

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT TAX AND REVENUE ANTICIPATION NOTE, TAXABLE SERIES 2016; PROVIDING FOR THE SECURITY AND PAYMENT THEREOF; APPROVING A NOTE PURCHASE AGREEMENT; AND ENACTING OTHER PROVISIONS RELATING THERETO

WHEREAS, Ector County Independent School District (the "*District*") was organized, created and established pursuant to the constitution and laws of the State of Texas as an independent school district and political subdivision of the State of Texas, and the District operates under the authority of the Texas Education Code, as amended;

WHEREAS, the District's Board of Trustees (the "*Board*") is authorized pursuant to Chapter 45, Texas Education Code, as amended, to levy, and cause to be assessed and collected, annual ad valorem taxes for the maintenance of the public free schools within the District;

WHEREAS, Section 45.108, Texas Education Code (the "*Act*"), authorizes the District to borrow money for the purpose of paying "Maintenance Expenses" (as defined herein) and to issue notes therefor, payable from Available Funds (as hereinafter defined) of the District, including receipts from its ad valorem maintenance tax, provided that at no time shall any note, together with other notes issued pursuant to the Act, exceed 75% of the District's previous year's income;

WHEREAS, the Board has adopted the Budget for Fiscal Year 2017;

WHEREAS, the Board has determined that it is in the best interests of the District to adopt this Resolution and issue its Tax and Revenue Anticipation Note, Taxable Series 2016 (the "*Note*"), in an aggregate principal amount of not more than \$20,000,000 as permitted by the Act;

WHEREAS, it is hereby affirmatively found and determined that sufficient funds will be available to pay the principal of and interest on said note when due, all as hereinafter provided; and

WHEREAS, the Purchaser (as hereinafter defined), has agreed to purchase such Note upon the terms and conditions hereof and of the Note Purchase Agreement (as hereinafter defined);

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT:

***Section 1. Definitions.*** As used in this Resolution, the following terms shall have the meanings set forth below:

"*Act*" means Section 45.108 of the Texas Education Code, as amended.

"*Authorized Officer*" means the Superintendent or Chief Financial Officer of the District.

"*Available Funds*" means the revenues received from the levy and receipt of the Maintenance Tax and other income and state appropriations to the District (to the extent available therefor) (excluding debt service taxes pledged to the payment of the District's outstanding bonds and other debts (as defined in Section 26.012(7), Texas Tax Code) and proceeds of the District's bonds and other debts and earnings thereon) during and with respect to Fiscal Year 2017.

"*Board*" means the Board of Trustees of the District, which is the governing body of the District.

"*Business Day*" means any day which is not a Saturday, Sunday, legal holiday, or day on which the lending institutions in the City of Odessa, Texas, or the New York Stock Exchange are required or are authorized by law or executive order to remain closed.

"*Bond Counsel*" means McCall, Parkhurst & Horton L.L.P.

"*Date of Delivery*" or "*Dates of Delivery*" means the date of the initial closing and funding of the Note, which is \_\_\_\_\_, 2016, and each other date on which the Purchaser provides funds to the District representing the Purchase Price for the Note.

"*District*" means Ector County Independent School District in Ector County, Texas.

"*Event of Default*" has the meaning assigned to the term in Section 17.

"*Fiscal Year 2017*" means the fiscal year of the District beginning July 1, 2016, and ending June 30, 2017.

"*Interest Rate*" means a per annum rate equal to the lesser of (a) LIBOR (as defined below) plus one and one-half percent (1.50%) per annum, with said rate to be adjusted monthly to reflect any change in LIBOR at the time of any such change or (b) the highest rate permitted by applicable law, but in no event shall interest contracted for, charged or received hereunder plus any other charges in connection herewith which constitute interest exceed the maximum interest permitted by applicable law, with said interest to be computed on the basis of a year of 360 days for the actual number of days elapsed. As used herein, for any date, "LIBOR" shall mean the London Interbank Offered Rate (LIBOR) for one month quoted in the most recently published issue of The Wall Street Journal (U.S. Edition) in the "London Interbank Offered Rates" column; provided, LIBOR will not decrease below a minimum LIBOR of 0.15% per annum. The District acknowledges that (i) if more than one London Interbank Offered Rate is published at any time by The Wall Street Journal, the highest of such London Interbank Offered Rate shall constitute the London Interbank Offered Rate hereunder, and (ii) if at any time The Wall Street Journal ceases to publish a London Interbank Offered Rate, the Purchaser shall have the right to select a substitute rate that Purchaser determines, in the exercise of its reasonable commercial discretion, to be comparable to such LIBOR, and the substituted rate as so selected,

upon the sending of written notice thereof to District, shall constitute LIBOR hereunder. LIBOR is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Each determination by the Purchaser of the LIBOR shall be conclusive and binding absent manifest error, and may be computed using any reasonable averaging and attribution method.

"*Interest and Sinking Fund*" means the interest and sinking fund established by the District in Section 6 hereof.

"*Maintenance Expense*" means any lawful expenditure of the District other than the payment of principal of and interest on bonds.

"*Maintenance Tax*" means the District's annual ad valorem maintenance tax pursuant to Section 45.003, Texas Education Code, as amended, for Fiscal Year 2017.

"*Material Adverse Effect*" means any material adverse change in or effect on (i) the business, operations, assets, financial condition or results of the operations of the District, (ii) the ability of the District to consummate the transactions described in this Resolution or the Note Purchase Agreement, or (iii) the ability of the District to perform any of its obligations under this Resolution or the Note Purchase Agreement.

"*Note*" means the Ector County Independent School District Tax and Revenue Anticipation Note, Taxable Series 2016, authorized and issued pursuant to this Resolution in the amount set forth in Section 3 hereof and bearing interest at the interest rates determined pursuant to Section 4 hereof and any and all Notes issued in substitution therefor or replacement thereof.

"*Note Purchase Agreement*" means the Note Purchase Agreement, in substantially the form and substance as set forth in **Exhibit B** hereto, between the District and the Purchaser.

"*Noteholder*" or "*Holder*" means a Purchaser, as the initial payee of a Note, and its successors and assigns.

"*Person*" means an individual, a corporation, a partnership, an association, a limited liability company, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"*Principal Amount of the Note*" means \$20,000,000.

"*Purchase Price*" means \$20,000,000, which is the total aggregate dollar amount to be paid to the District by the Purchaser in exchange for the Note on the Date of Delivery or on the Dates of Delivery.

"*Purchaser*" means Frost Bank, Odessa, Texas.

"*Resolution*" means this resolution authorizing the issuance of the Note.

"State" means the State of Texas.

"Stated Maturity Date" means \_\_\_\_\_, 2017 being the date on which all of the Principal Amount of the Note and the interest thereon matures and becomes due and payable.

**Section 2. Findings and Determinations.** The Board hereby finds, determines and certifies that: (a) the facts and recitations contained in the preamble of this Resolution are true and correct; (b) the Principal Amount of the Note, together with other notes issued pursuant to the Act, does not exceed in aggregate amount seventy-five percent (75%) of the District's previous year's income; (c) the District has adopted a budget for the Fiscal Year 2017; and (d) the Note is being issued pursuant to and in compliance with the Act and pursuant to this Resolution.

**Section 3. Designation, Amount, Purpose and Authorization.** The Note, to be designated as "ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT TAX AND REVENUE ANTICIPATION NOTE, TAXABLE SERIES 2016", shall be issued in fully registered form, without coupons, in the aggregate principal amount of TWENTY MILLION DOLLARS (\$20,000,000) for the purpose of paying the District's Maintenance Expenses that would otherwise have been payable from Available Funds. Proceeds of the Note also will be used to pay the costs of issuance thereof.

**Section 4. Number, Date, Maturity and Interest, Optional Redemption.**

(a) The Note shall be dated the Date of Delivery to the Purchaser thereof and shall be payable to the Purchaser thereof as payee, without coupons. A single note in the principal amount of \$20,000,000 shall be issued in the form attached hereto as **Exhibit A** and shall be numbered R-1 and delivered to the Purchaser on the Delivery Date. Interest shall accrue on the Principal Amount of the Note from the Date of Delivery or from the Dates of Delivery to the Purchaser thereof in exchange for the Purchase Price therefor, bearing interest at the Interest Rate, as provided in **Exhibit A** hereto.

(b) The District shall owe and hereby promises to pay the Principal Amount of the Note and accrued interest, as determined in accordance with Section 5 hereof.

(c) The Note shall mature on the Stated Maturity Date unless prepaid prior to the Stated Maturity Date as provided in Section 4(e). The Principal Amount of the Note outstanding shall bear interest at the Interest Rate, said interest to be computed on the basis of a year of 360 days for the actual number of days elapsed. Interest on the Note shall be due and payable on the Stated Maturity Date of the Note.

(d) Reserved.

(e) The Note is subject to prepayment, in whole but not in part, on any Business Day, at a price equal to the Principal Amount of the Note plus accrued interest thereon to the

prepayment date. The District shall notify the Purchaser in writing of any such prepayment at least twenty (20) Business Days prior to the prepayment date.

***Section 5. Note Purchase Agreement, the Note and Purchases.***

(a) The Note Purchase Agreement in substantially the form and substance attached hereto as **Exhibit B** is hereby approved and accepted by the District. The President of the Board shall execute and the Secretary of the Board shall attest the Note Purchase Agreement on behalf of the District.

(b) The Authorized Officer shall deliver the executed Note Purchase Agreement and the Note to the Purchaser as soon as practicable after the execution thereof and concurrently with compliance with the delivery requirements contained in the Note Purchase Agreement.

(d) The Authorized Officers are designated as the officers of the District charged with the responsibility of delivering the Note, and the Authorized Officers are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Note Purchase Agreement and the Note to or for the account of the Purchaser in accordance with the Note Purchase Agreement and this Resolution.

(e) The District expressly acknowledges and agrees that the obligations of the Purchaser to accept delivery of the Note and to pay the Purchase Price thereof under the Note Purchase Agreement is subject to satisfaction by the District of all terms and conditions of the Note Purchase Agreement and this Resolution.

***Section 6. Security for the Note; Pledge; Interest and Sinking Fund; Reserve Fund Deposits.***

(a) The Principal Amount of the Note and the interest thereon are payable from the Available Funds. To secure full and complete payment of the Principal Amount of the Note and the interest thereon on the Stated Maturity Date, the District hereby irrevocably pledges for such payment, the Available Funds of the District, and grants to, and creates in favor of, the Purchaser, for the benefit of the Purchaser and any successor Noteholder, an irrevocable lien on the Available Funds and an irrevocable first priority lien on all money on deposit in the Interest and Sinking Fund.

(b) A special Interest and Sinking Fund (the "*Interest and Sinking Fund*") is hereby created solely for the benefit of the Note, and the Interest and Sinking Fund shall be established and maintained by the Issuer at an official depository bank of the Issuer. The Interest and Sinking Fund shall be kept segregated, separate and apart from all other funds and accounts of the Issuer, and shall be used only for paying the interest on and principal of the Note. All Available Funds collected for and on account of the Note shall be deposited, as collected, to the credit of the Interest and Sinking Fund. Moneys on deposit in the Interest and Sinking Fund shall be used solely for the purpose of paying the Principal Amount of the Note and the interest thereon on the Stated Maturity Date or upon the District's election to prepay the Note in

accordance with Section 4(e). Money on deposit in the Interest and Sinking Fund may be invested at the direction of an Authorized Officer in such investments as are permitted by law for school districts having maturities not later than the Stated Maturity Date.

(c) The District shall deposit to the Interest and Sinking Fund by a date not later than one day prior to the Stated Maturity Date or the date of any prepayment of all of the Note, from Available Funds, an amount equal to the Principal Amount of the Note plus the interest accruing thereon to such date.

(d) Chapter 1208, Government Code, applies to the issuance of the Note and the pledge of the Available Funds granted by the Issuer, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Note is outstanding and unpaid such that the pledge of the Available Funds granted by the Issuer is to be subject to the filing requirements of Chapter 9, Business & Commerce Code, then in order to preserve to the Holder the perfection of the security interest in said pledge, the Issuer 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.

(e) The Board hereby declares and covenants that it shall for Fiscal Year 2017 compute and ascertain a rate and amount of the Maintenance Tax which will be sufficient, in addition to other Available Funds, to raise and produce the money required to pay all of the District's Maintenance Expenses, including the Principal Amount of the Note and the interest thereon by a date not later than the Stated Maturity Date; that the taxing authority of the District for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding obligations of the District; that the tax shall be based on the latest approved tax rolls of the District, with full allowance being made for tax delinquencies and the cost of tax collections; and that said rate and amount of ad valorem tax is intended by the District to be levied against all taxable property in the District.

***Section 7.*** Reserved.

***Section 8. Warranties and Representations of the District.***

(a) The District represents and warrants that it is duly authorized under the laws of the State of Texas to issue the Note, that all actions prerequisite to the lawful issuance and delivery of the Note have been duly and effectively taken, and that the Note is and will be a valid and enforceable obligation of the District in accordance with its terms and the terms of this Resolution.

(b) The District certifies that the Note is duly authorized, issued and delivered pursuant to and in compliance with Section 45.108, Texas Education Code, as amended, and pursuant to this Resolution.

(c) The District represents that the proceeds of the Note are needed to provide funds for the purpose of paying Maintenance Expenses in anticipation of the receipt of Available Funds for said purpose during Fiscal Year 2017 of the District (notwithstanding the forgoing, the Purchaser understands the District may incur other loans in the District's ordinary course of business and may be incurred while the Note is outstanding, and, so long as no Event of Default is occurring under this Resolution or the Note Purchase Agreement, the Purchaser does not and will not object to such loans nor will the Purchaser have any right to consent to, prevent or halt the entering into such loans).

(d) All approvals, consents and orders of any authority or agency having jurisdiction of any matter which would constitute a condition precedent to the performance by the District of its obligations under this Resolution, the Note and the Note Purchase Agreement will have been obtained prior to delivery of the Note.

(e) Assuming due authorization, execution, and delivery by the other parties thereto (other than the District), this Resolution and the Note Purchase Agreement are the legal, valid, and binding obligations and agreements of the District, enforceable against the District in accordance with their respective terms, subject to the application by a court of general principles of equity which permit the exercise of judicial discretion and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law affecting creditors' rights generally and principles of sovereign immunity.

(f) There is no action, suit, or proceeding pending in any court or, to the best knowledge of the District, pending or threatened against or affecting the District, or relating to other applicable laws or regulations, or this Resolution or the Note Purchase Agreement in any court or before or by any governmental department, agency, instrumentality, or arbitrator the resolution of which would materially and adversely affect the ability or authority of the District to perform its obligations under this Resolution or the Note Purchase Agreement, or which in any manner questions the validity or enforceability of this Resolution or the Note Purchase Agreement or the granting, perfection, enforceability, or priority of the lien on and pledge of the security.

(g) No Event of Default has occurred and is continuing or would result from the consummation of the transaction contemplated by this Resolution or the Note Purchase Agreement.

(h) No portion of the proceeds of any Note shall be used by the District for the purpose of "purchasing" or "carrying" any margin stock or used in any manner which might cause the borrowing or the application of such proceeds to violate Regulation G, Regulation U, Regulation T, or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of the Board or to violate the Securities Exchange Act of 1934, as amended, in each case as in effect on the date or dates of such Note and such use of proceeds.

(i) There is no amendment or proposed amendment certified for placement on a ballot or referendum, or, to the knowledge of the District, to any law, ordinance, or regulation of

the District, or any legislation that has passed either house of the legislature of the State, or any published judicial decision interpreting any of the foregoing, the effect of which is to materially adversely affect the Notes, or any holder thereof in its capacity as such, or this Resolution or the security therefor or the Note Purchase Agreement.

(j) The District is solvent and able to pay its debts as they become due.

(k) The audited financial statements of the District as of June 30, 2016, delivered herewith to the Purchaser, are true and accurate and fairly present the financial condition and results of operations of the District as of the date thereof. Since June 30, 2016 there has been no material adverse change in the business, financial position, result of operations, or prospects of the District.

(l) The District is in compliance with all laws except to the extent noncompliance could not reasonably be expected to result in a Material Adverse Effect.

The covenants and representations made or required by this Section are for the benefit of the Purchaser and any subsequent Noteholder and of Bond Counsel and may be relied upon by such persons. Any inquiry undertaken by or on behalf of the Purchaser shall not affect the Purchaser's ability to rely on such covenants and representations.

***Section 9. Covenants of the District.*** While any amount is due, owing and unpaid on the Note or any commitment under the Note Purchase Agreement is still in effect, the District covenants as follows:

(a) The District covenants to provide the Purchaser immediately upon the availability thereof, audited financial statements of the District as of June 30, 2016, for the twelve-month period then ended.

(b) The District will not create any lien on the Available Funds (other than the Maintenance Tax) which either directly or indirectly creates a Material Adverse Effect. The District will not create a lien on the Maintenance Tax other than the lien created hereunder for the benefit of the Purchaser.

(c) The District shall promptly upon request by the Purchaser, execute and deliver such further documents and do such other acts and things as the Purchaser may reasonably request in order to effect fully the purposes of this Resolution and the Note Purchase Agreement, and to provide for payment of the obligations and for granting the pledge of the Available Funds in accordance with the terms of this Resolution and the Note Purchase Agreement.

(d) The District will furnish to the Purchaser such information regarding the financial condition, results of operations, or business of the District as the Purchaser may reasonably request and will permit any officers, employees, or agents of the Purchaser to discuss matters reasonably pertinent to an evaluation of the credit of the District, as the Purchaser may reasonably request. All information received by or provided to the Purchaser pursuant to this



Resolution or the Note Purchase Agreement, unless otherwise made public by the District, will be held as confidential information by such party.

(e) The District shall comply with all laws, ordinances, orders, rules, and regulations of duly constituted public authorities which if not complied with would have a Material Adverse Effect.

(f) The District shall promptly notify the Purchaser of (i) the existence and status of any litigation or any other action, suit or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality which individually or in the aggregate could, in the event of an unfavorable outcome, have a material adverse effect on (A) its financial condition or operations, (B) the Notes, (C) the District's ability to pay and perform the obligations, or (D) the enforceability or validity of this Resolution or the Note Purchase Agreement, or (ii) any change in any material fact or circumstance represented or warranted in this Resolution or in the Note Purchase Agreement.

(g) The District will not liquidate or dissolve or otherwise dispose of all or substantially all of its assets (whether in a single transaction or a series of transactions) or merge into another Person or permit one or more other Persons to consolidate with or merge into it, unless each of the following conditions shall have been fulfilled: (i) after giving effect to such disposition, consolidation or merger, no Event of Default will have occurred and be continuing; (ii) the Person to which such disposition is made or the Person surviving such consolidation or merger (if such Person is not the District) assumes in writing, reasonably satisfactory in form and substance to the Purchaser, the performance of all of the obligations, covenants, agreements and conditions of this Resolution and the Note Purchase Agreement; and (iii) the District shall have given to the Purchaser not less than thirty days' prior written notice of such disposition, merger or consolidation and furnished to the Purchaser (a) all such information concerning such disposition, consolidation or merger as the Purchaser shall have reasonably requested, and (b) a certificate of an appropriate officer of the District to the effect that each of the conditions precedent to such disposition, merger or consolidation contained in this Section 9(h) has been fulfilled.

(h) The covenants and representations made or required by this Section are for the benefit of the Purchaser and any subsequent Noteholder and of Bond Counsel, and may be relied upon by such persons. Any inquiry undertaken by or on behalf of the Purchaser shall not affect the Purchaser's ability to rely on such covenants and representations.

**Section 10. Execution.** The Note shall be signed by the manual or facsimile signature of the President of the Board and attested by the manual or facsimile signature of the Secretary of the Board, and the official seal of the District shall be impressed or placed in facsimile thereon.

**Section 11. Medium and Place of Payment.** The principal of and interest on the Note shall be payable by wire transfer in immediately available funds upon presentation and surrender of the Note to the District on the Stated Maturity Date or date of any prepayment.

**Section 12. Form of Note.** The Note shall be in substantially the form set out in **Exhibit A** to this Resolution, with such omissions, insertions and variations as may be necessary and desirable and permitted by this Resolution.

**Section 13. Collection of Revenues; Tax Levy; Payment.** The District covenants and agrees that it shall (a) use its best efforts to collect the Available Funds, including the Maintenance Tax, and apply the same to the payment of the principal of and interest on the Note, (b) levy, assess and collect such ad valorem taxes as are necessary to provide revenues adequate to meet the requirements of its budget for Fiscal Year 2017 and (c) make available, on or before the Stated Maturity Date, amounts sufficient to pay the principal of and interest on the Note, when due.

**Section 14. Delivery.** The Note shall be delivered to the Purchaser at the time and place agreed to by the District and the Purchaser.

**Section 15. Use of Proceeds; Investments; Security.** (a) The proceeds of the sale of the Note shall be deposited into the District's General Fund and used for the purposes set forth in Section 3 of this Resolution.

(b) The Board may place proceeds of the Note (including investment earnings thereon) in time deposits or invest the same as authorized by law; provided, however, that the District hereby covenants that the proceeds of the sale of the Note will be used as soon as possible for the purposes for which the Note are issued.

(c) All deposits authorized or required by this Resolution shall be secured to the fullest extent required by law for the security of public funds.

**Section 16. Opinion of Bond Counsel.** Delivery of the Note is subject to the Purchaser being furnished with the final, approving opinion of Bond Counsel, which opinion shall be dated as of and delivered on the Delivery Date.

**Section 17. Defaults and Remedies.**

(a) Each of the following occurrences or events, for the purpose of this Resolution, is hereby declared to be an "Event of Default," to wit:

(i) the failure to make full payment of (A) the Principal Amount of the Note on the Stated Maturity Date or (B) all interest payable on the Note when due;

(ii) any representation, warranty, certification, or statement made or deemed made by or on behalf of the District in this Resolution, the Note Purchase Agreement or in any certificate delivered pursuant to this Resolution or Note Purchase Agreement shall prove to have been incorrect or misleading in any material respect when made or deemed made;

(iii) the failure of the District to make deposits to the Interest and Sinking Fund at the time and in the amounts required hereby;

(iv) default in the performance or observance of any covenant of this Resolution, the Note Purchase Agreement or any other certificate delivered in connection therewith which is not remedied within fifteen days after the earlier of (i) the date on which such failure shall first become known to any officer of the District or (ii) written notice thereof is given to the District by the Purchaser;

(v) failure of the District to pay any amount owing under the Note Purchase Agreement;

(vi) the District shall commence a voluntary case or other proceeding seeking (a) liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshaling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (b) the appointment of a receiver, liquidator, custodian, or other similar official with respect to the District, or shall consent to or acquiesce in such relief or the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it; or (c) the District shall make a general assignment for the benefit of creditors or shall fail to generally pay its debts as they become due; and

(vii) (a) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal or interest on any obligation of the District; (b) there shall be commenced against the District any case, proceeding or other action of a nature referred to in paragraph (vi) above and the same shall remain undismissed or unbonded for a period of 60 days or result in the entry of an order for relief; (c) there shall be commenced against the District any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief or which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; (d) the District takes action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (a), (b) or (c) of this subsection 17(a)(vii); or (e) the District shall admit in writing its inability to, pay its debts as they become due.

(b) Upon the happening of any Event of Default, all obligations of the Purchaser under the Note Purchase Agreement shall automatically and immediately be terminated and then and in every case the Noteholder or an authorized representative thereof may proceed against the District for the purpose of protecting and enforcing the rights of the Noteholder under this Resolution including but not limited to enforcing the pledge of, security interest in, and lien and

charge on the Available Funds against all parties in possession of any Available Funds at any time, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including, but not limited to, the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Noteholder hereunder or any combination of such remedies; provided, however, that the right to accelerate the obligation evidenced by the Note shall not be available as a remedy under this Resolution.

**Section 18. Legal Holidays.** If the date fixed for payment of the Note is not a Business Day, then payment need not be made on such date, but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date fixed for payment and no interest shall accrue for the period from the date fixed for payment to the date of actual payment.

**Section 19. No Recourse Against District Officials.** No recourse shall be had for the payment of principal of or interest on the Note or for any claim based thereon or on this Resolution against any official of the District or against any person executing the Note.

**Section 20. Further Proceedings.** The President of the Board and other appropriate officials of the District are hereby authorized and directed to do any and all things necessary and/or convenient to carry out the terms of this Resolution.

**Section 21. Notice.** Any notice, demand, direction, request or other instrument authorized or required by this Resolution to be given to or filed with the District or the Purchaser shall be deemed to have been given only upon receipt. Any notice shall be sent by first class mail, postage prepaid, to the address specified below or, to such other address as may be designated in writing by the parties:

District: Ector County Independent School District  
802 N. Sam Houston  
Odessa, Texas 79761  
Attention: David Harwell, Chief Financial Officer

Purchaser: Frost Bank  
[STREET ADDRESS]  
Odessa, Texas [ZIP CODE]  
Attention: Austin Burns, Assistant Vice President

**Section 22. Severability.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 23. Open Meeting.** It is hereby found, determined and declared that a sufficient written notice of the date, hour, place and subject of the meeting of the Board at which this

Resolution was adopted was posted at a place convenient and readily accessible at all times to the general public at the regular meeting place of the District for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered and formally acted upon. The Board further ratifies, approves, and confirms such written notice and the contents and posting thereof.

***Section 25. Effective Date.*** This Resolution shall be in full force and effect immediately upon its adoption.

PASSED AND APPROVED THIS \_\_\_\_\_, 2016.

\_\_\_\_\_  
Secretary, Board of Trustees

\_\_\_\_\_  
President, Board of Trustees

**EXHIBIT A  
FORM OF NOTE**

No. R-1

PRINCIPAL AMOUNT  
\$20,000,000

**UNITED STATES OF AMERICA  
STATE OF TEXAS  
ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT  
TAX AND REVENUE ANTICIPATION NOTE  
TAXABLE SERIES 2016**

| <u>INTEREST RATE</u> | <u>DELIVERY DATE</u> | <u>STATED MATURITY DATE</u> |
|----------------------|----------------------|-----------------------------|
| As described below   | _____, 2016          | _____, 2017                 |

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT (the "*District*"), an independent school district and political subdivision of the State of Texas, for value received, hereby promises to pay to the order of FROST BANK (the "*Payee*" or, initially, the "*Purchaser*"), on the Stated Maturity Date specified above, an amount equal to the Principal Amount of TWENTY MILLION DOLLARS (\$20,000,000) and to pay interest to the Purchaser on the Principal Amount of this Note from the Delivery Date until the date the Stated Maturity Date or the date of prepayment of all of this Note. The Principal Amount of the Note and the interest due thereon from the Delivery Date above shall be paid to the Purchaser on the Stated Maturity Date and calculated in accordance with the provisions of the Resolution (as defined below).

INTEREST ON THE OUTSTANDING and unpaid principal balance of this Note shall be computed at a per annum rate equal to the lesser of (a) LIBOR (as defined below) plus one and one-half percent (1.50%) per annum, with said rate to be adjusted monthly to reflect any change in LIBOR at the time of any such change or (b) the highest rate permitted by applicable law, but in no event shall interest contracted for, charged or received hereunder plus any other charges in connection herewith which constitute interest exceed the maximum interest permitted by applicable law, with said interest to be computed on the basis of a year of 360 days for the actual number of days elapsed. As used herein, for any date, "LIBOR" shall mean the London Interbank Offered Rate (LIBOR) for one month quoted in the most recently published issue of The Wall Street Journal (U.S. Edition) in the "London Interbank Offered Rates" column; provided, LIBOR will not decrease below a minimum LIBOR of 0.15% per annum. The District acknowledges that (i) if more than one London Interbank Offered Rate is published at any time by The Wall Street Journal, the highest of such London Interbank Offered Rate shall constitute the London Interbank Offered Rate hereunder, and (ii) if at any time The Wall Street Journal ceases to publish a London Interbank Offered Rate, the Purchaser shall have the right to select a substitute rate that Purchaser determines, in the exercise of its reasonable commercial discretion,

to be comparable to such LIBOR, and the substituted rate as so selected, upon the sending of written notice thereof to District, shall constitute LIBOR hereunder. LIBOR is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Each determination by the Purchaser of the LIBOR shall be conclusive and binding absent manifest error, and may be computed using any reasonable averaging and attribution method.

SUCH INTEREST SHALL ACCRUE from the Date of Delivery or the Dates of Delivery of the Note in exchange for the purchase price therefor.

THIS NOTE MAY BE PREPAID in whole but not in part prior to the Stated Maturity Date on any Business Day, at a price equal to the Principal Amount of the Note plus accrued interest thereon to the prepayment date.

THE PRINCIPAL OF AND INTEREST of this Note shall be payable without exchange or collection charges in lawful money of the United States of America by wire transfer of immediately available funds upon presentation and surrender of this Note at the offices of the District located at 802 N. Sam Houston, Odessa, Texas 79761.

THIS NOTE IS ISSUED in accordance with, and subject and pursuant to the terms, provisions, and conditions contained in a certain resolution (the "*Resolution*") of the Board of Trustees of the District adopted on \_\_\_\_\_, 2016, in order to obtain funds for the purpose of paying "Maintenance Expenses" of the District (as defined in the Resolution). The District hereby certifies that this Note is issued pursuant to and in compliance with Section 45.108, Texas Education Code, as amended, and the Resolution. The Resolution and all of its terms, provisions, covenants and conditions are incorporated herein by reference for all legal purposes.

BY ACCEPTANCE OF THIS NOTE, the Payee and its successors and assigns agree to and accept the terms, provisions and conditions pertaining hereto set forth in the Resolution.

THE DISTRICT MAY treat the Payee as the absolute owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue or has been assigned and transferred, and the District shall not be affected by notice to the contrary.

IF THE DATE FOR THE PAYMENT of the principal of or interest on this Note shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the City of Odessa, Texas, or the New York Stock Exchange are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the original date payment was due.

The Principal Amount of the Note and the interest thereon are payable to the Payee under the Resolution, notwithstanding that such amounts, by mistake, error, or oversight are not entered on accounts or records maintained by the Purchaser. This Note is payable from and is



secured by a first lien and security interest on the "*Available Funds*" of the District, as defined in the Resolution.

IT IS HEREBY certified, recited, and covenanted that this Note has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance and delivery of this Note have been performed, existed, and been done in accordance with law; that this Note constitutes a special obligation of the District and is payable solely from the receipts of the Available Funds (as defined in the Resolution) sufficient to provide for the payment of the interest on and principal of this Note, as such principal and interest comes due; and that the total indebtedness of the District, including this Note, does not exceed any constitutional or statutory limitation.

THIS NOTE SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE FEDERAL LAW.

IN WITNESS WHEREOF, the District has caused this Note to be executed by the manual or facsimile signature of its President and countersigned by the manual or facsimile signature of its Secretary and the official seal of the District has been duly impressed or placed in facsimile on this Note.

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Secretary, Board of Trustees

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President, Board of Trustees

[SEAL]

**EXHIBIT B**

**NOTE PURCHASE AGREEMENT**