

## **DEALER AGREEMENT**

THIS DEALER AGREEMENT (this "Agreement") is entered into as of September 1, 2014 by and between the City of Austin, Texas (the "Issuer") and Goldman, Sachs & Co. (the "Dealer").

### **RECITALS**

The Issuer proposes to issue and reissue its Combined Utility Systems Commercial Paper Notes, Series A (the "Notes") in an aggregate principal amount not to exceed \$400,000,000 at any time outstanding. The Dealer has agreed to act as Dealer for the Notes and to perform the duties imposed upon the Dealer by the Note Resolution and this Agreement.

### **AGREEMENTS**

NOW THEREFORE, for and in consideration of the covenants herein made, and subject to the conditions herein set forth, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context clearly indicates a contrary meaning, each capitalized term used in this Agreement shall have the meaning given to that term in the ordinance authorizing the Notes adopted by the Issuer on August 28, 2014 (the "Note Resolution").

#### **Section 2. Appointments of Dealer; Acceptance.**

(a) Subject to the terms and conditions set forth in this Agreement, the Issuer hereby appoints Goldman, Sachs & Co. as the Dealer for the Notes, and Goldman, Sachs & Co. hereby accepts such appointment and accepts and agrees to perform the duties and obligations imposed upon it as Dealer under this Agreement and under the Note Resolution, subject to the terms, conditions and limitations set forth in this Agreement.

(b) While (i) the Issuer has and shall have no obligation to sell the Notes to the Dealer or to permit the Dealer to arrange any sale of the Notes for the account of the Issuer, and (ii) the Dealer has and shall have no obligation to purchase the Notes from the Issuer or to arrange any sale of the Notes for the account of the Issuer, the parties hereto agree that in any case where the Dealer purchases the Notes from the Issuer, or arranges for the sale of the Notes by the Issuer, such Notes will be purchased or sold by the Dealer in reliance on the representations, warranties, covenants and agreements of the Issuer contained herein or made pursuant hereto and on the terms and conditions and in the manner provided herein.

(c) The Issuer has delivered to the Dealer a certified copy of the Note Resolution and the Issuing and Paying Agency Agreement. The Issuer agrees to provide the Dealer with a certified copy of any amendment to the Note Resolution or Issuing and Paying Agency Agreement, if any, promptly upon the adoption or execution thereof.

(d) The Issuer hereby authorizes the Dealer to transmit instructions to the Issuing and Paying Agent or receive reports with respect to the Notes, in accordance with Section 4 of the Issuing and Paying Agency Agreement.

**Section 3. Sale and Purchase of Notes.** The Dealer and the Issuer agree that any Note which the Dealer may purchase or for which the Dealer may arrange the sale, will be purchased or sold on the terms and conditions and in the manner provided in the Note Resolution, the Issuing and Paying Agency Agreement and this Agreement.

**Section 4. Transaction in Notes.**

(a) All transactions in Notes between the Dealer and the Issuer shall be in accordance with the Note Resolution and the custom and practice in the commercial paper market to the extent such custom and practice is not inconsistent with the Note Resolution.

(b) As early as possible, but not later than 1:00 p.m. (New York City time) on the day on which any Notes are to be issued, the Dealer shall notify the Issuer of the proposed Maturity Dates, prices and interest rates at which the Dealer will purchase or arrange the sale of the Notes. The Dealer shall not be obligated to purchase any Notes unless and until an agreement has been reached in each case on the foregoing points and the Dealer has agreed to such purchase. Not later than 1:00 p.m. (New York City time) on the date of each transaction, the Dealer shall either (a) confirm each transaction made with or arranged by it or (b) notify the Issuer and the Issuing and Paying Agent of the difference, if any, between the amount of maturing Notes and the amount of Notes which the Dealer has arranged to sell or has agreed to purchase. Such confirmation or notification shall be given by telephone (or by other telecommunications medium acceptable to the Issuer) and in writing to the Issuer and the Issuing and Paying Agent in the Dealer's customary form.

**Section 5. Payment for Notes.** The Dealer shall pay for the Notes purchased by the Dealer or sold by the Dealer in immediately available funds on the Business Day such Notes are delivered to the Dealer. All Notes will be sold at par, and will be executed in the manner provided for in the Issuing and Paying Agency Agreement.

**Section 6. Authorized Issuer Representative.** Note transactions with the Issuer referred to in Section 4 hereof, shall be with any one of the officers or employees of the Issuer who are designated as an Authorized Issuer Representative by certificate signed by the Chief Financial Officer of the Issuer. The initial written designation of the Authorized Issuer Representatives is appended hereto as Exhibit A. The Issuer agrees to provide the Dealer with revised written designations in the form of Exhibit A when and as required by changes in the Authorized Issuer Representatives. The Dealer may rely upon such designation unless and until otherwise notified in writing by the Issuer.

**Section 7. Representations and Warranties of the Issuer.** The Issuer represents and warrants to the Dealer as follows:

(a) The Issuer is a home-rule municipality, duly organized and validly existing under the laws of the State of Texas, and has full power and authority to issue the Notes, to enter into, perform and observe the covenants and agreements on its part contained in this

Agreement, the Issuing and Paying Agency Agreement, the Note Resolution and the Notes (collectively, the “Documents”) and to carry out and consummate all transactions contemplated by the Documents, and the Documents have been duly authorized, executed and delivered by the Issuer. The Documents constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium or other similar laws heretofore or hereafter in effect affecting creditors’ rights, to the extent constitutionally applicable.

(b) The Issuer has adopted the Note Resolution at a meeting that was duly called and at which a quorum was present and acting throughout. The Note Resolution is in full force and effect and has not been modified or amended since its adoption. The Issuer has also duly authorized its City Manager and Chief Financial Officer to execute and deliver this Agreement and the other Documents.

(c) The Notes have been duly authorized and executed by the Issuer, and when authenticated and delivered by the Issuing and Paying Agent will constitute legal, valid and binding notes of the Issuer and will be in conformity with, and entitled to the benefit of, the Note Resolution. The Notes will be issued solely as Book-Entry Notes, as defined in the Issuing and Paying Agency Agreement, and the Issuer will not issue Certificated Notes, as defined in the Issuing and Paying Agency Agreement, without amending the Offering Memorandum to provide material information relating to the Certificated Notes.

(d) The information relating to the Notes and the Issuer contained in the Offering Memorandum prepared by the Issuer does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(e) There are no consents, authorization or approvals of, or filings with, any Federal or state government authority (other than the Issuer) required in connection with the issuance or sale by the Issuer of the Notes or the performance of its obligations thereunder except as may be required by state securities laws and those which have already been obtained or made.

(f) Adoption of the Note Resolution and the execution, delivery and performance by the Issuer of this agreement, the Notes, and the Related Documents have not and will not result in a breach or violation of, conflict with, or constitute a default under any law, regulation, order, judgment, agreement or instrument to which the Issuer is a party or by which the Issuer or any of its property is bound.

(g) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect the validity of the Notes and the Documents, or any other agreement or instrument to which the Issuer is a party and which has been or will be executed in connection with the issuance of the Notes.

(h) Each delivery of Notes to the Dealer shall be deemed a representation and warranty by the Issuer, as of the date thereof, that (i) the Notes issued on such date have been duly authorized, issued and delivered and, upon payment therefor, will constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms, and (ii) the representations and warranties of the Issuer set forth in paragraphs (a) through (g) of this Section 7 are true and correct as if made on such date.

**Section 8. Covenants and Agreements of the Issuer.** The Issuer covenants and agrees that:

(a) The Issuer will give the Dealer notice forthwith of the occurrence of any breach by the Issuer of any of its covenants contained in the Note Resolution

(b) The Issuer will not permit to become effective any amendment to or modification of the Note Resolution or the Related Documents which could reasonably be expected to adversely affect the interest of the holder of any Notes then outstanding. The Issuer will give the Dealer notice of any proposed amendment to or modification of the Note Resolution or the Related Documents prior to the effective date thereof.

(c) The Issuer will not sell Notes in the event that the opinions from Bond Counsel delivered in connection with the initial issuance of the Notes have been withdrawn, adversely modified or retracted.

(d) The Issuer will take all actions within its control necessary to maintain the exclusion of interest on the Notes from the gross income of the holders thereof for Federal income tax purposes.

**Section 9. Offering Memorandum.**

(a) The Issuer shall prepare or cause to be prepared for distribution to investors and potential investors in the Notes an Offering Memorandum containing material information about the Issuer and the Notes. The Issuer shall be responsible for retaining such counsel or advisors as it believes necessary to assure itself that the Offering Memorandum contains all material information necessary to comply with the disclosure requirements of federal and state securities laws. The Offering Memorandum shall be updated by the Issuer on an annual basis or more often as necessary to reflect information material to investors in the Notes. Copies of each updated Offering Memorandum shall be promptly delivered to the Dealer in reasonable quantity for delivery to holders or potential holders of the Notes.

(b) In the event that an action is brought against the Dealer pursuant to federal or state securities laws for a material misstatement or omission in the Issuer's Offering Memorandum, the Issuer shall reimburse the Dealer for its legal expenses in defending itself against such action.

(c) After the Closing, defined below, the Issuer shall immediately notify the Dealer by telephone (which shall promptly be confirmed in writing) of (i) any fact or occurrence as a result of which the Offering Memorandum would be or become misleading or any representation or warranty of the Issuer under the [defined term to reflect all documents issued in

conjunction with the Notes] would become false; (ii) any material adverse change in the financial condition or general affairs of the Issuer; (iii) any reduction or written communication by any rating agency that it is considering a possible reduction, in any existing rating of the Notes; (iv) any adverse change in the federal income tax treatment of interest on the Notes under the Internal Revenue Code of 1986, as amended (the “Code”); (v) the need for an opinion of bond counsel as to the tax status of any of the Notes; or (vi) any event of default under the Note Resolution, or any event which, with notice or lapse of time or both, would constitute such an event of default.

(d) The Issuer shall furnish the Dealer copies of any published reports and financial statements relating to the financial affairs and condition of the Issuer, promptly after they are made available to the public, and such additional information concerning the operations and financial condition of the Issuer, as the Dealer may from time to time reasonably request.

**Section 10. Closing.** On a date mutually acceptable to the Issuer and the Dealer (the “Closing”) there shall be delivered to the Dealer the following documents:

(a) A Certificate signed by the Chief Financial Officer of the City stating that the representations and warranties set forth in this Agreement, the Note Resolution and Issuing and Paying Agency Agreement are true and accurate as of the date of Closing.

(b) An opinion of Bond Counsel, dated the Closing, substantially in the form attached to the Offering Memorandum.

(c) A supplemental opinion of Bond Counsel, dated the Closing, substantially in the form of Exhibit B hereto.

(d) Such additional documentation as Bond Counsel or the Dealer may reasonably request to evidence compliance with applicable law.

**Section 11. Payment of Fees and Expenses of Dealer.**

(a) For the services to be performed by the Dealer under this Agreement, the Issuer agrees to pay the Dealer during each calendar quarter a fee equal to \_\_\_\_% of the amount of each Note sold or placed by the Dealer calculated as follows: [rate in decimal form] times the principal amount of the Notes which were issued in such quarter, times the number of days such Notes shall be Outstanding, divided by 365 or 366 days (as appropriate); and shall be billed quarterly in arrears on [first billing date] and on the first day of each January, April, July or October thereafter and shall be due and payable upon receipt.

(b) The Issuer’s obligations under this Section 10 shall survive termination or expiration of the Agreement.

**Section 12. [RESERVED]**

**Section 13. Termination.** Either the Dealer or the Issuer may terminate this Agreement with five business days’ prior written notice to the other, with a copy provided to the Issuing and Paying Agent. No such termination shall affect the rights and obligations of the Dealer which have accrued under this Agreement prior to termination.

**Section 14. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original but all of which shall constitute one and the same document.

**Section 15. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York; however, the rights, duties and obligations of the Issuer under this Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

**Section 16. Notices.** Except as otherwise specifically provided herein, all notices and documents required of and provided for under this Agreement shall be in writing and shall be delivered by hand, first class mail (postage prepaid), telex, telecopier, telegram or overnight express delivery, and shall be effective when received at the following addresses or at such other address as a party may designate in a notice delivered to the other party hereto in accordance herewith:

If to the Issuer:

City of Austin, Texas  
301 West Second Street  
Austin, Texas 78701  
Attention: City Treasurer  
Tel: 512-974-7882  
E-mail: debt@austintexas.gov

If to the Dealer:

Goldman, Sachs & Co.  
200 West Street, 6th Floor  
New York, New York 10282  
Attn: Municipal Money Market Sales and Trading – CP and Notes Trading  
Tel: 212-902-6633  
E-mail: ficc-municp-traders@ny.email.gs.com

**Section 17. No Advisory or Fiduciary Role.** The Issuer acknowledges and agrees that: (i) any purchase of, or arrangement for the sale of, the Notes contemplated by this Agreement will be pursuant to an arm's-length commercial transaction between the Issuer and the Dealer and that the Dealer has financial and other interests that differ from those of the issuer; (ii) the Dealer is not acting as a municipal advisor, financial advisor, or fiduciary to the Issuer and has not assumed any advisory or fiduciary responsibility to the Issuer with respect to any transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Dealer has provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligations the Dealer has to the Issuer with respect to any transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate. If the Issuer

would like a municipal advisor in this transaction that has legal fiduciary duties to the Issuer, then the Issuer is free to engage a municipal advisor to serve in that capacity.

**Section 18. Headings.** The section headings hereof have been inserted for convenience of reference only, shall not be part of this Agreement, and shall not be used to construe, define, limit or interpret the meaning of any provision hereof.

**Section 19. Severability.** If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining provisions hereof.

**Section 20. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Agreement shall only be amended, supplemented or modified in a writing signed by both of the parties hereto.

*[Execution Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

CITY OF AUSTIN, TEXAS

By: \_\_\_\_\_  
Marc A. Ott  
City Manager

[SEAL]

ATTEST:

\_\_\_\_\_  
Jeannette S. Goodall  
City Clerk

GOLDMAN, SACHS & CO.

\_\_\_\_\_



**EXHIBIT A**

**DESIGNATION OF AUTHORIZED ISSUER REPRESENTATIVE**

**City of Austin, Texas**

**Commercial Paper Notes**

I, Chief Financial Officer of the City of Austin, Texas, pursuant to the terms of the Note Resolution authorizing \$400,000,000 City of Austin, Texas Combined Utility System Commercial Paper Notes, Series A adopted by the Austin City Council on August 28, 2014 DO HEREBY DESIGNATE, in addition to myself, the following individuals as Authorized Issuer Representatives, to execute and deliver documents and instructions and to effect other transactions on behalf of the Issuer pursuant to or as contemplated by the Note Resolution, and the signatures set forth opposite their names below are their true and correct signatures, respectively:

<b>Name</b>	<b>Signature</b>
Art Alfaro	
Georgia Sanchez	
Audra Dickinson	

**IN WITNESS WHEREOF**, I have hereunto set my hand as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_

Elaine Hart

Chief Financial Officer

[Letterhead of Bond Counsel]

\_\_\_\_\_, 2014

Goldman, Sachs & Co.  
85 Broad Street  
New York, New York 10004

Dear Sirs:

This opinion is being rendered to you pursuant to that certain Dealer Agreement, dated as of September 1, 2014 (the "Dealer Agreement"), between the City of Austin, Texas (the "Issuer"), and Goldman, Sachs & Co., relating to the \$400,000,000 City of Austin, Texas Combined Utility Systems Commercial Paper Notes, Series A (the "Notes"). Terms defined in the Dealer Agreement are used in this opinion with the meanings assigned to them in the Dealer Agreement.

We have acted as Bond Counsel to the Issuer in connection with the issuance and sale of the Notes. We have examined the Offering Memorandum and the Note Resolution, an executed Note and certain certificates and other documents of representatives of the Issuer and certain other public officials, and have examined such other records and documents and have made such other investigation as we deemed appropriate for the purposes of this opinion.

Based upon the foregoing, we are of the opinion that:

(1) No registration of any security under the Securities Act of 1933, as amended and as now in effect, or qualification of any indenture under the Trust Indenture Act of 1939, as amended and as now in effect, is required in connection with the offer and sale of the Notes.

(2) The Dealer Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due and valid authorization, execution and delivery of the Dealer Agreement by the parties thereto other than the Issuer, constitutes a valid and binding obligation enforceable in accordance with its terms.

(3) All consents, approvals or other actions of governmental bodies required for the valid execution and delivery of the Note Resolution and the Dealer Agreement by the Issuer and the valid issuance of the Notes by the Issuer have been obtained.

(4) The summary descriptions in the Offering Memorandum under the captions "\_\_\_\_\_", "\_\_\_\_\_", "\_\_\_\_\_", "\_\_\_\_\_" and "\_\_\_\_\_" and "\_\_\_\_\_" insofar as such descriptions purport to describe the Issuer or to

summarize certain provisions of the Notes, the Note Resolution, the Issuing and Paying Agency Agreement and the Dealer Agreement, fairly and accurately present the information purported to be shown therein.

The opinions expressed in paragraph 1 above are based upon our opinion of even date rendered to the Issuer and to you in our capacity as Bond Counsel in connection with the validity of the issuance and sale of the Notes and the tax exemption of interest thereon.

The opinions expressed in paragraph 2 above are qualified to the extent that (i) the enforceability of such instrument may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights, (ii) certain equitable remedies including specific performance may be unavailable and (iii) the indemnification provisions contained therein may be limited by applicable securities laws and public policy.

Very truly yours,