ORDINANCE NO. 2009-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CANTON, TEXAS, AUTHORIZING THE EXECUTION AND DELIVERY OF A PUBLIC PROPERTY FINANCE ACT CONTRACT FOR THE ACQUISITION OF A FIRETRUCK, LEVYING A TAX AND PROVIDING FOR THE PAYMENT AND SECURITY THEREOF, AND ENACTING OTHER PROVISIONS RELATED THERETO

WHEREAS, the City is authorized, pursuant to the Public Property Finance Act, Chapter 271, Subchapter A, Local Government Code, as amended (the "Act"), to execute, perform and make payments under a contract for the acquisition of personal property for authorized municipal purposes, or the financing thereof;

WHEREAS, Governmental Capital Corporation ("GCC") offered to provide financing for the acquisition of fire apparatus equipment for the City through the execution and delivery of a Public Property Finance Act Contract, dated as of August 20, 2009 (the "Finance Contract") with GCC, approved by the City Council on August 20, 2009;

WHEREAS, it is deemed advisable and in the best interests of the City to adopt the tax levy for the payment of the Finance Contract; and

WHEREAS, 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 Tex. Gov't Code Ann. ch. 551; Now, Therefore

BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF CANTON, TEXAS:

Section 1. Finance Contract. The execution and delivery of the Finance Contract by the City Manager and City Secretary is hereby ratified, affirmed and approved.

Section 2. Source of Payment for the Contract Payments.

(a) The City Council hereby declares and covenants that it will provide and levy a tax legally and fully sufficient, together with the Surplus Revenues, for payment of the principal and interest due under the Finance Contract (the "Contract Payments"), it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding obligations of the City. In order to provide for the payment of the Contract Payments, being (i) the interest on the outstanding principal amount and (ii) a sinking fund for payment of the installment amounts of the principal amount as they become due or a sinking fund of two percent per annum (whichever amount is the greater), there is hereby levied for the current year and each succeeding year thereafter, while the principal amount or interest thereon remains outstanding and unpaid, a tax within legal limitations on each $100 valuation of taxable property in the City that is sufficient to pay such Contract Payments, full allowance being made for delinquencies and costs of collection. The tax levied by this Section shall be assessed and collected each year and applied to the payment of the Contract Payments, and the tax shall not be diverted to any other purpose. Said ad valorem tax, the collections therefrom, and all amounts on deposit in or required hereby to be deposited to the Payment Fund are hereby pledged and committed irrevocably to the payment of the Contract Payments when and as due and payable in accordance with the Finance Contract and this Ordinance.

(b) The payment of the Contract Payments is additionally secured by and shall be payable from any revenues and funds lawfully available to the City for payment of the contract Payments (the "Pledged Revenues"), provided that the City expressly reserves the right to issue or incur obligations payable from and secured by a pledge of and lien on any of such revenues and funds superior to the pledge of such revenues and funds to the payment of the Contract Payments.

Section 3. Payment Fund.

The City hereby establishes the City of Canton, Texas 2009 Finance Contract Payment Fund (the "Payment Fund"). The Payment Fund shall be maintained at an official depository of the City. The taxes levied and Pledged Revenues pledged under Section 2 shall be deposited to the credit of the Payment Fund at such times and in such amounts as necessary for the timely payment of the Contract Payments. Money on deposit in the Payment Fund shall be used to pay the Contract Payments as such become due and payable.

Section 4. Covenants Regarding Tax Exemption of Interest Paid Under the Finance Contract.

(a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Finance Contract as an obligation described in section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), the interest on which is not includable in the "gross income" of the holder of the Finance Contract for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Finance Contract 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 Finance Contract, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Finance Contract or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) 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 Finance Contract (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;

(4) to refrain from taking any action which would otherwise result in the Finance Contract being treated as a "private activity bond" within the meaning of section 141(b) of the Code;

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

(6) to refrain from using any portion of the proceeds of the Finance Contract, 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 Finance Contract, other than investment property acquired with --

(A) proceeds of the Finance Contract invested for a reasonable temporary period of 3 years or less or, in the case of a refunding bond, for a period of 90 days or less until such proceeds are needed for the purpose for which the Finance Contract is issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section l.148-1(b) of the Treasury Regulations, and

(C) 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 Finance Contract;

(7) to otherwise restrict the use of the proceeds of the Finance Contract or amounts treated as proceeds of the Finance Contract, as may be necessary, so that the Finance Contract does 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);

(8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Finance Contract) 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 Finance Contract has 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

(9) to assure that the proceeds of the Finance Contract will be used solely for new money projects.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (8), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Finance Contract. 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 Finance Contract, 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 Finance Contract 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 Finance Contract, 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 Finance Contract under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the City Manager 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 execution of the Finance Contract.

(d) Allocation Of, and Limitation On, Expenditures for the Project. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the Equipment on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the project is completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Finance Contract, or (2) the date the Finance Contract is no longer in force or effect. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Finance Contract. 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.

(e) Disposition of Project. The City covenants that the property constituting the Equipment 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 Finance Contract. For purposes of the foregoing, the portion of the Equipment 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.

(f) Designation as a Qualified Tax-Exempt Obligation. The City hereby designates the Finance Contract as a "qualified tax-exempt obligation" as defined in section 265(b)(3) of the Code. In furtherance of such designation, the City represents, covenants and warrants the following: (a) that during the calendar year in which the Finance Contract is delivered, the City (including any subordinate entities) has not designated nor will designate obligations that when aggregated with the Finance Contract, will result in more than $30,000,000 of "qualified tax-exempt obligations" being issued; (b) that the City reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Finance Contract is delivered, by the City (or any subordinate entities) will not exceed $30,000,000; and, (c) that the City will take such action or refrain from such action as necessary, and as more particularly set forth in this Section, in order that the Finance Contract will not be considered a "private activity bond" within the meaning of section 141 of the Code.

Section 5. Further Procedures. All officers of the City are authorized to take such actions and to execute such documents, certificates and receipts as they may deem necessary and appropriate in order to consummate the delivery of the Finance Contract. McCall, Parkhurst & Horton L.L.P., is hereby engaged as bond counsel for the City in connection with the authorization and delivery of the Finance Contract. The execution and delivery of an engagement letter between the City and such firm, with respect to such services as bond counsel, is hereby approved with such changes as may be approved by the City Manager and the City Manager is hereby authorized to execute such engagement letter.

PASSED, APPROVED AND EFFECTIVE this the 20th day of October, 2009.

Wm. R. Wilson

William R. Wilson, Mayor
City of Canton, Texas

ATTEST:

Julie H Seymore

Julie H. Seymore, City Secretary
City of Canton, Texas

[CITY SEAL]