying Agent/Registrar.

(a) At all times while any 2019B Certificates are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance. The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar. The signature of the Mayor shall be attested by the City Secretary.

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

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

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

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

Section 5.07. Delivery of Records to Successor. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the 2019B Certificates to the successor Paying Agent/Registrar.

## ARTICLE VI

### FORM OF THE CERTIFICATES

#### Section 6.01. Form Generally.

(a) The 2019B Certificates, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of Paying Agent/Registrar, and the Assignment form to appear on each of the 2019B Certificates, (i) shall be substantially in the form set forth in this Article, with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such 2019B Certificates, as evidenced by their execution thereof.

(b) Any portion of the text of any 2019B Certificates may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the 2019B Certificates.

(c) The 2019B Certificates shall be typed, printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such 2019B Certificates, as evidenced by their execution thereof.

(d) The Initial 2019B Certificate submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Certificates. The form of the 2019B Certificates, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the form of Certificate of Paying Agent/Registrar and the form of Assignment appearing on the 2019B Certificates, shall be substantially as follows:

(a) Form of Certificate.

REGISTERED

REGISTERED

No. R-\_\_

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

United States of America  
State of Texas  
CITY OF BRADY, TEXAS  
COMBINATION TAX AND SURPLUS  
WATERWORKS AND SEWER SYSTEM REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2019B

Dated Date: Interest Rate: Stated Maturity: CUSIP No.:

July 1, 2019 0.00% September 1, 20\_\_

Date of Delivery:

Registered Owner:

Principal Amount: DOLLARS

CITY OF BRADY, STATE OF TEXAS (the "City"), for value received, hereby promises to pay to the order of the Registered Owner named above, or registered assigns, on the Maturity Date specified above, the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption).

THE PRINCIPAL OF THIS 2019B Certificate shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this 2019B Certificate at the Designated Payment/Transfer Office of the

Paying Agent/Registrar executing the Certificate of Paying Agent/Registrar appearing hereon.

IF THE DATE FOR THE PAYMENT of the principal on this 2019B Certificate shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS 2019B CERTIFICATE IS ONE OF A SERIES of fully registered certificates specified in the title hereof issued in the aggregate principal amount of \$2,035,000 (herein referred to as the "2019B Certificates"), issued pursuant to a certain ordinance of the City (the "Ordinance") for the purpose of paying contractual obligations incurred for the construction activities associated with improvements to the City's wastewater system, and the payment of professional services and costs of issuance related thereto.

THE 2019B CERTIFICATES are payable from the levy of a direct and continuing ad valorem tax, within the limits prescribed by law, against all taxable property in the City, and from a pledge of Surplus Net Revenues (as defined in the Ordinance) from the City's Waterworks and Sewer System.

THE CITY HAS RESERVED THE OPTION TO REDEEM the 2019B Certificates maturing on or after September 1, 2030, in whole or in part, and if less than in whole, in inverse order of the maturities outstanding at the time of such redemption, in principal amounts of \$5,000 or any integral multiple thereof, on September 1, 2029, or on any date thereafter, at a price equal to the principal amount of the 2019B Certificates called for redemption. If less than all of the 2019B Certificates are to be redeemed and if less than all of a maturity is to be redeemed, the Paying Agent/Registrar shall determine by lot the 2019B Certificates, or portions thereof, within such maturity to be redeemed.

NOTICE OF SUCH REDEMPTION or redemptions shall be given by first class mail, postage prepaid, not less than thirty (30) days before the date fixed for redemption, to the Registered Owner of each of the 2019B Certificates to be redeemed in whole or in part. Notice having been so given, the 2019B Certificates or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice, and from and after such date, notwithstanding that any of the 2019B Certificates or portions thereof so called for redemption shall not have been surrendered for payment.

AS PROVIDED IN THE ORDINANCE, and subject to certain limitations therein set forth, this 2019B Certificate is transferable upon surrender of this 2019B Certificate for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered 2019B Certificates of

the same stated maturity, of authorized denominations and for the same aggregate principal amount will be issued to the designated transferee or transferees.

THE CITY, THE PAYING AGENT/REGISTRAR, and any other person may treat the person in whose name this 2019B Certificate is registered as the Registered Owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this 2019B Certificate be overdue, and neither the City nor the Paying Agent/Registrar shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this 2019B Certificate and the series of which it is a part is duly authorized by law; that all acts, conditions and things to be done precedent to and in the issuance of this 2019B Certificate, and the series of which it is a part, have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; that proper provisions have been made for the levy and collection annually of taxes upon all taxable property in said City sufficient within the limits prescribed by law, and a pledge of the Surplus Net Revenues of the Waterworks and Sewer System to provide for the payment of the principal as the same matures; and that the total indebtedness of the City, including the 2019B Certificates, does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City has caused this 2019B Certificate to be executed by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly impressed or placed in facsimile on this 2019B Certificate.

Mayor  
City of Brady, Texas

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**City Secretary  
City of Brady, Texas**

[CITY SEAL]

**(b) Form of Comptroller's Registration Certificate.**

The following Comptroller's Registration Certificate may be deleted from the definitive 2019B Certificates if such certificate on the Initial 2019B Certificate is fully executed.

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS  
OF THE STATE OF TEXAS

§  
§  
§  
REGISTER NO. \_\_\_\_\_

I hereby certify that there is on file and of record in my office an opinion of the Attorney General of the State of Texas to the effect that this 2019B Certificate has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that this 2019B Certificate has this day been registered by me.

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

[SEAL]

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Comptroller of Public Accounts  
of the State of Texas

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

The following Certificate of Paying Agent/Registrar may be deleted from the Initial 2019B Certificate if the Comptroller's Registration Certificate appears thereon.

**CERTIFICATE OF PAYING AGENT/REGISTRAR**

The records of the Paying Agent/Registrar show that the Initial 2019B Certificate of this series of 2019B Certificates was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the 2019B Certificates referred to in the within-mentioned Ordinance.

BOKF, NA,  
Dallas, Texas  
As Paying Agent/Registrar

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

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

(d) Form of Assignment.

**ASSIGNMENT**

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

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

the within 2019B Certificate and all rights thereunder,  
(Please insert Social Security or Taxpayer Identification Number)

and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to register the transfer of the within 2019B Certificate on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed By:

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears on the face of the within 2019B Certificate in every particular and must be guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers

(e) Form of Initial Certificate.

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

REGISTERED

No. T-1

\$2,035,000

United States of America  
State of Texas  
CITY OF BRADY, TEXAS  
COMBINATION TAX AND SURPLUS  
WATERWORKS AND SEWER SYSTEM REVENUE  
CERTIFICATE OF OBLIGATION  
SERIES 2019B

DATED DATE:

CUSIP NUMBER:

July 1, 2019

Date of Delivery: \_\_\_\_\_

Registered Owner: TEXAS WATER DEVELOPMENT BOARD

Principal Amount: TWO MILLION THIRTY-FIVE THOUSAND DOLLARS

CITY OF BRADY, STATE OF TEXAS (the "City"), for value received, hereby promises to pay to the order of the Registered Owner named above, or registered assigns, on the Maturity Date specified above, the Principal Amount hereinabove stated on September 1 in the years and in principal installments in accordance with the following schedule:

<u>Year of Maturity</u>	<u>Principal Installments</u>	<u>Interest Rate</u>
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(Information to be inserted from  
Section 3.02(b) to the Ordinance.)

(or so much principal thereof as shall not have been prepaid prior to maturity). Principal installments of this 2019B Certificate are payable as specified above to the Registered Owner hereof by BOKF, NA (the "Paying Agent/Registrar"), upon presentation and surrender, at its Designated Payment/Transfer Office in Dallas, Texas. All payments of principal of and premium, if any, on this 2019B Certificate shall be without exchange or collection charges to the Registered Owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. At Closing, the Paying Agent/Registrar shall complete the Initial 2019B Certificate by inserting the actual Date of Delivery to the Initial Purchaser in the appropriate blank on the face of the Initial 2019B Certificate.

Section 6.03. CUSIP Registration. The City may secure identification numbers ("CUSIP Numbers") and may authorize the printing of such numbers on the face of the 2019B Certificates. It is expressly provided, however, that the presence or absence of CUSIP Numbers on the 2019B Certificates shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said 2019B Certificates as to legality are to be held responsible for CUSIP Numbers incorrectly printed on the 2019B Certificates.

Section 6.04. Legal Opinion. The approving legal opinion of Bickerstaff Heath Delgado Acosta LLP, Bond Counsel, may be printed on the reverse side of each 2019B Certificate, which may be executed in facsimile, or may be attached to each 2019B Certificate.

## ARTICLE VII

### INVESTMENTS

#### Section 7.01. Investments.

(a) Money in the Construction Fund and the 2019B Interest and Sinking Fund, at the option of the City, may be invested in such securities or obligations as permitted under the Public Funds Investment Act, Chapter 2256, Texas Government Code.

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

(c) The loan proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Chapter 2256, Government Code (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Government Code (the "PFCA").

Section 7.02. Investment Income. Interest and income derived from investment of the 2019B Interest and Sinking Fund and the Construction Fund shall be credited to the respective fund.

## ARTICLE VIII

### PARTICULAR REPRESENTATIONS AND COVENANTS

8.01. Rates. The City further covenants and agrees that it will at all times charge, and collect for services rendered by the System, rates sufficient to pay all the operating, maintenance, depreciation, replacement and betterment expenses, and other costs deductible in determining "Surplus Net Revenues", as herein defined, and in lieu of tax revenues, to produce Surplus Net Revenues in an amount not less than the amounts required to accumulate and maintain the associated debt service requirements.

8.02. Maintenance and Operation; Insurance. While any of the 2019B Certificates are outstanding, the City covenants and agrees to maintain the System in good condition and operate the same in an efficient manner and at reasonable expense, and to maintain adequate insurance coverage on the System, customarily carried by political subdivisions of the State of Texas operating similar properties in an amount adequate to protect the Board's interest.

8.03. Accounts and Fiscal Year. The City will maintain accurate project records and accounts containing financial assistance for planning, design, acquisition or construction, as applicable, in accordance with generally accepted accounting principles (GAAP) as required under 33 U.S.C. § 1382 *et seq.* and 31 TAC 371.70(a)(2)(L). These standards and principles also apply to the reporting of underlying infrastructure assets. The City shall keep the books of records and accounts separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the System, and shall have said books audited once each fiscal year by a certified public accountant. The City agrees to operate the System and keep their books of record and accounts pertaining thereto on the basis of its current fiscal year; provided, however, that the City Council may change such fiscal year by ordinance duly passed, if such change is deemed necessary by the City Council.

8.04. Accounting Reports. The City will furnish each year, within 180 days after the end of each fiscal year, to the Texas Water Development Board as long as the State owns any of the 2019B Certificates a copy of its audit in accordance with generally accepted auditing standards as required under 31 TAC 371.70(a)(2)(M). As required during construction, the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with the Board's outlay report

guidelines. Further, the City shall provide the Board with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the 2019B Certificates are outstanding.

**8.05. Covenant to Comply with Rules and Regulations of Texas Water Development Board.** That in compliance with the published rules and regulations of the Board, the City agrees and covenants that upon completion of the project to be financed with the proceeds of the 2019B Certificates issued for the construction activities associated with improvements to the City's wastewater system, the proper officials of the City shall cause to be prepared and submitted to the Board (i) a final accounting of the total costs of the project and the expenditure of funds therefor, and (ii) a copy of the construction plans for the project as built and completed. In addition to other information required by the Board, said final accounting shall identify (i) all funds utilized or represented to be available in the City's application from whatever source derived, and (ii) all project costs contained and approved in the City's application to the Board or approved in subsequent change orders.

The City shall use any loan proceeds from the 2019B Certificates that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the City to submit a final accounting and disposition of any unused funds. The City shall use any loan proceeds from the 2019B Certificates that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the 2019B Certificates owned by the Board; (2) deposit into the 2019B Interest and Sinking Fund or other debt service account for the payment of principal on the 2019B Certificates owned by the Board; or (3) deposit into a reserve fund. The City further covenants and agrees that (i) all proceeds of sale of the 2019B Certificates shall be deposited in a "City of Brady, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Series 2019B Construction Fund" hereby created and established with the City's depository bank, and (ii) all funds deposited in such Fund shall be disbursed only for the project the 2019B Certificates are being issued to finance and, as is appropriate, in accordance with the provisions of Chapters 15, 16 or 17 of the Texas Water Code.

The City further agrees and covenants to comply with all applicable laws of the State of Texas and all applicable rules and policies of the Board with respect to the construction of the project and the loan of funds to the City by the Board evidenced by the 2019B Certificates.

The City further agrees and covenants to:

- (a) adopt and implement an approved water conservation plan;
- (b) abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;
- (c) comply with Davis-Bacon Act prevailing wage requirements; and
- (d) return any principals forgiveness funds associated with the project that are determined to be surplus funds in a manner determined by the Executive Administrator.

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

**8.07. Timely and Expeditious Project Implementation.** The City agrees to pursue the project and expend the proceeds of the 2019B Certificates in a timely and expeditious manner, as required by 40 CFR Section 35.3135(d), in accordance with the project schedule which shall not be altered except for good cause shown and only with the written approval of the Executive Administrator.

**8.08. Covenants Regarding Tax Exemption.** The City covenants to refrain from taking any action which would adversely affect, and to take any required action to ensure, the treatment of the 2019B Certificates as obligations described in Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the Holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the 2019B Certificates or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in Section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the 2019B Certificates, in contravention of Section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in Subsection (a) hereof exceeds 5 percent of the proceeds of the 2019B Certificates or the projects financed therewith (less amounts deposited into a reserve fund, if any), then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of Section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the 2019B Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of Section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the 2019B Certificates being treated as "private activity bonds" within the meaning of Section 141 of the Code and the Treasury Regulations promulgated thereunder ("Regulations");

(e) to refrain from taking any action that would result in the 2019B Certificates being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the 2019B Certificates, directly or indirectly, in a manner that would cause the 2019B Certificates to be "arbitrage bonds" within the meaning of Section 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's 2019B Certificates that are issued to provide financing for the loan ("Source Series Bonds"), other than Nonpurpose Investments acquired with--

(1) proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to 3 years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed,

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

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the 2019B Certificates, 125 percent of average annual debt service on the 2019B Certificates or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the 2019B Certificates;

(g) to otherwise restrict the use of the proceeds of the 2019B Certificates or amounts treated as proceeds of the 2019B Certificates, as may be necessary, so that the 2019B Certificates do not otherwise contravene the requirements of Section 148 of the Code (relating to arbitrage) and, to the extent applicable, Section 149(d) of the Code (relating to advance refundings);

(1) to account for all Gross Proceeds, as defined in the Code and Regulations, (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 retain all records of such accounting for at least six years after the final Computation Date. The City may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the City, provided that the City separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;

- (2) to calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its Loan, not less frequently than each Computation Date, in accordance with rules set forth in §148(f) of the Code, §1.148-3 of the Regulations, and the rulings thereunder. The City shall maintain a copy of such calculations for at least six years after the final Computation Date;
- (3) as additional consideration for the making of the Loan, and in order to induce the making of the Loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, to pay to the United States the amount described in paragraph (2) above within 30 days after each Computation Date; and
- (4) to exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (2) above and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations; and

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the 2019B Certificates) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of Section 148(f) of the Code, and to pay to the United States of America, not later than 60 days after the 2019B Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under Section 148(f) of the Code;

(i) to maintain such records as will enable the City to fulfill its responsibilities under this Section and Section 148 of the Code, and to retain such records for at least six years following the final payment of principal on the 2019B Certificates;

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

(k) to refrain from using the proceeds provided the TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the 2019B Certificates in contravention of the requirements of section 149(d) of the Code.

In order to facilitate compliance with the above covenants, a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the certificate holders. The Rebate Fund is established for the additional purpose of compliance with Section 148 of the Code.

It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the 2019B Certificates, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the 2019B Certificates under Section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the 2019B Certificates, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the 2019B Certificates under Section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the 2019B Certificates.

**8.09. Ordinance a Contract – Amendments – Outstanding Certificates.** This Ordinance shall constitute a contract with the Owners from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any 2019B Certificate remains Outstanding except as permitted in this Section. The City may, without the consent of or notice to any Owners, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Owners, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Owners holding a majority in aggregate principal amount of the 2019B Certificates then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided that, without the consent of all Owners of Outstanding 2019B Certificates, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and the redemption price, or in any other way modify the terms of payment of the principal of or premium, if any, in the 2019B Certificates, (2) give any preference to any 2019B Certificate over any other 2019B Certificate, or (3) reduce the aggregate principal amount of 2019B Certificates required to be held by Owners for consent to any such amendment, addition, or rescission.

The term "Outstanding" when used in this Ordinance with respect to 2019B Certificates means, as of the date of determination, all 2019B Certificates theretofore issued and delivered under this Ordinance, except:

- (1) those 2019B Certificates canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;
- (2) those 2019B Certificates deemed to be duly paid by the City in accordance with the provisions of Article XI hereof; and
- (3) those mutilated, destroyed, lost, or stolen 2019B Certificates which have been replaced with 2019B Certificates registered and delivered in lieu thereof as provided in Section 3.09 hereof.

Notwithstanding anything in this Section to the contrary, the City shall not amend this Ordinance without the approval of the Board for so long as the Board is a Holder of the 2019B Certificates.

The City further covenants that neither it nor a related party will acquire any of the Board's Source Series Bonds in an amount related to the amount of the 2019B Certificates acquired from the City by the Board.

**8.10. Additional Certifications.** Proper officers of the City charged with the responsibility of issuing the 2019B Certificates are hereby directed to make, execute and deliver certifications as to facts, estimates and circumstances in existence as of the Closing Date and stating whether there are any facts, estimates or circumstances that would materially change the City's current expectations.

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

## ARTICLE IX

### CONTINUING DISCLOSURE UNDERTAKING

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

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

"MSRB" means the Municipal Securities Rulemaking Board.

"Rule" means SEC Rule 15c2-12, as amended from time to time or officially interpreted by the SEC.

"SEC" means the United States Securities and Exchange Commission.

Section 9.02. Annual Reports. The City shall provide annually to the MSRB through EMMA, within six months after the end of each fiscal year ending in or after 2019, financial information and operating data with respect the City that is contained in its annual financial statements as is customarily prepared by the City and publicly available. The financial statements so to be provided shall be (1) prepared in accordance with the accounting principles as the City may be required to employ from time to time pursuant to state law or regulation and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide audited financial statements for the applicable fiscal year to the MSRB through EMMA, when and if the audit report on such statements becomes available.

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

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

Section 9.03. Event Notices. The City shall notify the MSRB through EMMA, in a timely manner not in excess of ten business days after the occurrence of any of the following events with respect to the 2019B Certificates:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue

(IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the 2019B Certificates or other material events affecting the tax-exempt status of the 2019B Certificates;

7. Modifications to rights of holders of the 2019B Certificates, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the 2019B Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material;
15. Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

For the purposes of the preceding (15) of this Section 9.03 of the Ordinance, the term, "financial obligation" means a: (A) Debt obligation; (B) Derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (C) Guarantee of paragraph (A) or (B). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with Rule 15c2-12 of the Securities Exchange Act of 1934.

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

Section 9.04. Limitations, Disclaimers, and Amendments. The City shall be obligated to observe and perform the covenants specified in this Article with respect to the City and the 2019B Certificates while, but only while, the City remains an "obligated person" with respect to the 2019B Certificates within the meaning of the Rule, except that the City in any event will give notice required by Section 9.03 of any bond calls and defeasance that cause the City to no longer be such an "obligated person."

The provisions of this Article are for the sole benefit of the Holders and Beneficial Owners of the 2019B Certificates, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the financial results, condition, or prospects of the City or the State of Texas or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell 2019B Certificates at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY 2019B CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

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

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

The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell 2019B Certificates in the primary offering of the 2019B 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 2019B Certificates consent to such amendment or (b) a Person that is

unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and Beneficial Owners of the 2019B Certificates. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 9.02 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

## ARTICLE X

### DEFAULT AND REMEDIES

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

- (i) the failure to make payment of the principal of, redemption premium, if any, on any of the 2019B Certificates when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Owners, including but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 30 days after notice of such default is given by any Owner to the City.

#### Section 10.02. Remedies for Default.

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

(b) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Owners of 2019B Certificates then outstanding.

### Section 10.03. Remedies Not Exclusive.

(a) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the 2019B Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the 2019B Certificates shall not be available as a remedy under this Ordinance.

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

(c) The TWDB may exercise all remedies available to it in law or equity, and any provision of the 2019B Certificates that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect.

## ARTICLE XI

### DISCHARGE AND DEFEASANCE

#### Section 11.01. Defeasance of Certificates.

(a) Any 2019B Certificate shall be deemed to be paid, retired and no longer outstanding (a "Defeased 2019B Certificate") within the meaning of this Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such 2019B Certificate, either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of prepayment or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar or an eligible trust company or commercial bank for the payment of its services until all Defeased 2019B Certificates shall have become due and payable or (3) any combination of (1) and (2). At such time as a 2019B Certificate shall be deemed to be a Defeased 2019B Certificate hereunder, as aforesaid, such 2019B Certificate shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal shall be payable solely from such money or Defeasance Securities.

(b) The deposit under clause (ii) of subsection (a) shall be deemed a payment of a 2019B Certificate as aforesaid when proper notice of prepayment of such 2019B

Certificate shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with this Ordinance. Any money so deposited with the Paying Agent/Registrar or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City Council also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such 2019B Certificate and premium, if any, with respect to which such money has been so deposited, shall be remitted to the City Council.

(c) Notwithstanding any provision of any other Section of this Ordinance which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of the 2019B Certificate and premium, if any, shall be applied to and used solely for the payment of the particular 2019B Certificate and premium, if any, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased 2019B Certificates shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased 2019B Certificates the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Ordinance.

(d) Notwithstanding anything elsewhere in this Ordinance, if money or Defeasance Securities have been deposited or set aside with the Paying Agent/Registrar or an eligible trust company or commercial bank pursuant to this Section for the payment of the 2019B Certificate and such 2019B Certificate shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the Registered Owner of each 2019B Certificate affected thereby.

(e) Notwithstanding the provisions of subsection (a) above, to the extent that, upon the defeasance of any Defeased 2019B Certificate to be paid at its maturity, the City retains the right under Texas law to later call that Defeased 2019B Certificate for prepayment in accordance with the provisions of this Ordinance, the City may call such Defeased 2019B Certificate for prepayment upon complying with the provisions of Texas law and upon the satisfaction of the provisions of subsection (a) above with respect to such Defeased 2019B Certificate as though it was being defeased at the time of the exercise of the option to prepay the Defeased 2019B Certificate and the effect of the prepayment is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased 2019B Certificate.

## ARTICLE XII

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

Section 12.01. Sale of the Certificates. The sale of the 2019B Certificates to the Texas Water Development Board, the Initial Purchaser, pursuant to a loan commitment received from the Initial Purchaser at the price of par and the payment of a loan or

origination fee of 1.75% is hereby confirmed. The Mayor and all other officers, agents and representatives of the City are hereby authorized to do any and all things necessary or desirable to satisfy the conditions set out therein and to provide for the issuance and delivery of the 2019B Certificates. The Initial 2019B Certificate shall be registered in the name of the Texas Water Development Board.

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

(a) The Mayor is hereby authorized to have control of the Initial 2019B Certificate and all necessary records and proceedings pertaining thereto pending investigation, examination and approval of the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) After registration by the Comptroller of Public Accounts, delivery of the 2019B Certificates shall be made to the Initial Purchaser under and subject to the general supervision and direction of the Mayor, against receipt by the City of all amounts due to the City under the terms of sale.

**ARTICLE XIII**

**ESCROW AGREEMENT**

Section 13.01. Escrow Agent. The City appoints BOKF, NA, as Escrow Agent.

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

Section 13.03. Escrow Account. An escrow account separate and apart from all other funds and accounts of the City is hereby authorized to be created pursuant to the Escrow Agreement referred to in Section 13.01. Except for the proceeds deposited to the Construction Fund in accordance with Section 2.06 hereof, the proceeds of the 2019B Certificates shall be deposited in the escrow account and be transferred to the Construction Fund to pay costs of the project upon the authorized release of the escrowed proceeds by the Board.

**ARTICLE XIV**

**MISCELLANEOUS**

Section 14.01. Further Procedures. The Mayor, City Secretary and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things to execute, acknowledge and deliver in the name and under the official seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable to carry out the terms and provisions of this Ordinance and the 2019B Certificates. In case any officer whose facsimile signature shall appear on any 2019B Certificates shall cease to be such officer before the delivery of the 2019B Certificates, such facsimile signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery.

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

*[The remainder of this page intentionally left blank.]*

PASSED AND APPROVED this 2nd day of July, 2019.

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Mayor  
City of Brady, Texas

ATTEST:

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City Secretary  
City of Brady, Texas

[CITY SEAL]

[Signature Page]

**EXHIBIT A**

**Escrow Agreement**

(See complete copy at Tab \_\_\_\_.)

# City Council

## City of Brady, Texas

### Agenda Action Form

AGENDA DATE:	7-2-2019	AGENDA ITEM	7.E
AGENDA SUBJECT:	Discussion, consideration and possible action ON RESOLUTION 2019-029 CONCERNING A PRINCIPAL FORGIVENESS AGREEMENT WITH THE TEXAS WATER DEVELOPMENT BOARD IN THE APPROXIMATE AMOUNT OF \$4,250,000; ACCEPTING THE TERMS OF THE FINANCIAL ASSISTANCE FROM THE STATE AGENCY; AND, AUTHORIZING OFFICIALS OF THE CITY TO EXECUTE THE AGREEMENT (Waste Water Treatment Plant Project).		
PREPARED BY:	Lisa Remini	Date Submitted:	6-27-2019
EXHIBITS:	Resolution 2019-029		
BUDGETARY IMPACT:	Required Expenditure:	\$00.00	
	Amount Budgeted:	\$00.00	
	Appropriation Required:	\$00.00	
CITY MANAGER APPROVAL:			

#### **SUMMARY:**

The Texas Water Development Board (TWDB) has granted the City of Brady principal forgiveness in the amount of \$4,250,000 through the Clean Water State Revolving Fund Program.

Loan proceeds of \$2,035,000 at zero percent interest, a low interest loan (0.62%) of \$8,400,000 along with the principal forgiveness funds from the TWBD will be used to fund the estimated \$14,685,000 construction cost of a new Waste Water Treatment Plant.

This is the final “leg” of the City’s efforts to provide ongoing sewer treatment service at the lowest possible cost to the citizens of Brady.

Funds will be delivered to BOK, Financial as the city’s escrow agent. Monies will be invested in accordance with the City’s investment policy.

#### **RECOMMENDED ACTION:**

It is recommended that the Council approve Resolution 2019-029 authorizing City Manager Dennis Jobe as the Designated Representative of the City, to execute an agreement with the TWDB for principle forgiveness in the amount of \$4,250,000.

**CITY OF BRADY, TEXAS**  
**RESOLUTION NO. 2019-029**

**Authorized Representative Agreement Execution Resolution**

A RESOLUTION by the City Council of the City of Brady, Texas (the "City") authorizing Dennis Jobe, Interim City Manager, the Designated Representative of the City, to execute an agreement with the Texas Water Development Board for funding in the amount of \$4,250,000.

WHEREAS, the Texas Water Development Board made a commitment to provide financial assistance in the form of principal forgiveness in the amount of \$4,250,000 to the City to finance a wastewater system project upon execution of a principal forgiveness agreement; therefore

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRADY, TEXAS:**

**SECTION 1. Approval of Agreement.** The agreement setting out the terms and conditions of the financial assistance between the Texas Water Development Board and the City is approved and the City's Designated Representative is authorized to execute the agreement on behalf of the City.

**SECTION 2. Effective Date.** This Resolution shall become effective immediately after its adoption.

PASSED AND APPROVED, this the 2nd day of July, 2019.

ATTEST: \_\_\_\_\_  
Tina Keys, City Secretary

By: \_\_\_\_\_  
Anthony Groves, Mayor

By: \_\_\_\_\_  
Dennis Jobe, Interim City Manager

(Seal)

City Council  
City of Brady, Texas

**Agenda Action Form**

AGENDA DATE:	7/02/2019	AGENDA ITEM	7.F.
AGENDA SUBJECT:	Discussion, consideration and possible action authorizing the city manager to execute an engineering amendment with <i>Freese and Nichols, Inc.</i> for construction phase services related to the construction and startup of the proposed new WWTP.		
PREPARED BY:	S. Miller	Date Submitted:	
EXHIBITS:	Amendment to Existing Agreement Scope of Work		
BUDGETARY IMPACT:	Required Expenditure:	\$955,000.00	
	Amount Budgeted:	\$955,000.00	
	Appropriation Required:	\$00.00	
CITY MANAGER APPROVAL:			

**SUMMARY:**

*Freese and Nichols, Inc.* has submitted a derived construction phase services fee for general representation, field resident project inspections including startup and final project checkout, O&M manual preparation, and construction materials testing. These construction phase services and field RPR activities represent a critical aspect of the project. The fee breakout is as follows:

**Basic Services**

<ul style="list-style-type: none"> <li>○ Construction General Representation Services</li> <li>○ Inspection Services – Resident Project Representative</li> <li>○ O&amp;M Manual</li> <li>○ Construction Materials Testing</li> </ul>	<ul style="list-style-type: none"> <li>\$ 366,351.00</li> <li>\$ 468,740.00</li> <li><u>\$ 31,346.00</u></li> <li>• Subtotal \$ 866,437.00</li> <li><u>\$ 88,563.00</u></li> <li>• Total Fee \$ 955,000.00</li> </ul>
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This fee will be delineated in the TWDB Outlay budget templates as shown below in Table 1. Construction phase services provide the necessary oversight, administration and care to ensure a project is properly managed, observed and implemented. During actual construction a large amount of information will need to be exchanged in the form of reviews of material and equipment, responding to requests for information (RFIs'), field directives and change orders. Additionally, field observation and inspection of work installed by general contractors is a requirement from TWDB.

A	B	E	F
1	TABLE 1		
2		TWDB Budget	
3	<u>description</u>	<u>Template</u>	
4	construction	\$13,000,000.00	
5	construction engineering	\$366,351.00	
6	application	\$20,000.00	
7	inspection	\$468,740.00	
8	o&m manual	\$31,346.00	
9	testing	\$88,563.00	
10	bond counsel	\$25,000.00	
11	financial advisor	\$55,000.00	
12	fiscal/legal	\$9,500.00	
13	issuance costs	\$2,000.00	
14	loan origination fee	\$179,472.00	
15	administration	\$54,000.00	
16	project legal expenses	\$10,000.00	
17	contingency	\$375,028.00	
18	<i>TWDB Approved 5-9-2019</i>	\$14,685,000.00	

City staff recommends to city council the approval of an amendment to *Freese and Nichols, Inc.* contract in the total amount of **\$955,000.00** for construction phase services related to the replacement of the city's old sewage treatment plant with a new wastewater treatment plant.

**RECOMMENDED ACTION:**

**Mayor:** Do I have a motion to authorize the city manager to execute the proposed amendment to *Freese and Nichols, Inc.* contract agreement?

**Mayor calls for a motion:**

Move to approve.

**AMENDMENT  
TO  
EXISTING AGREEMENT  
FOR  
CONSTRUCTION PHASE SERVICES - WWTP REPLACEMENT PROJECT**

STATE OF TEXAS §  
COUNTY OF McCULLOCH §  
CITY OF BRADY, TX §

This is an Amendment by and between the City of Brady, Texas, (CITY), a home rule municipal corporation located at 201 E. Main Street, Brady, Texas 76825, and, Freese and Nichols, Inc. (FNI), a professional engineering firm located at 10431 Morado Circle, Ste. 300, Austin, TX 78759, from the original Agreement executed on February 19, 2015.

WHEREAS, CITY desires to obtain certain professional services; and

WHEREAS, FNI is in the business of providing such services.

NOW, THEREFORE, the CITY and FNI mutually agrees as follows:

## I. SCOPE OF SERVICES & OBLIGATIONS

FNI, HEREINAFTER referred to as ENGINEER and shall serve as an ENGINEER of the CITY. The description of services contained herein is intended to be general in nature. It is neither exhaustive, nor a limitation on ENGINEER's services so long as its services actually delivered are consistent with the provisions of this Amendment.

ENGINEER agrees to provide professional services to the CITY generally described as Construction Phase Services – WWTP Replacement Project or as more fully described in and made a part of this Amendment in Attachment A the tasks AND costs of which are listed as follows:

Construction General Representation Services	\$ 366,351.00
Inspection Services – Resident Project Representative	\$ 468,740.00
O&M Manual	<u>\$ 31,346.00</u>
Subtotal Basic Phase Services	\$ 866,437.00
Construction Materials Testing	\$ 88,563.00
Subtotal Special Services	<u>\$ 88,563.00</u>
<b>TOTAL ALL SERVICES</b>	<b>\$ 955,000.00</b>

An Authorization to Proceed shall be issued by the CITY prior to any work commencing or initiation of services by the ENGINEER.

ENGINEER shall procure and maintain at all times, and at its own expense, for the program or services covered by this Amendment, any and all necessary liability insurance with companies authorized to do business in the State of Texas. ENGINEER must deliver to CITY proof of insurance (Attachment B as attached) evidencing that coverage's are in full force and effect.

ENGINEER shall defend, indemnify and hold harmless the CITY, its officials and employees, against all suits or claims that may be based on any injury to persons or property that may occur, or may be alleged to occur, in the course of the performance of this Amendment by ENGINEER, its agents or employees, provided, that the damage, claims, loss, demand, or suit is caused in whole or in part by any negligent act or omission of ENGINEER, or any sub-consultant of ENGINEER, or anyone directly or indirectly employed by ENGINEER.

All professional services provided under this Amendment must be completed as described in each work order; the dates for performance can only be extended with a written consent letter signed by both CITY and ENGINEER.

ENGINEER shall provide services which reflect normal professional and industry standards, procedures and performances. ENGINEER shall exercise due diligence and proper care and perform services subject to this Amendment or Contract in a good and professional workmanlike manner. Approval or acceptance of work delivered or rendered by ENGINEER to CITY shall not constitute, or be deemed, a release of the responsibility and liability of the ENGINEER, its employees, agents, or associates from the exercise of skill and diligence, nor shall CITY's approval be deemed to be an assumption of responsibility by CITY or any defect or error by ENGINEER.

## **II. COMPENSATION**

CITY shall compensate ENGINEER for its services in the amount and manner as described by the individual work orders. Unless otherwise stated or agreed to in writing by both parties, ENGINEER shall invoice CITY at the end of each month for the services performed under the scope of services in each work order during that month.

Additional services shall be negotiated through contract amendment(s) that are authorized by the CITY.

ENGINEER shall invoice the CITY monthly and will reflect the percentage of the project completed at the date of the invoice. The CITY shall process payments of amounts due for Basic Engineering Services, Special Services, Additional Services and Reimbursable Expenses, if any, under this Amendment within 60-days after ENGINEER's presentation of payment invoice. ENGINEER understands payment administration is coordinated with the Texas Water Development Board and release of reimbursements to CITY is through OUTLAY EXPENDITURE REPORTS.

Reimbursable expenses shall mean the ENGINEER's cost of reproduction of reports, drawings and similar project related items. Reimbursable expenses are controlled or otherwise limited as shown in the Reimbursable Expense Addendum as attached and made a part of this Amendment.

## **III. SPECIAL CONDITIONS**

No officer, agent or employee of the CITY is employed by ENGINEER or has a financial interest direct or indirect in this Amendment or the compensation to be paid under this Amendment.

ENGINEER shall promptly correct any defective designs or specification furnished by ENGINEER at no cost to CITY. CITY's approval, acceptance, use of, or payment for all or any part of the Engineer's services hereunder shall in no way alter the Engineer's obligations or rights hereunder.

All documents, including but not limited to original drawings, estimates, specifications, field notes and data that are created for or an outcome of work generated or produced for the CITY shall become the property of CITY. This includes certain intellectual property, such as datasets/results generated from computer programs or software, documentation, specifications, inventions, improvements, discoveries and other copyrightable or patentable works ("Works") developed by ENGINEER, solely or with others, resulting from performance of services under this **Amendment** or Contract and which shall become the property of the CITY.

ENGINEER does hereby irrevocably grant and assign to CITY and its licensees all rights in and to the Works during the performance period of this **Amendment** or Contract and thereafter, including by not limited to the right to reproduce, distribute, prepare derivative Works, display and perform action on the Works.

ENGINEER understands that performing work for the CITY may involve access to and creation of confidential information or information involving the personal privacy and personal identity of customers or citizens, trade secret or other confidential information ("proprietary information") of the CITY and its affiliates or customers. ENGINEER agrees not to disclose or use any proprietary information without the prior written consent of the CITY.

This **Amendment** contains the entire **Amendment** of the Parties and there are no other promises or conditions in any other **Amendment** whether oral or written. This **Amendment** may be modified or amended if the addendum is made in writing and is executed by both parties.

This **Amendment** shall be governed by the laws of the State of Texas. Venue shall be in McCulloch County, Texas

#### IV. TERM

ENGINEER shall complete all Basic Services and Special Services on or before the timeline established in **Attachment A**.

Either party may terminate the **Amendment** or Contract at any time upon thirty (30) days written notice. Upon ENGINEER's receipt of such Notice by the CITY, ENGINEER shall cease work immediately.

If this **Amendment** is terminated by the CITY, the ENGINEER will be paid for services performed to the date of termination. If this **Amendment** is terminated by the ENGINEER, the ENGINEER will be paid for services performed on the completed portions of the project which are usable to the CITY.

If, through any cause, ENGINEER fails to fulfill its obligations under this **Amendment**, or if the ENGINEER violates any of the conditions or requirements of this **Amendment**, CITY has the right to terminate this **Amendment** or Contract by giving the ENGINEER five (5) days written notice the ENGINEER will be compensated for the services satisfactorily performed before the termination date.

CITY OF BRADY, TEXAS

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Dennis Jobe, Interim City Manager

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Date

ATTEST:

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Tina Keys, City Secretary

FREESE AND NICHOLS, INC.

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Trooper Smith, P.E., ENV SP - Vice President

---

Date

**FNI SCOPE OF SERVICES AND RESPONSIBILITIES OF OWNER (CITY OF BRADY)**

**PROJECT DESCRIPTION:** This AMENDMENT includes Construction Phase Services for the Brady WWTP Replacement Project.

**ARTICLE I**

**BASIC SERVICES:** Freese and Nichols, Inc. (FNI) shall provide the following professional services in connection with the development of the Project:

**CONSTRUCTION PHASE:** Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. FNI will endeavor to protect Owner in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

**A. PROJECT MANAGEMENT**

1. Provide monthly invoices and progress reports to OWNER.
2. Manage project scope, cost, quality, staff resources, communications, risk and procurements as necessary.
3. TWDB Coordination: Prepare Texas Water Development Board Outlays on a monthly basis. Reports will include all necessary information to ensure compliance with the Texas Water Development Board's financial assistance program. Coordinate with TWDB representative for site visits, Change Orders, and compliance with CWSRF requirements.

**B. GENERAL REPRESENTATION SERVICES:** These services are in addition to the services of FNI's Resident Project Representative as denoted in Section C.**1. Meetings:**

- a. **Conduct Pre-Construction Conference:** Assist Owner in conducting pre-construction conference(s) with the Contractor(s), review construction schedules prepared by the Contractor(s) pursuant to the requirements of the construction contract, and prepare a proposed estimate of monthly cash requirements of the Project from information provided by the Construction Contractor.
- b. **Construction Site Visits/Construction Progress Meetings:** ENGINEER will attend a maximum of twenty (20) Construction Site Visits/Construction Progress Meetings appropriate to the stage of construction at the site (as distinguished from the continuous services of a Resident Project Representative) and when requested by OWNER, to observe the progress and the quality of work and to attempt to determine in general if the work is proceeding in accordance with the Construction Contract Documents. In this effort FNI will endeavor to protect the

Owner against defects and deficiencies in the work of the General Contractor and will report any observed deficiencies to Owner. Visits to the site in excess of the specified number are an additional service. *Resident Project Representative (RPR) shall be responsible for preparation and distribution of all meeting agendas and minutes.*

- c. **Additional Site Visits:** Attend a maximum of ten (10) site visits (separate from site visits in Item b. above) as needed during construction of the project.
- d. **Punchlist Meeting:** Conduct, in company with the RPR, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment.
- e. **Final Inspection:** Conduct one (1) Final Inspection site visit, in company with the RPR to review status of punchlist items. Prepare a final list of remaining deficiencies to be corrected by the Contractor.
- f. **Plant Start-Up Site Visits:** ENGINEER will attend a maximum of five (5) site visits to witness and assist with plant start-up activities by the Contractor.
- g. **Warranty Site Visit:** ENGINEER will attend one (1) site visit during the warranty period to observe completed construction. Prepare a list of warranty work items to be corrected by the contractor.

2. Review Contractor's submittals including requests for design related information, modification requests, shop drawings, O&M manuals and other submittals in accordance with the requirements of the construction contract documents for the project. FNI will review up to the following number of submittals. Any submittals reviewed beyond these numbers are considered an additional service. Additionally, FNI agrees to review up to two (2) resubmittals for each shop drawing. Reviews after the 2<sup>nd</sup> resubmittal will be considered an additional service.

- a. **Shop Drawings:** One hundred and fifty (150)
- b. **Requests for Information:** Forty (40)
- c. **Contract Modifications (Proposed Contract Modification, Field Order, Contract Modification Request, Change Order):** Twenty (20)
- d. **O&M Manuals:** Twenty (20)

3. Review quality related documents provided by the contractor such as test reports, equipment installation reports or other documentation required by the Construction contract documents.

4. Interpret the drawings and specifications for Owner and Contractor(s). Investigations, analyses, and studies requested by the Contractor(s) and approved by Owner, for substitutions of equipment and/or materials or deviations from the drawings and specifications is an additional service.

5. Perform Texas Accessibility Standards (TAS) Inspection per compliance with Texas Department of Licensing and Regulation (TDLR).

6. Provide the services of a NACE Certified coatings inspector for testing and inspection of High-Performance and Concrete Protective Coatings.

7. Revise the construction drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Two (2) 11x17 sets and

one (1) 22x34 set of prints of "Record Drawings" shall be provided by FNI to Owner. Coordinate with TWDB for Project Closeout Procedures.

C. **CONSTRUCTION MANAGER:** Furnish the services of one part-time (5 hours per week) Construction Manager. Construction manager shall provide the services as follows, separate from the services of the Resident Project Representative.

1. Attend meetings with **CONTRACTOR**, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of agendas and minutes thereof.
2. Establish communication procedures with the Owner and Contractor. Submit (insert frequency; i.e. monthly, bi-monthly, quarterly, etc.) reports of construction progress. Reports will describe construction progress in general terms and summarize project costs, cash flow, construction schedule and pending and approved contract modifications.
3. Establish and maintain a project documentation system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process. Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
4. Establish procedures for administering constructive changes to the construction contracts. Process contract modifications and negotiate with the contractor on behalf of the Owner to determine the cost and time impacts of these changes. Prepare change order documentation for approved changes for execution by the Owner. Documentation of field orders, where cost to Owner is not impacted, will also be prepared. Investigations, analyses, studies or design for substitutions of equipment or materials, corrections of defective or deficient work of the contractor or other deviations from the construction contract documents requested by the contractor and approved by the Owner are an additional service. Substitutions of materials or equipment or design modifications requested by the Owner are an additional service.
5. Prepare documentation for contract modifications required to implement modifications in the design of the project. Receive and evaluate notices of contractor claims and make recommendations to the OWNER on the merit and value of the claim on the basis of information submitted by the contractor or available in project documentation. Endeavor to negotiate a settlement value with the Contractor on behalf of the OWNER, if appropriate. Providing these services to review or evaluate construction contractor(s) claim(s), supported by causes not within the control of FNI are an additional service.

D. **RESIDENT PROJECT REPRESENTATION:** Resident Project Representation (RPR) Services are to be provided to Owner during the Construction Phase by the **ENGINEER**. Furnish the services of one full-time (45 hours per week) Resident Project Representative for a maximum period of 18 months.

1. The duties, responsibilities and the limitations of authority of the Resident Project Representative, and designated assistants, are as follows:
  - a. Resident Project Representative is **ENGINEER**'s agent at the site, will act as directed by and

under the supervision of ENGINEER, and will confer with ENGINEER regarding Resident Project Representative's actions. Resident Project Representative's dealings in matters pertaining to the on-site Work shall in general be with ENGINEER and CONTRACTOR, keeping Owner advised as necessary. Resident Project Representative's dealings with Subcontractors shall only be through or with full knowledge and approval of CONTRACTOR. Resident Project Representative shall generally communicate with Owner with the knowledge of and under the direction of ENGINEER.

2. Duties and Responsibilities of Resident Project Representative:

- a. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedules of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.
- b. Conferences and Meetings: Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings (20), job conferences and other project-related meetings.
- c. Liaison: Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as Owner's liaison with CONTRACTOR when CONTRACTOR's operations affect Owner's on-site operations.
- d. Assist in obtaining from Owner additional details or information, when requested.
- e. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
- f. Coordinate the work of testing laboratories and inspection bureaus required for the testing or inspection of materials, witnessed tests, factory testing, etc. for quality control of the Project.
- g. Review of Work, Rejection of Defective Work, Inspections and Tests:
  - (a) Conduct on-site observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
  - (b) Report to ENGINEER whenever Resident Project Representative believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work the Resident Project Representative believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - (c) Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the CONTRACTOR maintains adequate records thereof; and observe record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
  - (d) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
  - (e) Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
- h. Records:

- (a) Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents, including all Work Change Directives, Addenda, Change Orders, Field Orders, Written Amendments, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, submittals and correspondence received from and delivered to CONTRACTOR and other Project related documents.
  - i. Reports:
    - (a) Furnish to ENGINEER periodic reports as required of progress of the work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawings and Sample submittals.
    - (b) Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
    - (c) When known, report immediately to ENGINEER and Owner the occurrence of any accident.
  - j. Payment Requests: Review Applications for Payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment at the Site but not incorporated in the Work.
  - k. Completion:
    - (a) Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
    - (b) Observe whether CONTRACTOR has performed inspections required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
    - (c) Conduct a final inspection in the company of ENGINEER, Owner and CONTRACTOR and prepare a final list of items to be completed or corrected.
    - (d) Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

#### E. WASTEWATER TREATMENT PLANT OPERATION AND MAINTENANCE (O&M) MANUAL

- 1. ENGINEER will prepare an operation and maintenance manual for Owner in accordance with 30 T.A.C. § 217.16.
  - a. Provide one draft (1) hard copy and one (1) electronic copy to the OWNER for review.
  - b. Address City comments on draft copy and provide two (2) hard copies and one (1) electronic copy of Final O&M Manual to OWNER.

**ARTICLE II**

**SPECIAL SERVICES:** FNI shall render the following special services in connection with the development of the Project.

**A. THIRD-PARTY CONSTRUCTION TESTING**

1. Procure services of a qualified testing laboratory in accordance with the Texas Water Development Board's Disadvantaged Business Enterprise program requirements including adherence to the Texas Water Development Board's "Six Good Faith Efforts". Manage work of materials testing laboratory, receive and document testing results.
2. Complete materials Quality Control testing during construction as described below. The quantities below are estimates based on materials takeoffs from the drawings. Materials testing quantities greater than those estimated below shall be considered an additional service:
  - a. Cast-In-Place Concrete: Up to seventy two (72) separate trips for testing and cylinder pickup. All tests described below shall be completed as part of these trips.
    - (a) Slump – One (1) per Batch
    - (b) Air Content – One (1) per Batch
    - (c) Temperature – One (1) per Batch
    - (d) Compression Tests – Up to three-hundred fifty (350) tests
  - b. Soils Testing: Up to seventy five (75) separate trips for soils testing. All tests described below will be completed during these trips
    - (a) Atterberg Limits Determination – Ten (10)
    - (b) Modified Moisture Density Relationship (D1557, TEX113E) – Five (5)
    - (c) Moisture Density Relationship (D698, TEX114E) – Five (5)
    - (d) Density Testing (Nuclear Gauge) – Daily Per Trip
    - (e) Percent Passing No. 200 Sieve
    - (f) Sieve Analysis
  - c. Asphalt Paving: Up to one (1) trip for taking cores of pavement
    - (a) Asphaltic Concrete Density of Field Core – Up to Three (3)
    - (b) Maximum Theoretical Density Test – Up to Two (2)
3. Furnish Special Inspections required under chapter 17 of the International Building Code.

ARTICLE III

**ADDITIONAL SERVICES:** Additional Services to be performed by FNI, if authorized by Owner, which are not included in the above described basic services, are described as follows:

- B. GIS mapping services or assistance with these services.
- C. Providing renderings, model and mock-ups requested by the Owner.
- D. Making revisions to drawings, specifications or other documents when such revisions are 1) consistent with approvals or instructions previously given by Owner or 2) due to other causes not solely within the control of FNI.
- E. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- F. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by Owner.
- G. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- H. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- I. Conducting pilot plant studies or tests.
- J. Conducting operator training.
- K. Preparing data and reports for assistance to Owner in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- L. Assisting Owner in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- M. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- N. Assisting Owner in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- O. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.

- P. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- Q. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this Agreement.
- R. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- S. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- T. Providing services after the completion of the construction phase not specifically listed in Article I.
- U. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Owner.
- V. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- W. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.
- X. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- Y. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services Agreement.
- Z. Provide follow-up professional services during Contractor's warranty period beyond those stated in Article I.
- AA. Provide Geotechnical investigations, studies and reports.

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon approval by the OWNER and agrees to complete the services in accordance with the following schedule based upon a total project construction duration of twenty (20) calendar months.

IF FNI's services are delayed or suspended in whole or in part by Owner, or if FNI's services are extended by the Contractor's actions or inactions for more than 90 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation.

**RESPONSIBILITIES OF OWNER:** Owner shall perform the following in a timely manner so as not to delay the services of FNI:

BB. Owner recognizes and expects that certain Change Orders may be required. Unless noted otherwise, the Owner shall budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

Further, Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omission, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees to pay for Change Orders and otherwise to make no claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the aggregate costs of all such approved Covered Change Orders exceed 2% for new construction and 4% for reconstruction. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include:

- any costs that Owner would have incurred if the Covered Change Order work had been included originally in the Contract Documents and without any other error or omission of Engineer related thereto,
- Any costs that are due to unforeseen site conditions, or
- Any costs that are due to changes made by the Owner.
- Any costs that are due to the Contractor

Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percent of Construction Cost stated above or for any other Change Order. Wherever used in this document, the term Engineer includes Engineer's officers, directors, partners, employees, agents, and Engineers Consultants.

CC. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to FNI's services for the Project.

DD. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all construction standards which Owner will require to be included in the drawings and specifications.

EE. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.

FF. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Owner

deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of FNI.

- GG. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- HH. Owner shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. Owner shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by Owner.
- II. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Owner may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- JJ. Owner shall determine, prior to receipt of construction bid, if FNI is to furnish Resident Project Representative service so the Bidders can be informed.
- KK. If Owner designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase services as defined in Attachment SC, Article I, C, together with such adjustment of compensation as appropriate.
- LL. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- MM. Give prompt written notice to FNI whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- NN. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article II of this Agreement or other services as required.
- OO. Bear all costs incident to compliance with the requirements of this Article IV.

**DESIGNATED REPRESENTATIVES:** FNI and Owner designate the following representatives:

Owner's Designated Representative: Name: Steven Miller  
Address: 201 E. Main  
Brady, TX 76825  
Phone: 325-597-2152  
Email: [smiller@bradytx.us](mailto:smiller@bradytx.us)

FNI's Project Manager: Name: Coby Gee  
Address: 10431 Morado Circle, Suite 300  
Austin, TX 78759  
Phone: 512-617-3183 (Office)  
Email: [Coby.Gee@freese.com](mailto:Coby.Gee@freese.com)

FNI's Accounting Representative: Name: Billy Metzger  
Address: 10431 Morado Circle, Suite 300  
Austin, TX 78759  
Phone: 512-617-3177  
Email: [Billy.Metzger@freese.com](mailto:Billy.Metzger@freese.com)

ATTACHMENT A

ATTACHMENT B

CERTIFICATE OF INSURANCE REQUIREMENTS  
CITY OF BRADY, TEXAS

Without limiting any of the other obligations or liabilities of the contractor, the ENGINEER shall provide MINIMUM insurance coverage as listed below, prior to the execution of the contract and maintain coverage, without interruption provided by an insurer of a Best Rating of B+ or better, until the work is completed and accepted by the CITY. A certification of insurance will be placed on file with the Purchasing Agent of the City of BRADY, prior to the execution of the Amendment or contract.

**TYPE OF COVERAGE MINIMUM LIMITS**

**WORKER'S COMPENSATION - Coverage A Statutory**

Worker's Compensation Insurance shall include a Waiver of Subrogation in favor of the City of BRADY

**EMPLOYERS LIABILITY - Coverage B**

Bodily Injury by Accident -	Each Accident	\$ 100,000
Bodily Injury by Disease -	Policy Limit	\$ 500,000
Bodily Injury by Disease -	Each Employee	\$ 100,000

**COMMERCIAL GENERAL LIABILITY:**

Coverage A - Each Claim	\$ 500,000
Coverage B - Personal & Advertising Injury	\$ 500,000
General Aggregate Other Than Products/ Completed Operations	\$ 500,000
Products/Completed Operations Aggregate	\$ 500,000

**PROFESSIONAL LIABILITY INSURANCE:**

Each Claim	\$ 750,000
General Aggregate	\$1,000,000

**AUTOMOBILE LIABILITY:**

Bodily Injury Liability -	Each Person	\$ 250,000
Bodily Injury Liability -	Each Claim	\$ 500,000
Property Damage Liability -	Each Claim	\$ 100,000

**NOTES (as applicable):**

- 1) Coverage must include all owned, hired, and non-owned vehicles.
- 2) Coverage must include the City of BRADY as an Additional Insured for all work performed for or on behalf of the City with the exception of workers compensation and professional liability insurance.
- 3) Contractual liability coverage cannot be excluded; and ENGINEER will assume all liability for independent subcontractors.
- 4) Vendor may satisfy the minimum limits required by the Commercial General Liability or Business Automobile Liability insurance with an umbrella or excess liability policy.
- 5) Vendor's insurance shall be deemed primary with respect to any insurance or self-insurance program carried by the CITY.

In the event of any material change, non-renewal, or cancellation of any policy, ENGINEER's insurance company will give thirty (30) days actual prior written notice to the Contracting Department of the City of BRADY for such changes or cancellation.

REIMBURSIBLE EXPENSES ADDENDUM TO AMENDMENT  
FOR ENGINEERING SERVICES -

The Amendment to which this Addendum is attached obligates the City of Brady ("CITY") to pay your expenses associated with delivery of services and work product.

This Addendum amends the Amendment to state the maximum amounts, which CITY will reimburse you for the types of expenses listed. CITY provides quality services on a frugal public budget and we expect the same good stewardship of public funds by ENGINEERs or professionals with whom CITY contracts.

These expense limitations also apply to subconsultants, subcontractors, experts and other third parties whom you may hire. You and others are free to incur any level of cost or luxury desired, but City's obligation to reimburse expenses is capped at the lesser of either actual cost or the maximums stated for each category below. Itemized receipts or accounting are a prerequisite to City's obligation to pay the expenses listed in this Addendum:

Hotel. \$100.00 per night inclusive of taxes. City will not pay for room service, Internet, movies, massages, valet parking, telephone calls (except to City personnel on job-related matters), or other hotel services. (In cities over 200,000 population, the rate = \$125.00/night).

Airfare. City pays only the lowest available fare for economy e-ticket as shown on the airline's website.

Rental car. City will pay the rental, taxes and self-serve fuel for a compact or mid-size car; no fuel charges, waivers, or insurance fees. A larger vehicle may be authorized for special needs or business necessity.

Meals. Actual costs, up to a maximum of \$38 per day per person; no alcohol. Receipts are required.

Amenities. You are solely responsible for the cost of snacks, drinks, alcohol, etc. that are not necessary for conducting City business.

Business services. When in Brady – you shall use photocopiers, printers, facsimiles, and similar services at City Hall. When in other locations – CITY will pay you the actual cost of such services as evidenced by your receipts.

Surcharges and/or Overhead. CITY does not pay any percentage defined as "administrative" cost or other expenses.

Exceptions. You may request an exception by CITY to any of the above limits due to special needs of the case or reasonable accommodation for a disability.