RESOLUTION NO. 13-22

A RESOLUTION AUTHORIZING CITY MANAGER TO ENTER INTO NEGOTIATIONS WITH A PROSPECTIVE BUSINESS ON A TAX ABATEMENT AGREEMENT; AND GRANTING AUTHORITY TO THE MAYOR TO EXECUTE SAID RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE MAYOR'S SIGNATURE TO THIS RESOLUTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL INSTRUMENTS REQUISITE IN IMPLEMENTING THIS RESOLUTION AND AUTHORIZING CITY SECRETARY TO AUTHENTICATE CITY MANAGER'S SIGNATURE TO THIS RESOLUTION.

A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 21st day of May 2013, at 6:00 p.m., a majority of council members being present and constituting a quorum, the following resolution was adopted:

WHEREAS, the City Council has granted permission to the City Manager to enter into negotiations with a prospective business on a tax abatement agreement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor of the City of Commerce, Texas, be authorized and he is hereby authorized to execute this Resolution

BE IT FURTHER RESOLVED that the City Secretary be authorized and she is hereby authorized to attest to the signature of the Mayor to this Resolution, and to attest to the signature of the City Manager to any and all instruments requisite to implementing said Resolution.

PASSED BY THE GOVERNING BODY of the City Council of the City of Commerce, Texas, on the 21st day of May 2013.

ATTEST:

Marty Cunningham, City Secretary

(seal)

CITY OF COMMERCE, TEXAS

John Ballotti, Mayor

APPROVED AS TO FORM:

Jay Garrett, City Attorney

I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a Resolution, and that the same has not been repealed and is in full force and effect.

(seal)

Marty Cunningham
City Secretary

Sworn to and subscribed before me, on this the 28th day of May, 2013, to certify which witness my hand and seal of office.

(seal)

BECKY PATTILLO
Notary Public
STATE OF TEXAS
My Comm. Exp. May 16, 2015

NOTARY PUBLIC STATE OF TEXAS

Notary Public, State of Texas

Resolution/TaxAbatementIncentive.052113

RESOLUTION 13-22

APPROVING AND AUTHORIZING THE EXECUTION OF ESCROW AGREEMENTS WITH THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. WITH RESPECT TO THE CITY'S COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2010A AND COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2010B

THE STATE OF TEXAS §
HUNT COUNTY §
CITY OF COMMERCE §

WHEREAS, the City of Commerce (the "City") has previously issued its Combination Tax and Revenue Certificates of Obligation, Series 2010A and its Combination Tax and Revenue Certificates of Obligation, Series 2010B (collectively, the "Obligations"), which Obligations were sold to the Texas Water Development Board (the "Board"); and

WHEREAS, the Obligations were sold under arrangements that include installment deliveries of the proceeds thereof and periodic deliveries of the Obligations to the Board; and

WHEREAS, the Board has informed the City that the City now has the option of entering into escrow agreements with respect to each series of the Obligations (the "Escrow Agreements") for the purpose of reducing the time and expense associated with the installment deliveries of the Obligations; and

WHEREAS, the City Council has determined that it is beneficial to the City to accept the offer of the Board to enter into the Escrow Agreements with The Bank of New York Mellon Trust Company, N.A. (the "Escrow Agent"), which will permit the remaining unreleased proceeds of the Obligations to be placed into escrow accounts and administered by the Escrow Agent in accordance with the terms of the Escrow Agreements; and

WHEREAS, it is hereby officially found and determined that public notice of the time, place, and purpose of the meeting at which this resolution was adopted was given, all as required by Texas Government Code, Chapter 551.

BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

1. The preambles hereto are hereby affirmed, approved and incorporated herein for all purposes.

2. The Escrow Agreements with respect to the Obligations in substantially the forms attached hereto as Exhibit A and Exhibit B are hereby approved, and the Mayor of the City is hereby authorized to execute and deliver such Escrow Agreements on behalf of the City.

3. The City's officers and employees are hereby directed to do any and all things in order to accommodate the implementation of the Escrow Agreements.

SIGNED this the 18th day of June, 2013.

City Secretary

Mayor

Exhibit A

Form of Escrow Agreement
for
City of Commerce Combination Tax and Revenue Certificates of Obligation, Series 2010A

Exhibit A

Form of Escrow Agreement
for
City of Commerce Combination Tax and Revenue Certificates of Obligation, Series 2010A

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "*Agreement*"), made by and between CITY OF COMMERCE, a political subdivision of the State of Texas in Hunt County, Texas, (the "City"), acting by and through the City Council of the City, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., (the "*Bank*"), as Escrow Agent (the "*Escrow Agent*") together with any successor in such capacity;

W I TN E S S E T H:

WHEREAS, pursuant to an Ordinance finally adopted on May 18, 2010 (the "Ordinance"), CITY OF COMMERCE authorized the issuance of $2,274,000 CITY OF COMMERCE COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2010A, dated June 1, 2010 (the "*Obligations*") to obtain financial assistance from the Texas Water Development Board (the "*TWDB*") for the purpose of funding water or wastewater system improvements (the "*Project*"); and

WHEREAS, the Escrow Agent is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral_in accordance with Government Code Chapter 404, Subchapter D and is otherwise qualified and empowered to enter into this Agreement, and hereby acknowledges its acceptance of the terms and provisions hereof; and

WHEREAS, a condition of the Obligations is the deposit of $1,802,000.00 of the proceeds of the Obligations (the "*Proceeds*") in escrow subject to being withdrawn only with the approval of the Executive Administrator of the TWDB or another designated representative; provided, however, the Proceeds can be transferred to different investments so long as all parties hereto consent to such transfer;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and in consideration of the amount to be paid by the City to the Escrow Agent, as set forth on **Exhibit A**, the receipt of which is hereby acknowledged, and in order to secure the delivery of the Obligations, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives and successors, as follows:

SECTION 1: ESCROW ACCOUNT. Upon the delivery of the Obligations described above, the Proceeds in the amount of $1,802,000.00 identified under TWDB Commitment Number L090026 shall be deposited to the credit of a special escrow account or escrow subaccount (the "*Escrow Account*") maintained at the Bank on behalf of the City and the TWDB and shall not be commingled with any other accounts or with any other proceeds or funds. The Proceeds received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Agreement.

The Escrow Account shall be entitled "City Of Commerce, Combination Tax And Revenue Certificates Of Obligation, Taxable Series 2010A, Texas Water Development Board L090026 Escrow Account" and shall not be subject to warrants, drafts or checks drawn by the City but shall be disbursed or withdrawn to pay the costs of the Project for which the Obligations were issued or other purposes in accordance with the Ordinance and solely upon written authorization from the Executive Administrator, or his/her designated representative. The Bank shall provide to the City and to the Executive Administrator's staff of the TWDB the Escrow Account bank statements upon request.

SECTION 2: COLLATERAL. All cash deposited to the credit of such Escrow Account and any accrued interest in excess of the amounts insured by the FDIC and remaining uninvested under the terms of this Agreement shall be continuously secured by a valid pledge of direct obligations of the United States of America or other collateral meeting the requirements of the Public Funds Collateral Act, Chapter 2257, TEX. GOV'T CODE ANN., as amended.

SECTION 3: INVESTMENTS. While the Proceeds are held in escrow, the Bank shall only invest escrowed Proceeds in investments that are authorized by the Public Funds Investment Act, Chapter 2256, TEX. GOV'T CODE ANN., as amended. It is the City's responsibility to direct the Escrow Agent to invest all public funds in a manner that is consistent not only with the Public Funds Investment Act but also with its own written investment policy.

SECTION 4: DISBURSEMENTS. The Bank shall not honor any disbursement from the Escrow Account, or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Administrator of the TWDB or another designated TWDB representative. However, no written approval and consent by the Executive Administrator shall be required if the disbursement involves transferring Proceeds from one investment to another within the Escrow Account provided that all such investments are consistent with the requirements of the Public Funds Investment Act.

SECTION 5: UNEXPENDED FUNDS. Any Proceeds remaining unexpended in the Escrow Account after completion of the Project and after the final accounting has been submitted to and approved by the TWDB shall be disposed of pursuant to the provisions of the Ordinance. The City shall deliver a copy of such approval of the final accounting by the TWDB to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Ordinance, that being the sole obligation of the City.

SECTION 6: CERTIFICATIONS. The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

SECTION 7: LIABILITY OF ESCROW AGENT. To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or default or failure in the performance of any obligation imposed upon it hereunder. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Obligations or any recitation contained in the Obligations.

SECTION 8: RECORDS. The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City and the TWDB.

SECTION 9: MERGER/CONSOLIDATION. In the event that the Escrow Agent merges or consolidates with another bank or sells or transfers substantially all of its assets or corporate trust business, then the successor bank shall be the successor Escrow Agent without the necessity of further action as long as the successor bank is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral_in accordance with Government Code Chapter 404, Subchapter D. The Escrow Agent must provide the TWDB with written notification within 30 days of acceptance of the merger, consolidation, or transfer. If the merger, consolidation or other transfer has occurred between state banks, the newly-created entity shall forward the certificate of merger or exchange issued by the Texas Department of Banking as well as the statement filed with the pertinent chartering authority, if applicable, to the TWDB within five business days following such merger, consolidation or exchange.

SECTION 10: AMENDMENTS. This Agreement may be amended from time to time as necessary with the written consent of the City and the TWDB, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Bank without its consent.

SECTION 11: TERMINATION. In the event that this Agreement is terminated by either the City or by the Escrow Agent, the Escrow Agent must report said termination in writing to the TWDB within five business days of such termination. The City is responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent and notifying the TWDB of the change in escrow agents: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent within 5 business days of said termination. No funds shall be released by the TWDB until it has received, reviewed and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed by the City or a court, the successor escrow agent and escrow agreement must be approved by the TWDB for the appointment to be effective. The Escrow Agent is responsible for performance under this Agreement until a successor has been approved by the TWDB and has signed an acceptable escrow agreement.

SECTION 12: EXPIRATION. This Agreement shall expire upon final transfer of the funds in the Escrow Account to the City.

SECTION 13: POINT OF CONTACT. The points of contact for the City, the Escrow Agent and the TWDB are as follows:

The Bank of New York Mellon Trust Company, N.A
2001 Bryan Street, 11th Floor
Dallas, Texas 75201
Phone Number: 214-468-6536
Fax Number: (214) 468-6322
Email Address: jason.stephens@bnymellon.com

Texas Water Development Board
Executive Administrator
1700 North Congress Avenue
Austin, Texas 78701

City of Commerce
City Manager
1119 Alamo Street
Commerce, Texas 75428
Telephone: (903) 886-1124
Fax: (903) 886-8329
Email Address: marc.clayton@commercetx.org

SECTION 14: CHOICE OF LAW. This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

SECTION 15: ASSIGNABILITY. This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

SECTION 16: ENTIRE AGREEMENT. This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or this Escrow Account. No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TWDB.

SECTION 17: VALIDITY OF PROVISIONS. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 18: COMPENSATION FOR ESCROW SERVICES. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule agreed to by the Escrow Agent and the City from time to time, which compensation shall be paid by the City but may not be paid directly from the Escrow Account.

SECTION 19: INDEMNIFICATION. To the extent permitted by law, the City agrees to indemnify the Escrow Agent, its directors, officers and employees, an hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

SECTION 20: DUTIES OF ESCROW AGENT. The Escrow Agent undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

SECTION 21: RIGHTS AND PROTECTIONS. No provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it. The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Escrow Agent may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Escrow Agent.

SECTION 22: FAX/E-MAIL. The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City shall provide to the Escrow Agent an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction; provided that, to the extent possible, the Escrow Agent shall attempt to comply with such subsequent written instructions requested by the City to achieve the purposes of this Agreement. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective upon signature of both parties.

CITY OF COMMERCE

By: ______________________
Mayor
CITY OF COMMERCE, TEXAS

(Seal)

Address: 1119 Alamo Street
Commerce, Texas 75428

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Escrow Agent

By: ______________________
Title: ______________________

Address: 2001 Bryan Street
Dallas, Texas 75201

(Bank Seal)

EXHIBIT "A"
Pay Schedule

Exhibit B

Form of Escrow Agreement
for
City of Commerce Combination Tax and Revenue Certificates of Obligation, Series 2010B

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "*Agreement*"), made by and between CITY OF COMMERCE, a political subdivision of the State of Texas in Hunt County, Texas, (the "City"), acting by and through the City Council of the City, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., (the "*Bank*"), as Escrow Agent (the "*Escrow Agent*") together with any successor in such capacity;

WITNESSETH:

WHEREAS, pursuant to an Ordinance finally adopted on May 18, 2010 (the "Ordinance"), CITY OF COMMERCE authorized the issuance of $466,000 CITY OF COMMERCE COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, TAXABLE SERIES 2010B, dated June 1, 2010 (the "*Obligations*") to obtain financial assistance from the Texas Water Development Board (the "*TWDB*") for the purpose of funding water or wastewater system improvements (the "*Project*"); and

WHEREAS, the Escrow Agent is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral in accordance with Government Code Chapter 404, Subchapter D and is otherwise qualified and empowered to enter into this Agreement, and hereby acknowledges its acceptance of the terms and provisions hereof; and

WHEREAS, a condition of the Obligations is the deposit of $369,000.00 of the proceeds of the Obligations (the "*Proceeds*") in escrow subject to being withdrawn only with the approval of the Executive Administrator of the TWDB or another designated representative; provided, however, the Proceeds can be transferred to different investments so long as all parties hereto consent to such transfer;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and in consideration of the amount to be paid by the City to the Escrow Agent, as set forth on **Exhibit A**, the receipt of which is hereby acknowledged, and in order to secure the delivery of the Obligations, the parties hereto mutually undertake, promise and agree for themselves, their respective representatives and successors, as follows:

SECTION 1: ESCROW ACCOUNT. Upon the delivery of the Obligations described above, the Proceeds in the amount of $369,000.00 identified under TWDB Commitment Number L090027 shall be deposited to the credit of a special escrow account or escrow subaccount (the "*Escrow Account*") maintained at the Bank on behalf of the City and the TWDB and shall not be commingled with any other accounts or with any other proceeds or funds. The Proceeds received by the Escrow Agent under this Agreement shall not be considered as a banking deposit by the City, and the Escrow Agent shall have no right to title with respect thereto except as Escrow Agent under the terms of this Agreement.

The Escrow Account shall be entitled "City Of Commerce, Combination Tax And Revenue Certificates Of Obligation, Taxable Series 2010B, Texas Water Development Board L090027 Escrow Account" and shall not be subject to warrants, drafts or checks drawn by the City but shall be disbursed or withdrawn to pay the costs of the Project for which the Obligations were issued or other purposes in accordance with the Ordinance and solely upon written authorization from the Executive Administrator, or his/her designated representative. The Bank shall provide to the City and to the Executive Administrator's staff of the TWDB the Escrow Account bank statements upon request.

SECTION 2: COLLATERAL. All cash deposited to the credit of such Escrow Account and any accrued interest in excess of the amounts insured by the FDIC and remaining uninvested under the terms of this Agreement shall be continuously secured by a valid pledge of direct obligations of the United States of America or other collateral meeting the requirements of the Public Funds Collateral Act, Chapter 2257, TEX. GOV'T CODE ANN., as amended.

SECTION 3: INVESTMENTS. While the Proceeds are held in escrow, the Bank shall only invest escrowed Proceeds in investments that are authorized by the Public Funds Investment Act, Chapter 2256, TEX. GOV'T CODE ANN., as amended. It is the City's responsibility to direct the Escrow Agent to invest all public funds in a manner that is consistent not only with the Public Funds Investment Act but also with its own written investment policy.

SECTION 4: DISBURSEMENTS. The Bank shall not honor any disbursement from the Escrow Account, or any portion thereof, unless and until it has been supplied with written approval and consent by the Executive Administrator of the TWDB or another designated TWDB representative. However, no written approval and consent by the Executive Administrator shall be required if the disbursement involves transferring Proceeds from one investment to another within the Escrow Account provided that all such investments are consistent with the requirements of the Public Funds Investment Act.

SECTION 5: UNEXPENDED FUNDS. Any Proceeds remaining unexpended in the Escrow Account after completion of the Project and after the final accounting has been submitted to and approved by the TWDB shall be disposed of pursuant to the provisions of the Ordinance. The City shall deliver a copy of such approval of the final accounting by the TWDB to the Escrow Agent together with instructions concerning the disbursement of unexpended Proceeds hereunder. The Escrow Agent shall have no obligation to ensure that such unexpended Proceeds are used as required by the provisions of the Ordinance, that being the sole obligation of the City.

SECTION 6: CERTIFICATIONS. The Escrow Agent shall be authorized to accept and rely upon the certifications and documents furnished to the Escrow Agent by the City and shall not be liable for the payment of any funds made in reliance in good faith upon such certifications or other documents or approvals, as herein recited.

SECTION 7: LIABILITY OF ESCROW AGENT. To the extent permitted by law, the Escrow Agent shall not be liable for any act done or step taken or omitted by it or any mistake of fact or law, except for its negligence or default or failure in the performance of any obligation imposed upon it hereunder. The Escrow Agent shall not be responsible in any manner for any proceedings in connection with the Obligations or any recitation contained in the Obligations.

SECTION 8: RECORDS. The Escrow Agent will keep complete and correct books of record and account relating to the receipts, disbursements, allocations and application of the money deposited to the Escrow Account, and investments of the Escrow Account and all proceeds thereof. The records shall be available for inspection and copying at reasonable hours and under reasonable conditions by the City and the TWDB.

SECTION 9: MERGER/CONSOLIDATION. In the event that the Escrow Agent merges or consolidates with another bank or sells or transfers substantially all of its assets or corporate trust business, then the successor bank shall be the successor Escrow Agent without the necessity of further action as long as the successor bank is a state or national bank designated by the Texas Comptroller as a state depository institution in accordance with Government Code, Chapter 404, Subchapter C, or is a designated custodian of collateral_in accordance with Government Code Chapter 404, Subchapter D. The Escrow Agent must provide the TWDB with written notification within 30 days of acceptance of the merger, consolidation, or transfer. If the merger, consolidation or other transfer has occurred between state banks, the newly-created entity shall forward the certificate of merger or exchange issued by the Texas Department of Banking as well as the statement filed with the pertinent chartering authority, if applicable, to the TWDB within five business days following such merger, consolidation or exchange.

SECTION 10: AMENDMENTS. This Agreement may be amended from time to time as necessary with the written consent of the City and the TWDB, but no such amendments shall increase the liabilities or responsibilities or diminish the rights of the Bank without its consent.

SECTION 11: TERMINATION. In the event that this Agreement is terminated by either the City or by the Escrow Agent, the Escrow Agent must report said termination in writing to the TWDB within five business days of such termination. The City is responsible for ensuring that the following criteria are satisfied in selecting the successor escrow agent and notifying the TWDB of the change in escrow agents: (a) the successor escrow agent must be an FDIC-insured state or national bank designated by the Texas Comptroller as a state depository; (b) the successor escrow agent must be retained prior to or at the time of the termination; (c) an escrow agreement must be executed by and between the City and the successor escrow agent and must contain the same or substantially similar terms and conditions as are present in this Agreement; and (d) the City must forward a copy of the executed escrow agreement with the successor escrow agent within 5 business days of said termination. No funds shall be released by the TWDB until it has received, reviewed and approved the escrow agreement with the successor escrow agent. If the City has not appointed a successor escrow agent within thirty (30) days of the notice of termination, the Escrow Agent may petition any court of competent jurisdiction in Texas for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the City. Whether appointed by the City or a court, the successor escrow agent and escrow agreement must be approved by the TWDB for the appointment to be effective. The Escrow Agent is responsible for performance under this Agreement until a successor has been approved by the TWDB and has signed an acceptable escrow agreement.

SECTION 12: EXPIRATION. This Agreement shall expire upon final transfer of the funds in the Escrow Account to the City.

SECTION 13: POINT OF CONTACT. The points of contact for the Escrow Agent and the TWDB are as follows:

The Bank of New York Mellon Trust Company, N.A
2001 Bryan Street, 11th Floor
Dallas, Texas 75201
Phone Number: 214-468-6536
Fax Number: (214) 468-6322
Email Address: jason.stephens@bnymellon.com

Texas Water Development Board
Executive Administrator
1700 North Congress Avenue
Austin, Texas 78701

City of Commerce
City Manager
1119 Alamo Street
Commerce, Texas 75428
Telephone: (903) 886-1124
Fax: (903) 886-8329
Email Address: marc.clayton@commercetx.org

SECTION 14: CHOICE OF LAW. This Agreement shall be governed exclusively by the applicable laws of the State of Texas. Venue for disputes shall be in the District Court of Travis County, Texas.

SECTION 15: ASSIGNABILITY. This Agreement shall not be assignable by the parties hereto, in whole or in part, and any attempted assignment shall be void and of no force and effect.

SECTION 16: ENTIRE AGREEMENT. This Agreement evidences the entire Escrow Agreement between the Escrow Agent and the City and supersedes any other agreements, whether oral or written, between the parties regarding the Proceeds or this Escrow Account. No modification or amendment of this Agreement shall be valid unless the same is in writing and is signed by the City and consented to by the Escrow Agent and the TWDB.

SECTION 17: VALIDITY OF PROVISIONS. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 18: COMPENSATION FOR ESCROW SERVICES. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule agreed to by the Escrow Agent and the City from time to time, which compensation shall be paid by the City but may not be paid directly from the Escrow Account.

SECTION 19: INDEMNIFICATION. To the extent permitted by law, the City agrees to indemnify the Escrow Agent, its directors, officers and employees, an hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with its acceptance or administration of its duties hereunder, including the cost and expense against any claim or liability in connection with the exercise or performance of any of its powers or duties under this Agreement.

SECTION 20: DUTIES OF ESCROW AGENT. The Escrow Agent undertakes to perform the duties set forth herein and agrees to use reasonable care in the performance thereof.

SECTION 21: RIGHTS AND PROTECTIONS. No provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risks or liability is not assured to it. The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon. The Escrow Agent may exercise any of the powers hereunder and perform any duties hereunder either directly or by or through agents or attorneys of the Escrow Agent.

SECTION 22: FAX/E-MAIL. The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City shall provide to the Escrow Agent an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction; provided that, to the extent possible, the Escrow Agent shall attempt to comply with such subsequent written instructions requested by the City to achieve the purposes of this Agreement. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk or interception and misuse by third parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective upon signature of both parties.

CITY OF COMMERCE

By: ______________________
Mayor
CITY OF COMMERCE, TEXAS

(Seal)

Address: 1119 Alamo Street
Commerce, Texas 75428

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
as Escrow Agent

By: ______________________
Title: ______________________

Address: 2001 Bryan Street
Dallas, Texas 75201

(Bank Seal)

EXHIBIT "A"

Pay Schedule