

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$ _____ "CITY OF KYLE, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2016"; AUTHORIZING THE REFUNDING OF CERTAIN OUTSTANDING OBLIGATIONS; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX ON ALL TAXABLE PROPERTY WITHIN THE CITY TO PAY THE INTEREST ON SAID BONDS AND TO CREATE A SINKING FUND FOR THE REDEMPTION THEREOF AND THE ASSESSMENT AND COLLECTION OF SUCH TAXES; AUTHORIZING THE DELIVERY OF AN ESCROW AGREEMENT; AUTHORIZING THE SALE THEREOF; AND ENACTING PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE OF SAID BONDS

WHEREAS, the City of Kyle, Texas (the "City") has heretofore issued its:

Combination Tax and Revenue Certificates of Obligation, Series 2007, dated March 15, 2007 (the "Series 2007 Certificates");

Combination Tax and Revenue Certificates of Obligation, Series 2008, dated April 1, 2008 (the "Series 2008 Certificates"); and

General Obligation Refunding Bonds, Series 2009, dated November 15, 2009 (the "Series 2009 Bonds"); and

WHEREAS, the City desires to defease and/or refund in advance of their maturities:

1. \$750,000 representing a portion of the callable outstanding Series 2007 Certificates maturing August 15, 2027 (the "Series 2007 Refunded CO Obligations");
2. \$2,160,000 representing a portion of the callable outstanding Series 2008 Certificates maturing August 15, 2031 (the "Series 2008 Refunded CO Obligations");
3. \$6,110,000 representing a portion of the callable maturities of its outstanding Series 2009 Bonds maturing February 15, 2021 through February 15, 2025, inclusive (the "Series 2009 Refunded Bond Obligations");

WHEREAS, the Series 2007 Refunded CO Obligations, the Series 2008 Refunded CO Obligations and the Series 2009 Refunded Bond Obligations are collectively referred to herein as the "Refunded Obligations"; and

WHEREAS, Chapter 1207, Texas Government Code, as amended (the "Act"), authorizes the City to issue refunding bonds payable from taxes, without an election, for the purpose of refunding the Refunded Obligations in advance of their maturities and to accomplish such refunding by depositing an amount sufficient to provide for the discharge and final payment or redemption of the Refunded Obligations; and

WHEREAS, the City desires to authorize the execution of an escrow agreement and provide for the deposit of proceeds of the refunding bonds, together with other funds, if any, to pay the Refunded Obligations; and

WHEREAS, the City desires to restructure the City's debt service obligations and in so doing will result in a net present value savings of approximately \$_____; and

WHEREAS, upon the issuance of the refunding bonds herein authorized and the deposit of funds referred to above, the Refunded Obligations shall no longer be regarded as being outstanding, except for the purpose of being paid pursuant to such deposit, and the pledges, liens, trusts and all other covenants, provisions, terms and conditions of the ordinances authorizing the issuance of the Refunded Obligations shall be, with respect to the Refunded Obligations, discharged, terminated and defeased; and

WHEREAS, on the 2nd day of August, 2016, after notice and public hearing as required by the City Charter, the City Council of the City convened at 7:00 p.m. and considered the passage of an ordinance (the "Ordinance") authorizing the issuance of its General Obligation Refunding Bonds, Series 2016 (the "Bonds"); and

WHEREAS, the City Council determined that at this time the Bonds should be delivered and sold for cash.

NOW, THEREFORE, BE IT ORDAINED, ADJUDGED AND DECREED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS:

SECTION 1. Recitals; Consideration. It is hereby found and determined that the matters and facts set out in the preamble to this Ordinance are true and correct.

It is hereby found and determined that the transactions contemplated in this Ordinance result in a restructuring of its debt service and that such benefit of restructuring its outstanding debt service requirements is sufficient consideration for the refunding of the Refunded Obligations. The refunding will result in a gross savings of \$_____ and a net present value savings of \$_____.

SECTION 2. Definitions.

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

"Act" means Chapter 1207, Texas Government Code, as amended.

"Bond" or "Bonds" means the Bonds authorized to be issued by Section 3 of this Ordinance and designated as "City of Kyle, Texas General Obligation Refunding Bonds, Series 2016".

"City" means the City of Kyle, Texas.

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

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

"Dated Date" means the dated date of the Bonds, August 1, 2016.

"Defeasance Securities" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the City adopts or approves the proceedings authorizing the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (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 City adopts or approves the proceedings authorizing the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable law of the State of Texas that may be used to defease obligations such as the Bonds.

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

"DTC" means The Depository Trust Company, 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 Wilmington Trust, National Association, Dallas, Texas, as escrow agent for the Refunded Obligations.

"Escrow Agreement" means the escrow agreement between the City and the Escrow Agent relating to the escrow of funds to pay the Refunded Obligations.

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

"Initial Bond" means the initial bond described in Sections 3 and 20 of this Ordinance.

"Interest and Sinking Fund" means the interest and sinking fund established by Section 22 of this Ordinance.

"Interest Payment Date" when used in connection with any Bond means the date or dates upon which interest on each Bond is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being February 15 and August 15 of each year, commencing February 15, 2017.

"Owner," "Holder" or "Registered Owner" means the person who is the registered owner of a Bond or Bonds as shown in the Register.

"Paying Agent/Registrar" shall mean Registrar.

"Record Date" means the close of business on the last business day of the month next preceding the month in which an Interest Payment Date occurs.

"Register" means the register specified in Section 12 of this Ordinance.

"Registrar" means initially Wilmington Trust, National Association.

"Representation Letter" means the Letter of Representations with respect to the Bonds between the City and DTC.

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

"Underwriter" means Citigroup Global Markets Inc.

SECTION 3. Authorization, Maturities, Interest Rates and Interest Payment Dates. The Bonds shall be issued as fully registered obligations, without coupons, paying accrued interest to the Holders or Owners on and at stated intervals prior to Stated Maturity, in the aggregate principal amount of \$_____ for the purposes of refunding a portion of the City's outstanding general obligation debt for debt service savings to the City and to pay the costs of issuance for the Bonds.

The Bonds (other than the Initial Bond which shall be numbered T-1) shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity) thereof, shall

be lettered "R" and numbered consecutively from One (1) upward, and principal shall become due and payable on February 15 or August 15, as applicable, in each of the years and in amounts (the "Stated Maturities") and bear interest at the rate(s) per annum in accordance with the following schedule:

| <u>Stated Maturity</u> | <u>Principal Amount</u> | <u>Interest Rate(s)</u> |
|------------------------|-------------------------|-------------------------|
| 02/15/2021 | \$ | % |
| 02/15/2022 | \$ | % |
| 02/15/2023 | \$ | % |
| 02/15/2024 | \$ | % |
| 02/15/2025 | \$ | % |
| *** | *** | *** |
| 08/15/2027 | \$ | % |
| *** | *** | *** |
| 08/15/2029 | \$ | % |
| *** | *** | *** |
| 08/15/2031 | \$ | % |

The Bonds shall bear interest on the unpaid principal amounts from the Date of Delivery, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on February 15 and August 15 in each year, commencing February 15, 2017.

SECTION 4. Designation and Date. The Bonds shall be designated as "City of Kyle, Texas General Obligation Refunding Bonds, Series 2016" and shall be dated August 1, 2016.

SECTION 5. Execution of Bonds; Seal. The Bonds shall be signed by the Mayor and the City Secretary, by their manual, lithographed, or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds. If any officer of the City whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the authentication of such Bonds or before the delivery of such Bonds, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in such office.

SECTION 6. Approval by Attorney General; Registration by Comptroller. The Initial Bond shall be delivered to the Attorney General of Texas for approval and shall be registered by the Comptroller. The manually executed registration certificate of the Comptroller substantially in the form provided in Section 20 of this Ordinance shall be

attached or affixed to the Initial Bond.

SECTION 7. Authentication. Except for the Initial Bond, which needs not be authenticated by the Registrar, only such Bonds which bear thereon a certificate of authentication, substantially in the form provided in Section 20 of this Ordinance, manually executed by an authorized representative of the Registrar, shall be entitled to the benefits of this Ordinance or shall be valid or obligatory for any purpose. Such duly executed certificate of authentication shall be conclusive evidence that the Bonds so authenticated were delivered by the Registrar hereunder.

SECTION 8. Payment of Principal and Interest. The Registrar is hereby appointed as the Paying Agent and Registrar for the Bonds. The principal of the Bonds shall be payable, without exchange or collection charges, in any coin or currency of the United States of America which on the date of payment is legal tender for the payment of debts due the United States of America, upon their presentation and surrender as they respectively become due and payable, whether at maturity or by prior redemption, at the Designated Payment/Transfer Office of the Registrar. The interest on each Bond shall be payable on each Interest Payment Date, by check mailed by the Registrar on or before the Interest Payment Date to the Owner of record as of the Record Date, to the address of such Owner as shown on the Register, or by such other method acceptable to the Registrar, requested by, and at the risk and expense of, the Owner.

If the date for payment of the principal of or interest on any Bond is not a Business Day, then the date for such payment shall be the next succeeding Business Day with the same force and effect as if made on the date payment was originally due.

SECTION 9. Successor Registrars. The City covenants that at all times while any Bonds are outstanding it will provide a commercial bank or trust company organized under the laws of the State of Texas or other entity duly qualified and legally authorized to serve as and perform the duties and services of the Registrar and Paying Agent for the Bonds. The City reserves the right to change the Registrar on not less than 60 days written notice to the Registrar, so long as any such notice is effective not less than 60 days prior to the next succeeding principal or Interest Payment Date on the Bonds. Promptly upon the appointment of any successor Registrar, the previous Registrar shall deliver the Register or copies thereof to the new Registrar, and the new Registrar shall notify each Owner, by United States mail, first class postage prepaid, of such change and of the address of the new Registrar. Each Registrar hereunder, by acting in that capacity, shall be deemed to have agreed to the provisions of this Section.

SECTION 10. Special Record Date. If interest on any Bond is not paid on any Interest Payment Date and continues unpaid for thirty (30) days thereafter, the Registrar shall establish a new record date for the payment of such interest, to be known as a Special Record Date. The Registrar shall establish a Special Record Date when funds to make such interest payment are received from or on behalf of the City. Such Special Record Date shall be fifteen (15) days prior to the date fixed for payment of such past due interest, and notice of the date of payment and the Special Record Date shall be

sent by United States mail, first class, postage prepaid, not later than five (5) days prior to the Special Record Date, to each affected Owner of record as of the close of business on the date prior to the mailing of such notice.

SECTION 11. Ownership; Unclaimed Principal and Interest. The City, the Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal of or interest on such Bond, and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Registrar shall be bound by any notice or knowledge to the contrary. All payments made to the person deemed to be the Owner of any Bond in accordance with this Section 11 shall be valid and effectual and shall discharge the liability of the City and the Registrar upon such Bond to the extent of the sums paid.

Amounts held by the Registrar which represent principal of and interest on the Bonds 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 Registrar in accordance with the applicable provisions of Texas law including, to the extent applicable, Title 6 of the Texas Property Code, as amended.

SECTION 12. Registration, Transfer, and Exchange. So long as any Bonds remain outstanding, the Registrar shall keep a Register (the "Register") at its Designated Payment/Transfer Office and, subject to such reasonable regulations as it may prescribe, the Registrar shall provide for the registration and transfer of Bonds in accordance with the terms of this Ordinance.

Each Bond shall be transferable only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Registrar, duly endorsed for transfer, or accompanied by an assignment duly executed by the registered Owner or his authorized representative in form satisfactory to the Registrar. Upon due presentation of any Bond for transfer, the Registrar shall, to the extent possible and under reasonable circumstances, authenticate and deliver in exchange therefor, within 72 hours after such presentation, a new Bond or Bonds, registered in the name of the transferee or transferees, in authorized denominations and of the same maturity and aggregate principal amount and bearing interest at the same rate as the Bond or Bonds so presented.

All Bonds shall be exchangeable upon presentation and surrender thereof at the Designated Payment/Transfer Office of the Registrar for a Bond or Bonds of the same maturity and interest rate and in any authorized denomination, in an aggregate amount equal to the unpaid principal amount of the Bond or Bonds presented for exchange. The Registrar shall be and is hereby authorized to authenticate and deliver exchange Bonds in accordance with the provisions of this Section 12. Each Bond delivered in accordance with this Section 12 shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such Bond is delivered.

The City or the Registrar may require the Owner of any Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer or exchange of such Bond. Any fee or charge of the Registrar for such transfer or exchange shall be paid by the City.

SECTION 13. Mutilated, Lost, or Stolen Bonds. Upon the presentation and surrender to the Registrar of a mutilated Bond, the Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like maturity, interest rate, and principal amount, bearing a number not contemporaneously outstanding. If any Bond is lost, apparently destroyed, or wrongfully taken, the City, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authorize and the Registrar shall authenticate and deliver a replacement Bond of like maturity, interest rate and principal amount, bearing a number not contemporaneously outstanding.

The City or the Registrar may require the Owner of a mutilated Bond to pay a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith and any other expenses connected therewith, including the fees and expenses of the Registrar. The City or the Registrar may require the Owner of a lost, apparently destroyed or wrongfully taken Bond, before any replacement Bond is issued, to:

- (1) furnish to the City and the Registrar satisfactory evidence of the ownership of and the circumstances of the loss, destruction or theft of such Bond;
- (2) furnish such security or indemnity as may be required by the Registrar and the City to save them harmless;
- (3) pay all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Registrar and any tax or other governmental charge that may be imposed; and
- (4) meet any other reasonable requirements of the City and the Registrar.

If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except 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 Registrar in connection therewith.

If any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a replacement Bond, authorize the Registrar to pay such Bond.

Each replacement Bond delivered in accordance with this Section 13 shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

SECTION 14. Cancellation of Bonds. All Bonds paid in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance herewith, shall be canceled and destroyed upon the making of proper records regarding such payment. The Registrar shall furnish the City with appropriate certificates of destruction of such Bonds.

SECTION 15. Book-Entry-Only System.

(a) The definitive Bonds shall be initially issued in the form of a separate single fully registered Bond for each of the maturities thereof. Upon initial issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 16 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

(b) With respect to Bonds 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 Bonds, 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 Bonds, (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 Bonds, 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, or interest on the Bonds. 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 Bond is registered in the Register as the absolute Owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on the Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds 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, premium, if any, and interest on the Bonds 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., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the registered Owner at the close of business on the Record Date, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

SECTION 16. Successor Securities Depository; Transfer Outside Book-Entry-Only System. In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter by and between the City, the Paying Agent/Registrar and DTC (the "Representation Letter"), and that it is in the best interest of the Owners of the Bonds that they be able to obtain certificated Bonds, 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 Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants, as identified by DTC, of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts, as identified by DTC. In such event, the Bonds 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 Bonds shall designate, in accordance with the provisions of this Ordinance.

SECTION 17. Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds 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 Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 18. Effect of Pledge. Chapter 1208, Government Code, applies to the issuance of the Bonds and the pledge of the taxes thereof granted by the City under Section 22 of this Ordinance, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the taxes granted by the City under Section 22 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 Owners of the Bonds 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 19. Redemption. The Bonds shall be subject to redemption before scheduled maturity only as provided in this Section 19.

(a) *Optional Redemption.* The City reserves the right, at its option, to redeem

Bonds having stated maturities on or after February 15, 20____ prior to maturity, in whole or in part, on August 15, 20____, or any date thereafter, at the par value thereof plus accrued interest to the date fixed for redemption.

The Bonds may be redeemed only in integral multiples of \$5,000. If a Bond subject to redemption is in a denomination larger than \$5,000, a portion of such Bond may be redeemed, but only in integral multiples of \$5,000. Upon surrender of any Bond for redemption in part, the Registrar, in accordance with Section 12 hereof, shall authenticate and deliver in exchange therefor a Bond or Bonds of like maturity and interest rate in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered.

(b) *Mandatory Redemption.* The Bonds maturing on [February/August] 15, 20____ and [February/August] 15, 20____ (the "Term Bonds") are subject to mandatory redemption prior to maturity at the price of par and accrued interest and shall be redeemed, in part, on the date and in the principal amount set forth below:

\$ _____ Term Bonds Due February/August 15, 20

February/August 15, 20____ \$ _____
 February/August 15, 20____ \$ _____ (Maturity)

\$ _____ Term Bonds Due February/August 15, 20

February/August 15, 20____ \$ _____
 February/August 15, 20____ \$ _____ (Maturity)

At least forty-five days prior to each mandatory redemption date specified above that the Term Bonds are to be mandatorily redeemed, the Paying Agent/Registrar shall select by lot the numbers of the Term Bonds within the applicable maturity to be redeemed on the next following [February/August 15] from moneys set aside for that purpose in the Interest and Sinking Fund. Any Term Bonds not selected for prior redemption shall be paid on the date of their stated maturity.

The principal amount of the Term Bonds required to be redeemed pursuant to the operation of such mandatory redemption provisions may be reduced, at the option of the City, by the principal amount of the Term Bonds of the same maturity which at least fifty (50) days prior to a mandatory redemption date (i) shall have been defeased or acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase and delivered to the Paying Agent/Registrar for cancellation or (ii) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with money in the Interest and Sinking Fund.

(c) *Partial Redemption.* If less than all of the Bonds are to be redeemed and

if less than all of a maturity is to be redeemed, the Registrar shall determine by lot the Bonds, or portions thereof, within such maturity to be redeemed.

(d) *Notice of Redemption to Owners.* Notice of any redemption identifying the Bonds to be redeemed shall be given by the Registrar at least thirty days prior to the date fixed for redemption by sending written notice by United States mail, first class, postage prepaid, to the Owner of each Bond to be redeemed in whole or in part at the address of the registered Owner appearing on the Register at the close of business on the Business Day next preceding the date of mailing such notice. Such notices shall state the redemption date, the redemption price, the place at which Bonds are to be surrendered for payment and, if less than all Bonds of a particular maturity are to be redeemed, the numbers of the Bonds or portions thereof of that maturity to be redeemed. Any notice given as provided in this Section 19 shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice. By the date fixed for redemption, due provision shall be made with the Registrar for payment of the redemption price of the Bonds or portions thereof to be redeemed. When Bonds have been called for redemption in whole or in part and due provision has been made to redeem same as herein provided, the Bonds or portions thereof so redeemed shall no longer be regarded as outstanding except for the purpose of receiving payment solely from the funds so provided for redemption, and the rights of the Owners to collect interest which would otherwise accrue after the redemption date on any Bond or portion thereof called for redemption shall terminate on the date fixed for redemption.

The City reserves the right to give notice of its election or direction to optionally redeem Bonds conditioned upon the occurrence of subsequent events. Such notice may state (i) that the redemption is conditioned upon the deposit of moneys and/or authorized securities, in an amount equal to the amount necessary to effect the redemption, with the Paying Agent/Registrar, or such other entity as may be authorized by law, no later than the redemption date or (ii) that the City retains the right to rescind such notice at any time prior to the scheduled redemption date if the City delivers a certificate of the City to the Paying Agent/Registrar instructing the Paying Agent/Registrar to rescind the redemption notice, and such notice of redemption shall be of no effect if such moneys and/or authorized securities are not so deposited or if the notice is rescinded. The Paying Agent/Registrar shall give prompt notice of any such rescission of a conditional notice of redemption to the affected owners. Any Bonds subject to conditional redemption where redemption has been rescinded shall remain outstanding.

SECTION 20. Forms.

(a) *Form Generally.* The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment form to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this

the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount herein above 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 Date of Delivery, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing February 15, 2017. Principal of this Bond is payable at its Stated Maturity or redemption to the Registered Owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor. Interest is payable to the Registered Owner of this Bond whose name appears on the "Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the last business day of the month next preceding each Interest Payment Date, and interest shall be paid by the Paying Agent/Registrar by check sent by United States mail, first class postage prepaid, to the address of the Registered Owner recorded in the Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the 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.

THIS BOND is one of the series specified in its title issued in an aggregate principal amount of \$_____ (herein referred to as the "Bonds") for the purposes of refunding a portion of the City's outstanding general obligation debt for debt service savings to the City and to pay the costs of issuance for the Bonds, pursuant to an ordinance adopted by the City Council of the City on August 2, 2016 (the "Ordinance").

THE BONDS maturing on and after February 15, 20____, may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected by lot by the Paying Agent/Registrar), on August 15, 20____, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption and upon 30 days prior written notice being sent by United States mail, first class postage prepaid, to the Registered Owners of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance.

THE BONDS maturing on [February/August] 15, 20____ and [February/August] 15, 20____ (the "Term Bonds") are subject to mandatory redemption prior to maturity at the price of par and accrued interest and shall be redeemed, in part, on the date and in the principal amount set forth below:

\$ _____ Term Bonds Due February/August 15, 20 _____

February/August 15, 20____ \$ _____
February/August 15, 20____ \$ _____ (Maturity)

\$ _____ Term Bonds Due February/August 15, 20 _____

February/August 15, 20____ \$ _____
February/August 15, 20____ \$ _____ (Maturity)

AT LEAST FORTY-FIVE DAYS prior to each mandatory redemption date specified above that the Term Bonds are to be mandatorily redeemed, the Paying Agent/Registrar shall select by lot the numbers of the Term Bonds within the applicable maturity to be redeemed on the next following [February/August] 15 from moneys set aside for that purpose in the Interest and Sinking Fund. Any Term Bonds not selected for prior redemption shall be paid on the date of their stated maturity.

THE PRINCIPAL AMOUNT of the Term Bonds required to be redeemed pursuant to the operation of such mandatory redemption provisions may be reduced, at the option of the City, by the principal amount of the Term Bonds of the same maturity which at least fifty (50) days prior to a mandatory redemption date (i) shall have been defeased or acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued interest to the date of purchase and delivered to the Paying Agent/Registrar for cancellation or (ii) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the City with money in the Interest and Sinking Fund.

IF THIS BOND (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor, provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

IN THE EVENT OF A PARTIAL REDEMPTION of the principal amount of this Bond, payment of the redemption price of such principal amount shall be made to the Registered Owner only upon presentation and surrender of this Bond to the Paying Agent/Registrar at its Designated Payment/Transfer Office, and there shall be issued to the Registered Owner hereof, without charge, a new Bond or Bonds of like maturity and interest rate in any authorized denominations provided by the Ordinance for the then unredeemed balance of the principal sum hereof. If this Bond is selected for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer this Bond to an assignee of the Registered Owner within 45 days of the redemption date therefor; provided, however, such limitation on transferability shall

not be applicable to an exchange by the Registered Owner of the unredeemed balance hereof in the event of its redemption in part.

THE BONDS are payable from the proceeds of an ad valorem tax levied, within the limits prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Registered Owner or Holder of this Bond by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied and pledged for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of this Bond; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be discharged at or prior to its maturity, and deemed to be no longer outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

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

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

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and

things to be done precedent to and in the issuance of this Bond 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, to pay the interest on this Bond and the series of which it is a part as due and to provide for the payment of the principal as the same matures; and that the total indebtedness of the City, including the Bonds does not exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City has caused this Bond 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 Bond.

Mayor
City of Kyle, Texas

City Secretary
City of Kyle, Texas

[SEAL]

(f) Form of Comptroller's Registration Certificate.

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

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

I hereby certify that there is on file and of record in my office a Certificate of the Attorney General of the State of Texas to the effect that this Bond 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 Bond 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

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

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

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Bond of this series of Bonds 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 Bonds referred to in the within-mentioned Ordinance.

WILMINGTON TRUST, NATIONAL ASSOCIATION
as Paying Agent/Registrar

Dated: _____

By: _____
Authorized Signatory

(h) 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) (Please insert Social Security or Taxpayer Identification Number)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney, to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240-17Ad-15).

NOTICE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.

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

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

REGISTERED
No. T-1

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF KYLE, TEXAS
GENERAL OBLIGATION REFUNDING BOND
SERIES 2016

Dated Date: August 1, 2016

Registered Owner:

Principal Amount: DOLLARS

THE CITY OF KYLE, TEXAS (hereinafter referred to as the "City"), for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount herein above stated on February 15 or August 15, as applicable, in the years and in principal installments in accordance with the following schedule:

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

(Information to be inserted from
schedule in Section 3 hereof.)

(or so much principal thereof as shall not have been prepaid prior to maturity) and to pay interest on the unpaid principal installments hereof from the Date of Delivery, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 15 and August 15 in each year, commencing February 15, 2017. Principal installments of this Bond are payable in the year of maturity or on a prepayment date to the Registered Owner hereof by Wilmington Trust, National Association (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 Bond whose name appears on the "Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the last business day of the month next preceding each Interest Payment Date, and interest shall be paid by the Paying Agent/Registrar by check sent by United States mail, first class postage prepaid, to the address of the Registered Owner recorded in the Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the 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.

SECTION 21. CUSIP Registration and Legal Opinion.

(a) *CUSIP Numbers.* The City may secure identification numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association ("CUSIP numbers"), and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

(b) *Legal Opinion.* The approving legal opinion of Bickerstaff Heath Delgado Acosta LLP, Bond Counsel, may be printed on the reverse side of each Bond or may be attached to each Bond.

SECTION 22. Interest and Sinking Fund; Tax Levy. There is hereby established a separate fund of the City to be known as the "City of Kyle, Texas General Obligation Refunding Bonds, Series 2016 Interest and Sinking Fund" (the "Interest and Sinking Fund"), which shall be kept separate and apart from all other funds of the City. The proceeds from all taxes levied, assessed and collected for and on account of the Bonds authorized by this Ordinance shall be deposited, as collected, in the Interest and Sinking Fund. While the Bonds or any part of the principal thereof or interest thereon remain outstanding and unpaid, there is hereby levied and there shall be annually assessed and collected in due time, form and manner, and at the same time as other City taxes are assessed, levied and collected, in each year, beginning with the current year, a continuing direct annual ad valorem tax, within the limits prescribed by law, upon all taxable property in the City, sufficient to pay the current interest on the Bonds as the same becomes due and to provide and maintain a sinking fund of not less than two percent of the principal amount of the Bonds or the amount required to pay each installment of principal of the Bonds as the same matures, whichever is greater, full allowance being made for delinquencies and costs of collection, and said taxes are hereby irrevocably pledged to the payment of the interest on and principal of the Bonds and to no other purpose.

SECTION 23. Control and Delivery of the Bonds. After the Bonds to be initially issued shall have been executed, it shall be the duty of the Mayor and other appropriate officials and agents of the City to deliver the Bonds to be initially issued and all pertinent records and proceedings to the Attorney General of the State of Texas, for examination and approval. After the Bonds to be initially issued shall have been approved by the Attorney General, they shall be delivered to the Comptroller for registration. Upon registration of the Bonds to be initially issued, the Comptroller (or the Comptroller's bond clerk or an assistant bond clerk lawfully designated in writing to act for the Comptroller) shall manually sign the Comptroller's Registration Certificate prescribed herein and the

seal of said Comptroller shall be impressed, or placed in facsimile, thereon.

SECTION 24. Sale; Bond Purchase Agreement. The Bonds are hereby sold and shall be delivered to the Underwriter at a price of \$_____ (representing the principal amount of the Bonds, plus a net original issue premium of \$_____ and less an Underwriter's discount of \$_____), in accordance with the terms of a Bond Purchase Agreement of even date herewith, presented to and hereby approved by the City Council, which price and terms are hereby found and determined to be the most advantageous and reasonably obtainable by the City. The Mayor is authorized to execute the Bond Purchase Agreement. In addition, other appropriate officials of the City are hereby authorized and directed to execute such Bond Purchase Agreement on behalf of the City. 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 Bonds. The Initial Bond shall be registered in the name of _____.

SECTION 25. Covenants Regarding Tax Exemption of Interest on the Bonds. The City covenants to take any action necessary to secure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

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

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

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

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

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

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

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

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

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

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

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

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

In order to facilitate compliance with the above covenants (h) and (i), a "Rebate Fund" is hereby authorized to be established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is authorized to

be 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 Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor, the City Manager and the Director of Finance of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

In addition, the City covenants that the property being financed with the proceeds of the Refunded Obligations and the property financed in accordance with the authorization of the voters of the City, as described in the recitals to this Ordinance, will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

SECTION 26. Use of Proceeds.

On the Closing Date, the City shall cause the proceeds from the sale of the Bonds to be deposited as follows:

- (1) \$_____ from premium to pay the costs of issuance, consisting of:
 - \$_____ of general costs of issuance; and
 - \$_____ of Underwriter's Discount;
- (2) \$_____ rounding amount to the Interest and Sinking Fund;
and

- (3) The balance of the proceeds from the sale of the Bonds shall be applied to establish an escrow fund to refund the Refunded Obligations, as more fully provided below, and, to the extent not otherwise provided for, to pay all expenses arising in connection with the issuance of the Bonds, the establishment of such escrow fund and the refunding of the Refunded Obligations. Any proceeds of the Bonds remaining after making all such deposits and payments shall be deposited into the Interest and Sinking Fund.

SECTION 27. Security of Funds. All moneys on deposit in the funds referred to in this Ordinance shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and moneys on deposit in such funds shall only be used for the purposes permitted by this Ordinance.

SECTION 28. Defeasance.

(a) Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, 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 in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure 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 for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem Defeased Bonds that is made in conjunction with the payment arrangements specified in subsection (a)(i) or (ii) of this Section shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the City expressly reserves the right to call the Defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the Defeased Bonds immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the City be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City, or deposited as directed in writing by the City. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Bonds may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Bonds, with respect to which such money has been so deposited, shall be remitted to the City or deposited as directed in writing by the City.

(c) Until all Defeased Bonds shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Bonds 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) In the event that the City elects to defease less than all of the principal amount of Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Bonds by such random method as it deems fair and appropriate.

SECTION 29. Ordinance a Contract; Amendments. The Ordinance shall constitute a contract with the Owners, from time to time, of the Bonds, binding on the City and its successors and assigns, and shall not be amended or repealed by the City as long as any Bond remains outstanding except as permitted in this Section. The City may amend the Ordinance without the consent of or notice to any Owners to (i) cure any ambiguity, defect or omission therein that does not materially adversely affect the interests of the holders; (ii) grant additional rights or security for the benefit of the holders; (iii) add events of default as shall not be inconsistent with the provisions of the Ordinance that do not materially adversely affect the interests of the holders; (iv) qualify the Ordinance under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect; or (v) make such other provisions in regard to matters or questions arising under the Ordinance that are not inconsistent with the provisions thereof and which, in the opinion of Bond Counsel for the City, do not materially adversely affect the interests of the holders. In addition, the City may amend the Ordinance in ways not described above with the consent of the holders of a majority of the aggregate principal amount of the Bonds outstanding if it is deemed necessary or desirable by the City; provided, however, that without the consent of the holders of 100% of the then outstanding Bonds, no amendment may be made for the purpose of: (i) making any change in the maturity of any of the outstanding Bonds; (ii) reducing the rate of interest borne by any of the outstanding Bonds; (iii) reducing the amount of the principal of, or redemption premium, if any, payable on any outstanding

Bonds; (iv) modifying the terms of payment of principal, interest or redemption premium on outstanding Bonds, or imposing any condition with respect to such payment; or (v) changing the minimum percentage of the principal amount of the Bonds necessary for consent to such amendment.

SECTION 30. Investments.

(a) Money in the Funds established by this Ordinance, at the option of the City, may be invested in such securities or obligations as permitted under applicable law.

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

SECTION 31. Investment Income.

Interest and income derived from investment of any fund created by this Ordinance shall be credited to such fund.

SECTION 32. Escrow Agreement Approval and Execution. The discharge and defeasance of the Refunded Obligations shall be effectuated pursuant to the terms and provisions of an Escrow Agreement to be entered into by and between the City and the Escrow Agent, which shall be substantially in the form attached hereto as Exhibit A, the terms and provisions of which are hereby approved, subject to such insertions, additions and modifications as shall be necessary (a) to carry out the program designed for the City by the Financial Advisor, and which shall be certified as to mathematical accuracy by Grant Thornton LLP, Certified Public Accountants, whose Verification Report (the "Report") shall be attached to the Escrow Agreement, (b) to maximize the benefit of City's restructuring of its debt service obligations and/or to minimize the City's costs of refunding, (c) to comply with all applicable laws and regulations relating to the refunding of the Refunded Obligations, and (d) to carry out the other intents and purposes of this Ordinance, and the Mayor is hereby authorized to execute and deliver such Escrow Agreement on behalf of the City in multiple counterparts and the City Secretary is hereby authorized to attest thereto and affix the seal of the City.

SECTION 33. Redemption/Defeasance of Refunded Obligations.

(a) *Call.* The City hereby irrevocably calls the following obligations of the City for redemption prior to maturity or defeasance to maturity on the dates set forth below, at a price of par plus accrued interest to the dates fixed for redemption, and authorizes and directs notice of such redemption to be given in accordance with the ordinances authorizing the issuance of such obligations:

| <u>Obligations to be Redeemed</u> | <u>Redemption Date</u> |
|---|--|
| Combination Tax and Revenue Certificates of Obligation, Series 2007 2027 Maturity | September 2, 2016 @ Par plus accrued interest to the date of redemption |
| Combination Tax and Revenue Certificates of Obligation, Series 2008 a portion of 2031 Maturity | August 15, 2017 @ Par plus accrued interest to the date of redemption |
| General Obligation Refunding Bonds, Series 2009 a portion of Maturities 2021 through 2025 | February 15, 2018 @ Par plus accrued interest to the date of redemption |

The City hereby authorizes and instructs the Mayor, City Manager, Director of Finance and the paying agents for the Refunded Obligations to take such steps as are necessary to accomplish the redemption and the defeasance of the Refunded Obligations in accordance with the provisions hereof.

(b) *Notices of Defeasance/Redemption.* The City hereby ratifies its authorization to give notices of defeasance/redemption of the Refunded Obligations in the manner and within the time required by the ordinances authorizing the issuances thereof. The respective notices will be substantially in the forms set out in Exhibit B.

SECTION 34. Refunding of Refunded Obligations. It is hereby found and determined that the refunding of the Refunded Obligations is advisable and necessary in order to restructure the principal and interest requirements of the City, and the City further finds and determines that the City will receive a present value savings on the debt service of the Refunded Obligations.

SECTION 35. Refunding.

(a) *Purchase of United States Treasury Obligations.* To assure the purchase of the Escrowed Securities referred to in the Escrow Agreement, the City Manager, the Director of Finance and the Escrow Agent are hereby authorized to subscribe for, agree to purchase, and purchase non-callable obligations of the United States of America, in such amounts and maturities and bearing interest at such rates as may be provided for in the Report, and to execute any and all subscriptions, purchase agreements, commitments, letters of authorization and other documents necessary to effectuate the foregoing, and any actions heretofore taken for such purpose are hereby ratified and approved.

(b) *Related Matters.* To satisfy in a timely manner all of the City's obligations under this Ordinance, the Bond Purchase Agreement and the Escrow Agreement, the Mayor, the City Secretary, the City Manager, the Director of Finance, and all other appropriate officers and agents of the City are hereby authorized and directed to take all

other actions that are reasonably necessary to provide for the refunding of the Refunded Obligations, including, without limitation, executing and delivering on behalf of the City all certificates, consents, receipts, requests, and other documents as may be reasonably necessary to satisfy the City's obligations under the Escrow Agreement, the Bond Purchase Agreement and this Ordinance and to direct the application of funds of the City consistent with the provisions of such Escrow Agreement and this Ordinance.

(c) *Transfer from Interest and Sinking Fund.* On the date of delivery of and payment for the Bonds there shall be transferred from the interest and sinking fund for the Refunded Obligations to the Escrow Agent, an amount sufficient, if any, when added to the proceeds of the Bonds, to provide for the refunding of the Refunded Obligations, all as set out in the Report.

SECTION 36. Continuing Disclosure Undertaking.

(a) *Definitions.* As used in this Section, 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.

(b) 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 2016, financial information and operating data with respect to the City that is of the general type included in the Official Statement authorized by Section 39, being the information described in Tables 1 through 4 and 6 through 9 and in Appendix B thereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles the City may be required to employ from time to time in accordance with State law, 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 (1) unaudited financial statements for such fiscal year within such six month period, and (2) 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).

(c) 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 Bonds:

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 Bonds or other material events affecting the tax-exempt status of the Bonds;
7. Modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event;
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry

into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

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

(d) *Limitations, Disclaimers, and Amendments.* The City shall be obligated to observe and perform the covenants specified in this Section with respect to the City and the Bonds while, but only while, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice required by subsection (c) of this Section of any bond calls and defeasances that cause the City to no longer be such an "obligated person."

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

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

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

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

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds 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 Bonds 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 Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

SECTION 37. Qualified Tax-Exempt Obligations. The City hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of section 265(b) of the Code. In connection therewith, the City represents: (a) that the aggregate amount of tax-exempt obligations issued by the City during calendar year 2016, including the Bonds, which have been designated as "qualified tax-exempt obligations" under section 265(b)(3) of the Code, does not exceed \$10,000,000, and (b) that the reasonably anticipated amount of tax-exempt obligations which will be issued by the City during calendar year 2016 including the Bonds, will not exceed \$10,000,000. For purposes of this Section, the term "tax-exempt obligations" does not include "private activity bonds" within the meaning of section 141 of the Code, other than "qualified 501(c)(3) bonds" within the meaning of section 145 of the Code. In addition, for purposes of this Section, the City includes all governmental units which are aggregated with the City under the Code.

SECTION 38. Registrar. The form of agreement setting forth the duties of the Registrar is hereby approved, and the appropriate officials of the City are hereby authorized to execute such agreement for and on behalf of the City.

SECTION 39. Official Statement. The City Council ratifies and confirms its prior approval of the form and content of the Preliminary Official Statement prepared in the initial offering and sale of the Bonds and hereby authorizes the preparation of a final Official Statement reflecting the terms of the Bond Purchase Agreement with the Underwriter and other relevant matters. The use of such Official Statement in the reoffering of the Bonds by the Underwriter is hereby approved and authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed in the Bond Purchase Agreement, dated as of the date of payment for and delivery of the Bonds.

SECTION 40. No Personal Liability. No recourse shall be had for payment of the principal of or interest on any Bonds or for any claim based thereon, or on this Ordinance, against any official or employee of the City or any person executing any Bonds.

SECTION 41. Further Procedures. The Mayor and 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 and to execute, acknowledge, and deliver in the name and under the seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Bonds, the sale of the Bonds, the Escrow Agreement and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Bonds, the Mayor, City Manager, Director of Finance, and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance, (ii) obtain a rating from any of the national bond rating agencies or satisfy any requirements of the provider of a municipal bond insurance policy, if any, or (iii) obtain the approval of the Bonds by the Attorney General's office. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 42. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance has been 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 Chapter 551, Texas Government Code.

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FINALLY PASSED, APPROVED AND EFFECTIVE this 2nd day of August, 2016.

Mayor
City of Kyle, Texas

ATTEST:

City Secretary
City of Kyle, Texas

[SEAL]

Exhibit A

ESCROW AGREEMENT

Exhibit B

NOTICES OF DEFEASANCE/REDEMPTION