ORDINANCE NO. 20200827-072

AUTHORIZING THE ISSUANCE OF CITY OF AUSTIN, TEXAS COMBINED UTILITY SYSTEMS TAX-EXEMPT PROGRAM NOTES, CONSISTING OF COMMERCIAL PAPER NOTES AND DIRECT PURCHASE NOTES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

SECTION 1. **DEFINITIONS AND FINDINGS**. The terms below have following meanings, unless the text specifically indicates otherwise:

"Act" shall mean Chapter 1371, Texas Government Code.

"Advance" shall mean (i) all Advances and Bank Loans as defined in and made pursuant to the terms and conditions of the Revolving Credit Agreement, and (ii) any obligations of the City to the Bank under the Revolving Credit Agreement or the Fee Letter.

"Agreement" shall mean the Revolving Credit Agreement between the City and the Bank, together with any Bank Note, and any amendments or supplements.

"Authorized Denomination" shall mean (i) with respect to Commercial Paper Notes, $100,000 or integral multiples of $1,000 in excess of $100,000 and (ii) with respect to Direct Purchase Notes, $1,000,000 or integral multiples of $100,000 in excess of $1,000,000.

"Authorized Representative" shall mean one or more of the following officers or employees of the City, acting in concert or individually: the City Manager, any Assistant City Manager, the Chief Financial Officer of the City, any Deputy Chief Financial Officer, the City Treasurer, any Deputy City Treasurer or any other officer or employee of the City designated in writing by the City Manager or the Chief Financial Officer of the City, and approved by council, to act as an Authorized Representative.

"Bank" shall mean JPMorgan Chase Bank, National Association, and its successors and assigns under the Agreement and the Note Purchase Agreement.

"Bank Note" shall mean a promissory note or notes issued pursuant to the Revolving Credit Agreement (including, without limitation, the Bank Note, as defined in a Revolving Credit Agreement) to evidence and secure Advances made

by the Bank under, and having the terms and characteristics contained in, and issued in accordance with, the Revolving Credit Agreement.

"Bonds" shall mean a series or issue of bonds, notes, or similar obligations (other than the Program Notes, the Bank Note or the Revolving Credit Agreement) issued or incurred by the City after the passage of the Ordinance, payable from and secured solely by a lien on and pledge of the Net Revenues of the Systems, equal or subordinate in rank and dignity to the lien and pledge securing the payment of the Prior Lien Bonds or the Priority Lien Obligations.

"Business Day" shall mean any day (a) when (i) the office of the Bank is not authorized or required to be closed and (ii) banks are not authorized to be closed in the City and (b) when banks or the New York Stock Exchange are not authorized to be closed in New York, New York.

"City" shall mean the City of Austin, Texas.

"Code" shall mean the Internal Revenue Code of 1986.

"Commercial Paper Notes" shall mean Program Notes issued as commercial paper notes pursuant to the terms of the Ordinance.

"Commitment" shall mean $429,589,042, the maximum amount available to be drawn under the Revolving Credit Agreement for the payment of the principal of and interest on the Commercial Paper Notes, as this amount may be reduced and reinstated from time to time as provided in the Revolving Credit Agreement.

"Contractual Obligations" shall mean those obligations (i) issued or incurred by the City payable from the Net Revenues of the Electric Light and Power System and the Net Revenues of the Waterworks and Sewer System, (ii) incurred pursuant to express charter or statutory authority and (iii) which by the terms of the ordinance authorizing their issuance or the incurring of the obligation provide for payments to be made by the City for their retirement or payment to be equally and ratably secured with the Prior Lien Bonds by a lien on and pledge of the Net Revenues of the Systems.

"Council" or "council" shall mean the governing body of the City.

"Dealer" shall mean the entity designated in **Section 41(c).**

"Dealer Agreement" shall mean the agreement authorized to be entered into by **Section 41(c)**, as from time to time amended or supplemented.

"Designated Office" means, with respect to the Commercial Paper Notes, the corporate trust office of the Paying Agent/Registrar designated as the place for payment, transfer and exchange of the Commercial Paper Notes, initially, the corporate trust office of the Paying Agent/Registrar in New York, New York; and, with respect to the Direct Purchase Notes, the corporate office of the Note Paying Agent designated as the place for payment, transfer and exchange of the Direct Purchase Notes, initially, the corporate trust office of the Note Paying Agent in Newark, Delaware.

"Direct Purchase Payment Fund" shall mean the account so designated in **Section 17**.

"Direct Purchase Notes" shall mean Program Notes issued as direct purchase notes pursuant to the terms of this Ordinance to be purchased by the Bank in accordance with the terms of the Note Purchase Agreement.

"DTC" shall mean The Depository Trust Company, New York, New York.

"DTC Participant" shall mean the securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

"Electric Fund" shall mean the fund so designated in **Section 26**.

"Electric Light and Power System" shall mean all properties, facilities and plants currently owned, operated and maintained by the City, wholly or partially in participation with others, for the generation, transmission, supply and distribution of electrical energy and power, together with all future extensions, improvements, replacements and additions to, and all replacements of, the properties, facilities and plants; provided that, notwithstanding the foregoing, and to the extent authorized or permitted by law, the term "Electric Light and Power System" shall not include facilities of any kind (including any electric power generating and transmission facilities) which are declared not to be a part of the Electric Light and Power System and which are acquired or constructed by the City, or in participation with others, with the proceeds from the issuance of "Special Facilities Bonds," which are defined as being special revenue obligations of the City which are not Priority Lien Obligations but which are payable from and secured by other liens on and pledges of any revenues, sources or payments not pledged to the payment of Priority Lien Obligations including, but not limited to, special contract revenues or

payments received from any other legal entity in connection with the special facilities.

"Eligible Investments" shall mean any or all of the authorized investments described in the Public Funds Investment Act, Chapter 2256, Texas Government Code, and the City's investment policy, in which the City may purchase, sell and invest its funds and funds under its control.

"Eligible Project" shall mean the acquisition or construction of improvements, additions or extensions for the Systems, including capital assets and facilities incident and related to their operation, maintenance and administration, all as provided in the Act.

"Fee Letter" shall mean the fee letter between the City and the Bank executed in connection with the Revolving Credit Agreement and the Note Purchase Agreement.

"Fiscal Year" shall mean the twelve month financial accounting period used by the City in connection with the operation of the Systems, which may be any twelve consecutive month period established by the City.

"Gross Revenues of the Systems" and "Gross Revenues" shall mean, with respect to the Electric Light and Power System or the Waterworks and Sewer System, all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding refundable meter deposits, restricted gifts and grants and proceeds derived from the sale or other disposition of all or part of the City's participating interest in the South Texas Project and revenues, sources or payment from facilities acquired or constructed with Special Facilities Bonds) of the respective System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established by the City for the payment and security of the Priority Lien Obligations.

"Holder" or "Noteholder" shall mean any person, firm, association, or corporation who is in possession of any Program Note drawn, issued or endorsed to that person, firm, association or corporation or to the order of that person, firm, association or corporation or to bearer or in blank, including, unless the context shall otherwise require, the Bank.

"Issuing and Paying Agent," "Paying Agent/Registrar" or "Registrar" shall mean the agent appointed pursuant to **Section 3A**, or any successor to the agent.

"Issuing and Paying Agency Agreement" shall mean the agreement authorized to be entered into by **Section 41(a)**, as from time to time amended or supplemented.

"Maintenance and Operating Expenses" shall mean, with respect to the Electric Light and Power System or the Waterworks and Sewer System, all current expenses of operating and maintaining the respective system, including all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only repairs and extensions, as in the judgment of council, reasonably and fairly exercised, are necessary to maintain the operations and render adequate service to the City and its inhabitants, or as might be necessary to meet some physical accident or condition which would otherwise impair the Priority Lien Obligations shall be deducted in determining Net Revenues. Depreciation shall never be considered as an expense of Maintenance and Operation. Maintenance and Operating Expenses shall include payment under contracts for the purchase of power and energy, water supply or other materials, goods or services for the Systems to the extent authorized by law and the provisions of the contract.

"Maximum Interest Rate" shall mean 10%.

"Maximum Maturity Date" shall mean September 30, 2040.

"MSRB" shall mean the Municipal Securities Rulemaking Board.

"Net Revenues" and "Net Revenues of the Systems" shall mean, with respect to the Electric Light and Power System or the Waterworks and Sewer System, Gross Revenues of the respective System minus the respective System's Maintenance and Operating Expenses.

"Note Construction Account" shall mean the account so designated in **Section 18**.

"Note Paying Agent" shall mean, with respect to the Direct Purchase Notes, JP Morgan Chase Bank, National Association.

"Note Paying Agent Agreement" shall mean the agreement authorized to be entered into by **Section 41(b)**, as from time to time amended or supplemented.

"Note Payment Fund" shall mean the fund so designated in **Section 16**.

"Note Purchase Agreement" shall mean the Note Purchase Agreement between the City and the Bank, pursuant to which the purchase of Direct Purchase

Notes shall be governed, and as from time to time amended, restated or supplemented.

"Ordinance" shall mean this ordinance.

"Outstanding Tax-Exempt Program Notes" shall mean those commercial paper notes or direct purchase notes issued under authority of Ordinance No. 20170831-012 that are outstanding on the Business Day prior to the effective date of the Revolving Credit Agreement.

"Pledged Revenues" and "Pledged Revenues of the Systems" shall mean (i) the Net Revenues of the Systems, plus (ii) any additional revenues, income, or other resources, including, without limitation, any grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which in the future may, at the option of the City, be pledged to the payment of the Priority Lien Obligations, the Program Notes and the Taxable Commercial Paper Notes, the repayment of Advances and any other obligations of the City to the Bank under the Agreement, the Note Purchase Agreement and the Fee Letter, and the payment of Taxable Advances and any other obligations of the City to Barclays Bank PLC under the Taxable Agreement.

"Priority Lien Obligations" shall mean, collectively, the Subordinate Lien Bonds and the Separate Lien Obligations.

"Program Notes" shall mean the Commercial Paper Notes and the Direct Purchase Notes issued as notes pursuant to the terms of this Ordinance.

"Project Costs" shall mean all costs and expenses incurred in relation to Eligible Projects, including, without limitation, design, planning, engineering and legal costs, acquisition costs of land, interests in land, right-of-way and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an Eligible Project; financing costs, including interest during construction and thereafter, underwriter's discount and/or fees for legal, financial, and other professional services; and reimbursement for Project Costs attributable to Eligible Projects incurred prior to the issuance of any Program Notes.

"Regulations" shall mean all applicable temporary, proposed and final regulations and procedures promulgated under the Code or the Internal Revenue Code of 1954, to the extent applicable to the Code.

"Revolving Credit Agreement" shall mean the Agreement and any other agreement by and between the City and a liquidity provider executed and delivered

in substitution for or replacement of the Agreement providing a credit or liquidity facility supporting the Commercial Paper Notes, including any Bank Notes to be issued and delivered under the agreement evidencing any loans made or to be made to the City, providing additional security and liquidity for the payment of the Program Notes, and as from time to time the agreement may be amended, restated or supplemented.

"Separate Lien Obligations" shall mean those obligations (i) issued or incurred by the City payable solely from the Net Revenues of either the Electric Light and Power System or the Net Revenues of the Waterworks and Sewer System, but not both, (ii) incurred pursuant to express charter or statutory authority and (iii) which by the terms of the ordinance authorizing their issuance or the incurring of the obligations provide for payments to be made by the City for their retirement or payment to be secured solely by a lien on and pledge of the Net Revenues of the Electric Light and Power System or the Net Revenues of the Waterworks and Sewer System, but not both, of equal dignity with the lien on and pledge of Net Revenues securing the payment of the Subordinate Lien Bonds.

"Similarly Secured Notes" shall mean the Program Notes, the Bank Note, the Taxable Commercial Paper Notes and the Taxable Bank Note, payable from and secured by a parity lien on and pledge of Pledged Revenues.

"South Texas Project" shall mean the City's ownership interest in two nuclear steam electric generating units and related land and facilities, as more particularly defined in the South Texas Project Participation Agreement effective as of December 1, 1973, as amended.

"Subordinate Lien Bonds" shall mean:

City of Austin, Texas, Subordinate Lien Revenue Refunding Bonds, Series 1998, dated October 1, 1998.

"Systems" shall mean, collectively, the Electric Light and Power System and the Waterworks and Sewer System.

"Taxable Advances" shall mean advances and bank loans made under the Taxable Agreement.

"Taxable Agreement" shall mean the Taxable Revolving Credit Agreement dated as of September 1, 2020 by and between the City and Barclays Bank PLC, as amended and supplemented from time to time, executed to provide liquidity for the Taxable Commercial Notes.

"Taxable Bank Note" shall mean the bank note issued under the Taxable Agreement.

"Taxable Commercial Paper Notes" shall mean the "City of Austin, Texas Combined Utility Systems Commercial Paper Notes, Taxable Series" authorized by Ordinance No. 20200827-071, and as from time to time amended or supplemented by council.

"Water and Sewer Fund" shall mean the fund so designated in **Section 26**.

"Waterworks and Sewer System" means all properties, facilities and plants currently owned, operated and maintained by the City for the supply, treatment and transmission of treated potable water and the collection, treatment and disposal of water-carried wastes, together with all future extensions, improvements, replacements and additions; provided, however, that notwithstanding the foregoing, and to the extent authorized or permitted by law, the term "Waterworks and Sewer System" shall not include facilities of any kind which are declared not to be a part of the Waterworks and Sewer System and which are acquired or constructed by or on behalf of the City with the proceeds from the issuance of "Special Facilities Bonds," which are defined as being special revenue obligations of the City which are not Priority Lien Obligations but which are payable from and secured by other liens on and pledges of any revenues, sources or payments, not pledged to the payment of Priority Lien Obligations including, but not limited to, special contract revenues or payments received from any other legal entity in connection with the special facilities.

Terms not defined by, but used in, the Ordinance shall have the meanings given in the Note Purchase Agreement or the Revolving Credit Agreement, as the context requires.

There are no obligations outstanding that were issued by the City secured by a lien on and pledge of Net Revenues superior to the lien on and pledge of Net Revenues securing the Subordinate Lien Bonds and the Separate Lien Obligations.

The authorized amount of Program Notes to be issued and sold shall be limited to $400,000,000 at any one time outstanding.

In accordance with the provisions of the Act, council delegates to each Authorized Representative the authority to effect the issuance and sale of Program Notes, either in the form of Commercial Paper Notes or Direct Purchase Notes, all within certain specified parameters set forth in the Ordinance. The sale of Commercial Paper Notes or Direct Purchase Notes on the terms determined by an Authorized Representative is in the best interests of the City.

If appropriate in the context of the Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders. Unless the context requires otherwise, all references in the Ordinance to designated Sections and other subdivisions are to the Sections and other subdivisions of the Ordinance. References to any named person means that party and its successors and assigns. References to officials and officers mean the person holding the position in a permanent, acting or interim capacity. References to any constitutional, statutory or regulatory provision means the provision as it exists on the date council passed the Ordinance and any future amendments to or successor provisions of the constitutional, statutory or regulatory provision.

The Ordinance amends and supersedes Ordinance No. 2017-0831-012

SECTION 2. **AUTHORIZATION – DESIGNATION – PRINCIPAL AMOUNT - PURPOSE**. Acting under authority of the Act, council authorizes the issuance of Program Notes, designated the "**CITY OF AUSTIN, TEXAS COMBINED UTILITY SYSTEMS TAX-EXEMPT PROGRAM NOTES**". The Program Notes may be issued in an aggregate principal amount not to exceed **FOUR HUNDRED MILLION DOLLARS ($400,000,000)** at any one time outstanding for the purpose of financing Project Costs of Eligible Projects and to refinance, renew or refund Program Notes issued under the Ordinance, Priority Lien Obligations and any other authorized obligations of the System issued for Eligible Projects.

Program Notes issued under authority of the Ordinance shall consist of (i) Commercial Paper Notes and (ii) Direct Purchase Notes. Commercial Paper Notes shall be designated as "CITY OF AUSTIN, TEXAS COMBINED UTILITY SYSTEMS TAX-EXEMPT PROGRAM NOTES, COMMERCIAL PAPER SUB-SERIES." Direct Purchase Notes shall be designated as "CITY OF AUSTIN, TEXAS COMBINED UTILITY SYSTEMS TAX-EXEMPT PROGRAM NOTES, DIRECT PURCHASE SUB-SERIES."

In connection with the issuance of Commercial Paper Notes and the execution of the Revolving Credit Agreement, a Bank Note shall be issued and shall initially be issued in an amount equal to the Commitment, reflecting the maximum principal amount of Commercial Paper Notes that may be issued under this Ordinance, plus interest thereon, calculated on the basis of a 365-day year, for two hundred seventy (270) days at the Maximum Interest Rate, for the purpose of evidencing Advances to retire maturing Commercial Paper Notes, any outstanding Bank Notes and all other obligations of the City under the Revolving Credit Agreement; all in accordance with and subject to the terms, conditions and

limitations contained in the Ordinance and, with respect to the Bank Note, the Revolving Credit Agreement. Any portion of outstanding Commercial Paper Notes to be paid from money on deposit in the Note Payment Fund held by the Issuing and Paying Agent on the day of calculation and from the available proceeds of Commercial Paper Notes or Priority Lien Obligations or other obligations of the City issued on the day of calculation, the proceeds of which are deposited in the Note Payment Fund on the day of calculation, shall not be considered Outstanding. The authority to issue Commercial Paper Notes from time to time under the provisions of the Ordinance shall exist until the Maximum Maturity Date, regardless of whether prior to the Maximum Maturity Date there are at any time no outstanding Commercial Paper Notes. Commercial Paper Notes may not be issued to refinance or refund Priority Lien Obligations or Direct Purchase Notes without the prior approval of council and the Bank.

In connection with the issuance of Direct Purchase Notes, the terms of the Note Purchase Agreement shall govern the conditions to their issuance. Any portion of outstanding Direct Purchase Notes to be paid from money on deposit in the Direct Purchase Payment Fund on the day of calculation and from the available proceeds of Direct Purchase Notes or Priority Lien Obligations or other obligations of the City issued on the day of calculation, the proceeds of which are deposited in the Direct Purchase Payment Fund on the day of calculation, shall not be considered Outstanding. The authority to issue Direct Purchase Notes from time to time under the provisions of the Ordinance shall exist until the Maximum Maturity Date, regardless of whether prior to the Maximum Maturity Date there are at any time no outstanding Direct Purchase Notes. Direct Purchase Notes shall not have a stated maturity in excess of three hundred sixty (360) days. Direct Purchase Notes may not be issued to refinance or refund Priority Lien Obligations or Commercial Paper Notes without the prior approval of council and the Bank.

In connection with the refinancing or refunding of Program Notes, Priority Lien Obligations and any other authorized obligations of the System (including, without limitation, the Outstanding Tax-Exempt Program Notes), including accrued interest, the Program Notes, Priority Lien Obligations and any other authorized obligations of the System shall qualify as "obligations", as defined in the Act, at the time any refinancing or refunding occurs. The refunding or refinancing, other than a simultaneous refunding, of Program Notes, Priority Lien Obligations and other obligations of the System (including, without limitation, the Outstanding Tax-Exempt Program Notes), to the extent then required by applicable law, shall be by means of a gross defeasance established at the time of the issuance of the refunding Commercial Paper Notes or Direct Purchase Notes, and the selection of Program Notes, Priority Lien Obligations and any other authorized

obligations of the Systems to be so refunded or refinanced shall be made in the manner council determines.

SECTION 3A. **TERMS APPLICABLE TO THE COMMERCIAL PAPER NOTES**. Subject to the limitations contained in the Ordinance, Program Notes issued as Commercial Paper Notes shall be dated on or before, and within thirty (30) days of, their date of issuance (Note Date), as determined by an Authorized Representative; shall bear interest at a fixed rate or rates per annum computed on the basis of actual days elapsed and a 365-day year (but in no event in any case to exceed the Maximum Interest Rate) as may be determined by an Authorized Representative or the Dealer acting at the request of an Authorized Representative; and all Commercial Paper Notes shall mature on or before the Maximum Maturity Date.

Subject to the Maximum Interest Rate limitation, Commercial Paper Notes may be issued without a fixed numerical rate of interest for their stated term to bear interest in accordance with any clearly stated formula or method of calculation set forth in the Commercial Paper Note as determined by an Authorized Representative.

Subject to applicable terms, limitations and procedures contained in the Ordinance, Commercial Paper Notes may be sold at public or private sale and at par (within the interest rate restrictions provided in the Ordinance) as an Authorized Representative shall approve at the time of sale.

Council confirms that U.S. Bank National Association shall serve as Issuing and Paying Agent, Paying Agent/Registrar and Registrar for the Commercial Paper Notes, and the City covenants to keep and maintain with the Registrar at its Designated Office books and records (Registration Books) for the registration, payment, transfer and exchange of the Commercial Paper Notes, all as provided in the Ordinance and reasonable rules and regulations as the Registrar may prescribe. The City covenants to maintain and provide a Registrar at all times while the Commercial Paper Notes are outstanding, which shall be a national or state banking association or corporation or trust company organized and doing business under the laws of the United States of America or of any state and authorized under its laws to exercise trust powers. Should a change in the Paying Agent/Registrar for the Commercial Paper Notes occur, the City agrees to promptly cause a written notice to be (i) sent to the Bank, the Dealer and to each registered owner of the Commercial Paper Notes then Outstanding by United States mail, first-class postage prepaid, and (ii) published in a financial newspaper or journal of general circulation in The City of New York, New York, once during each calendar week for at least two calendar weeks; provided, however, publication of notice is not required if notice is sent to each Holder of the Commercial Paper Notes. The

notice shall give the address of the successor Paying Agent/Registrar. Council may appoint a successor Paying Agent/Registrar without the consent of the Holders.

The Commercial Paper Notes shall be issued in registered form, without coupons; provided, however, Commercial Paper Notes may be registered to bearer. The principal of and interest on the Commercial Paper Notes shall be payable in lawful money of the United States of America, without exchange or collection charges to the Holder of the Commercial Paper Note; principal is to be payable upon presentation and surrender of the Commercial Paper Note at the Designated Office and interest is to be payable to the registered owner thereof (when registered other than to bearer) either (i) by check sent by United States mail, first-class postage prepaid, to the address of the registered owner appearing on the Registration Books of the City maintained by the Registrar or (ii) by any other method, acceptable to the Issuing and Paying Agent, requested by the Holder, but interest on a Commercial Paper Note registered to bearer shall be payable only upon presentation of the Commercial Paper Note at the Designated Office.

A copy of the Registration Books shall be provided to the City by the Paying Agent/Registrar, by means of telecommunications equipment or other means as are mutually agreed to, within two Business Days of either the opening of the Registration Books or any change in the Registration Books.

The City and the Paying Agent/Registrar may treat the bearer (in the case of Commercial Paper Notes so registered) or the registered payee as the absolute owner of any Commercial Paper Note for the purpose of receiving payment and for all purposes, and the City and the Paying Agent/Registrar shall not be affected by any notice or knowledge to the contrary.

If an Authorized Representative determines that it is possible and desirable to provide for a book-entry only system of Commercial Paper Note registration with DTC, the Authorized Representative, acting for and on behalf of the City, is authorized to approve, execute, and deliver a Letter of Representations to DTC and to enter into any other agreement and execute any instrument as is necessary to implement a book-entry only system, with approval to be conclusively evidenced by the execution by the Authorized Representative of the agreement or instrument. Under the initial book-entry only system with DTC, no physical Commercial Paper Note certificates will be delivered to DTC. The execution and delivery to the Issuing and Paying Agent, as custodian for DTC, of a master note (Master Note) with respect to the Commercial Paper Notes, is approved. The ownership of the Commercial Paper Notes held in the book-entry-only system shall be registered in the name of Cede & Co., as nominee of DTC, which will serve as the initial securities depository for the Commercial Paper Notes. Ownership of beneficial

interests in the Commercial Paper Notes shall be shown by book-entry on the system maintained and operated by DTC and DTC Participants, and transfers of ownership of beneficial interests shall be made only by DTC and the DTC Participants by book-entry. The City and the Issuing and Paying Agent have no responsibility for DTC's book-entry system. DTC will be required to maintain records of the positions of the DTC Participants in the Commercial Paper Notes, and the DTC Participants and persons acting through the DTC Participants will be required to maintain records of the purchasers of beneficial interests in the Commercial Paper Notes. During any period when a book-entry only system is in effect, except as provided above, the Commercial Paper Notes shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository.

With respect to Commercial Paper Notes registered in the name of DTC or its nominee, neither the City nor the Issuing and Paying Agent shall have any responsibility or obligation to any DTC Participant or to any person on whose behalf a DTC Participant holds an interest in the Commercial Paper Notes. Without limiting the immediately preceding sentence, neither the City nor the Issuing and Paying Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC or any DTC Participant with respect to any ownership interest in the Commercial Paper Notes, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Commercial Paper Notes, as shown on the Registration Books, of any notice with respect to the Commercial Paper Notes, and (iii) the payment to any DTC Participant or any other person, other than a registered owner of the Commercial Paper Notes, as shown in the Registration Books, of any amount with respect to principal of or interest on the Commercial Paper Notes.

Whenever, during the term of the Commercial Paper Notes, the beneficial ownership thereof is determined by a book entry at DTC, the requirements in the Ordinance of holding, registering, delivering, exchanging, or transferring the Commercial Paper Notes shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC as to holding, registering, delivering, exchanging, or transferring the book-entry to produce the same effect.

The City or DTC each may determine to discontinue the book-entry only system and, unless a new book-entry only system is put in place, physical certificates in the form set forth in **Exhibit A** shall be provided to the beneficial owners of the Commercial Paper Notes.

If at any time, DTC ceases to hold the Commercial Paper Notes, all references to DTC in the Ordinance shall be of no further force or effect.

Whenever the beneficial ownership of the Commercial Paper Notes is determined by a book-entry at DTC, delivery of Commercial Paper Notes for payment at maturity shall be made pursuant to DTC's payment procedures as are in effect from time to time and the DTC Participants shall transmit payment to beneficial owners whose Commercial Paper Notes have matured. The City and each of the Issuing and Paying Agent, the Bank and the Dealer are not responsible for transfer of payment to the DTC Participants or beneficial owners.

SECTION 3B. **TERMS APPLICABLE TO THE DIRECT PURCHASE NOTES**. Subject to the limitations contained in the Ordinance and the Note Purchase Agreement, Program Notes issued as Direct Purchase Notes shall be dated on or before, and within thirty (30) days of, their date of issuance (Note Date), as determined by an Authorized Representative; shall bear interest and mature as set forth in the Note Purchase Agreement (but in no event in any case shall the interest payable on the Direct Purchase Notes exceed the amount determined at the Maximum Interest Rate); and all Direct Purchase Notes shall mature on or before the Maximum Maturity Date.

Direct Purchase Notes may be sold to the Bank at par (within the interest rate restrictions provided in the Ordinance and the Note Purchase Agreement).

JPMorgan Chase Bank, National Association shall serve as Note Paying Agent for the Direct Purchase Notes, and the City covenants to keep and maintain with the Note Paying Agent at its Designated Office books and records (Registration Books) for the registration, payment, transfer and exchange of the Direct Purchase Notes, all as provided in the Ordinance and reasonable rules and regulations as the Note Paying Agent may prescribe. The City covenants to maintain and provide a Note Paying Agent at all times while the Direct Purchase Notes are outstanding, which shall be a national or state banking association or corporation or trust company organized and doing business under the laws of the United States of America or of any state and authorized under its laws to exercise trust powers. Should a change in the Note Paying Agent for the Direct Purchase Notes occur, the City agrees to promptly cause a written notice to be sent to the Bank by United States mail, first-class postage prepaid. The notice shall give the address of the successor Note Paying Agent. Council may not appoint a successor Note Paying Agent without the consent of the Bank.

The Direct Purchase Notes shall be issued to the Bank in registered form, without coupons. The principal of and interest on the Direct Purchase Notes shall be payable in lawful money of the United States of America, without exchange or collection charges to the Holder of the Direct Purchase Note; principal is to be payable upon presentation and surrender of the Direct Purchase Note at the Designated Office and interest is to be payable to the registered owner thereof

either (i) by check sent by United States mail, first-class postage prepaid, to the address of the registered owner appearing on the Registration Books of the City maintained by the Note Paying Agent or (ii) by any other method, acceptable to the Note Paying Agent, requested by the Holder.

A copy of the Registration Books shall be provided to the City by the Note Paying Agent, by means of telecommunications equipment or other means as are mutually agreed to, within two Business Days of either the opening of the Registration Books or any change in the Registration Books.

The City and the Note Paying Agent may treat the registered payee as the absolute owner of any Direct Purchase Note for the purpose of receiving payment and for all purposes, and the City and the Note Paying Agent shall not be affected by any notice or knowledge to the contrary. Direct Purchase Notes will not be issued in book-entry form.

SECTION 4. **PROGRAM NOTES**. Commercial Paper Notes are authorized to be issued and sold and delivered from time to time in principal amounts as determined by an Authorized Representative in Authorized Denominations, numbered in ascending consecutive numerical order in the order of their issuance and to mature and become due and payable on the dates as an Authorized Representative shall determine at the time of sale; provided, however, that no Commercial Paper Note shall (i) mature after the Maximum Maturity Date, (ii) have a term in excess of two hundred seventy (270) days or (iii) be issued in a manner that would cause the City to violate the covenants set forth in **Section 7**. Interest, if any, on Commercial Paper Notes shall be payable at maturity with principal.

Direct Purchase Notes are authorized to be issued and sold and delivered from time to time in principal amounts as determined by an Authorized Representative in Authorized Denominations, numbered in ascending consecutive numerical order in the order of their issuance and to mature and become due and payable on the dates as an Authorized Representative shall determine at the time of sale; provided, however, that no Direct Purchase Note shall (i) mature after the Maximum Maturity Date, (ii) have a term in excess of three hundred sixty (360) days or (iii) be issued in a manner that would cause the City to violate the covenants set forth in **Section 7**. Interest on Direct Purchase Notes shall be payable on the dates and in the manner set forth in the Note Purchase Agreement.

An Authorized Representative will notify the Bank and the Dealer of each new issuance of Program Notes and confirm that at the time of the new issuance (after giving effect to the new issuance), the aggregate principal amount of Program Notes and Advances outstanding does not exceed $400,000,000.

SECTION 5: **ISSUANCE AND SALE OF PROGRAM NOTES.**

(a) *Completion of Commercial Paper Notes.* Commercial Paper Notes shall be completed and delivered by the Issuing and Paying Agent in accordance with telephonic, electronic or written instructions of the Authorized Representative and the Issuing and Paying Agent Agreement. To the extent instructions are not written, they shall be confirmed in writing by the Authorized Representative within twenty-four (24) hours. The instructions shall specify the Commercial Paper Notes to be sold and the principal amounts, dates of issue, maturities, rates of discount or interest, or the formula or method of calculating interest and the basis upon which it is to be computed, and other terms and conditions which may be determined by the Authorized Representative at the time of sale of the Commercial Paper Notes. The instructions shall include the purchase price of the Commercial Paper Notes, and, if the Commercial Paper Notes are not held in accordance with a book-entry only system, a request that the Issuing and Paying Agent authenticate the Commercial Paper Notes by counter signature of its authorized officer or employee and deliver them to the named purchaser upon receipt of payment in accordance with the custom then prevailing in the New York financial market in regard to the Commercial Paper Notes. The rules of the New York Clearinghouse shall apply. The instructions shall also contain provisions representing that all action on the part of the City necessary for the valid issuance of the Commercial Paper Notes then to be issued has been taken, that all provisions of Texas and federal law necessary for the valid issuance of the Commercial Paper Notes with provision for interest exemption from federal income taxation have been complied with, if applicable, and that the Commercial Paper Notes in the hands of the Holders will be valid and enforceable obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights to the extent constitutionally applicable and that, if applicable, based upon the advice of Bond Counsel, the stated interest on the Commercial Paper Notes is exempt from federal income taxation. The instructions shall also certify that:

(i) no Event of Default under **Section 33** has occurred and is continuing as of the date of the instructions and that the Issuing and Paying Agent has not received a Notice of No-Issuance (as defined in the Agreement);

(ii) the City has been advised by Bond Counsel that the projects to be financed with the proceeds of the Commercial Paper Notes will constitute Eligible Projects or that the obligations to be refunded were issued in connection with Eligible Projects;

(iii) the City is in compliance with the covenants set forth in **Sections 7, 22, 25, 26, and 28** as of the date of the instructions;

(iv) the City has been advised by Bond Counsel that the proposed expenditure of the proceeds of Commercial Paper Notes for Eligible Projects and the refunding of Commercial Paper Notes issued for Eligible Projects will not cause the City to be in violation of its covenants set forth in **Sections 29, 30, and 31**;

(v) the sum of the interest payable on the Commercial Paper Note will not exceed a yield (calculated on the principal amount of the Commercial Paper Note on the basis of actual number of days elapsed, and a 365-day year) to the maturity date of the Commercial Paper Note in excess of the Maximum Interest Rate;

(vi) all action on the part of the City necessary for the valid issuance of the Commercial Paper Notes then to be issued has been taken;

(vii) all provisions of Texas and federal law necessary for the valid issuance of the Commercial Paper Notes have been complied with;

(viii) the Commercial Paper Notes held by the Holders will be valid and enforceable obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights, to the extent constitutionally applicable; and

(ix) any and all conditions to the issuance of Commercial Paper Notes under the Revolving Credit Agreement have been fully satisfied.

(b) *Execution of Revolving Credit Agreement.* Upon its execution and delivery, the Revolving Credit Agreement is in full force and effect and loans may be made in accordance with the terms of the Revolving Credit Agreement.

(c) *Completion of Direct Purchase Notes*. Direct Purchase Notes shall be completed and delivered by the Note Paying Agent in accordance with telephonic, electronic or written instructions of the Authorized Representative and the Note Paying Agent Agreement. To the extent instructions are not written, they shall be confirmed in writing by the Authorized Representative within twenty-four (24) hours. The instructions shall specify the Direct Purchase Notes to be sold and the principal amounts, dates of issue, maturities, and other terms and conditions which may be determined by the Authorized Representative at the time of sale of the Direct Purchase Notes. The Direct Purchase Notes will bear interest at the rates

and in the manner set forth in the Note Purchase Agreement. The instructions shall include the purchase price of the Direct Purchase Notes, and a request that the Note Paying Agent authenticate the Direct Purchase Notes by counter signature of its authorized officer or employee and deliver them to the named purchaser upon receipt of payment. The instructions shall also contain provisions representing that all action on the part of the City necessary for the valid issuance of the Direct Purchase Notes then to be issued has been taken, that all provisions of Texas and federal law necessary for the valid issuance of the Direct Purchase Notes with provision for interest exemption from federal income taxation have been complied with, if applicable, and that the Direct Purchase Notes in the hands of the Bank will be valid and enforceable obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights to the extent constitutionally applicable and that, if applicable, based upon the advice of Bond Counsel, the stated interest on the Direct Purchase Notes is exempt from federal income taxation. The instructions shall also certify that:

(i) no Event of Default under **Section 33** has occurred and is continuing as of the date of the instructions;

(ii) the City has been advised by Bond Counsel that the projects to be financed with the proceeds of the Direct Purchase Notes will constitute Eligible Projects or that the obligations to be refunded were issued in connection with Eligible Projects;

(iii) the City is in compliance with the covenants set forth in **Sections 7, 25, 26, and 28** as of the date of the instructions;

(iv) the City has been advised by Bond Counsel that the proposed expenditure of the proceeds of Direct Purchase Notes for Eligible Projects and the refunding of Direct Purchase Notes issued for Eligible Projects will not cause the City to be in violation of its covenants set forth in **Sections 29, 30, and 31**;

(v) any and all conditions to the issuance of Direct Purchase Notes under the Note Purchase Agreement have been fully satisfied;

(vi) all action on the part of the City necessary for the valid issuance of the Direct Purchase Notes then to be issued has been taken;

(vii) all provisions of Texas and federal law necessary for the valid issuance of the Direct Purchase Notes have been complied with; and

(viii) the Direct Purchase Notes held by the Bank will be valid and enforceable obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights, to the extent constitutionally applicable.

(d) *Execution of Note Purchase Agreement.* Upon its execution and delivery, the Note Purchase Agreement is in full force.

SECTION 6: **PROCEEDS OF SALE OF PROGRAM NOTES**. (a) *Commercial Paper Note Proceeds*. The proceeds of the sale of any Commercial Paper Notes (net of all expenses and costs of sale and issuance) shall be applied for any or all of the following purposes as directed by an Authorized Representative:

(i) Proceeds shall first be used for the payment of outstanding Commercial Paper Notes at or prior to maturity and the repayment in full of Advances and any other amounts due under the Revolving Credit Agreement shall be deposited to the Note Payment Fund;

(ii) Proceeds not retained in the Note Payment Fund as provided in subparagraph (i) above shall be transferred and deposited to the Note Construction Account and used and applied in accordance with the provisions of **Section 18**; and

(iii) Proceeds to be used for the payment of outstanding Priority Lien Obligations (if prior approval is given by council and the Bank) shall be transferred to the appropriate account or fund established pursuant to the proceedings authorizing the issuance of the Priority Lien Obligations.

(b) *Direct Purchase Note Proceeds*. The proceeds of the sale of any Direct Purchase Notes (net of all expenses and costs of sale and issuance) shall be applied for any or all of the following purposes as directed by an Authorized Representative:

(i) Proceeds shall first be used for the payment of outstanding Direct Purchase Notes at or prior to maturity and the payment in full of any amounts due under the Note Purchase Agreement shall be deposited to the Direct Purchase Payment Fund;

(ii) Proceeds not retained in the Direct Purchase Payment Fund as provided in subparagraph (i) above shall be transferred and deposited to the Note

Construction Account and used and applied in accordance with the provisions of **Section 18**; and

(iii) Proceeds to be used for the payment of outstanding Priority Lien Obligations (if prior approval is given by council and the Bank) shall be transferred to the appropriate account or fund established pursuant to the proceedings authorizing the issuance of the Priority Lien Obligations.

SECTION 7: **LIMITATION ON ISSUANCE**. Unless council amends the Ordinance in accordance with the provisions of **Section 37**, the City covenants that there will not be issued and outstanding at any time under the Ordinance more than $400,000,000 in aggregate principal amount of Program Notes. For purposes of this **Section 7** any portion of outstanding Program Notes to be paid from money on deposit in the Note Payment Fund (in the case of Commercial Paper Notes) or the Direct Purchase Payment Fund (in the case of Direct Purchase Notes), and available proceeds of Program Notes or Bonds shall not be considered outstanding on that day. Any improvement or extension to the Systems to be funded with Program Notes must qualify as an Eligible Project, and the City shall not direct the Issuing and Paying Agent to issue Commercial Paper Notes that mature after the Maximum Maturity Date.

While the Revolving Credit Agreement is in effect and supports the payment of the principal amount of the Commercial Paper Notes, the City covenants and agrees that the total principal amount of all Commercial Paper Notes outstanding at any one time and the total amount of interest accrued or to accrue on the Commercial Paper Notes shall not exceed the Commitment.

SECTION 8: **PUNCTUAL PAYMENT**. The City will punctually pay or cause to be paid the principal of and interest on the Program Notes and the Bank Note (but only from the sources pledged by the Ordinance), in conformity with the Program Notes, the Ordinance, the Revolving Credit Agreement or the Note Purchase Agreement, as applicable.

SECTION 9: **PAYMENT AND PERFORMANCE ON BUSINESS DAYS**. Whenever under the terms of the Ordinance or the Program Notes, the performance date of any of their provisions, including the payment of principal of or interest on the Program Notes, shall occur on a day other than a Business Day, then performance, including the payment of principal of and interest on the Program Notes, need not be made on that day but may be performed or paid on the next succeeding Business Day with the same force and effect as if made on that day.

SECTION 10: **FORM OF PROGRAM NOTES**. (a) *Commercial Paper Notes*. The Commercial Paper Notes and the Certificate of Authentication to appear on each of the Commercial Paper Notes shall be substantially in the form set forth in **Exhibit A**, with appropriate insertions, omissions, substitutions and other variations as are permitted or required by the Ordinance, and may have letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and legends and endorsements as may be approved by an Authorized Representative. The Commercial Paper Notes shall be printed, lithographed, or engraved or produced in any other similar manner, or typewritten, all as determined and approved by an Authorized Representative.

If Commercial Paper Notes are issued in book-entry only form pursuant to **Section 3A**, they shall be issued in the form of the Master Note approved by council pursuant to the Ordinance, to which there shall be attached the form of Commercial Paper Note as prescribed above, and council declares that the provisions of the Commercial Paper Note are incorporated into and shall be a part of the Master Note. Council declares that the Ordinance and the form of Commercial Paper Note shall constitute the "underlying records" referred to in the Master Note. Notwithstanding the provisions of **Section 11**, the Master Note may be executed on behalf of the City with the manual signature of the City Manager or the Chief Financial Officer of the City.

(b) *Direct Purchase Notes*. The Direct Purchase Notes and the Certificate of Authentication to appear on each of the Direct Purchase Notes shall be substantially in the form set forth in **Exhibit B**, with appropriate insertions, omissions, substitutions and other variations as are permitted or required by the Ordinance, and may have letters, numbers or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and legends and endorsements as may be approved by an Authorized Representative. The Direct Purchase Notes shall be printed, lithographed, or engraved or produced in any other similar manner, or typewritten, all as determined and approved by an Authorized Representative.

SECTION 11: **EXECUTION - AUTHENTICATION**. Under authority granted by Section 1371.055, Texas Government Code, the Program Notes shall be executed on behalf of the City by the Mayor, and attested by the City Clerk under its seal reproduced or impressed thereon, all as provided in **Section 10** (or in case of the Master Note and the Bank Note, executed on behalf of the City by the City Manager or the Chief Financial Officer of the City). The signatures appearing on the Program Notes (including the Master Note) may be manual or facsimile.

Program Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the date of passage of the Ordinance are duly executed on behalf of the City, regardless of whether any individual ceases to hold office at the time of the initial sale and delivery of Program Notes or at the time Program Notes are delivered in future sales, exchanges and transfers, all as authorized and provided in Section 1371.055 and Chapter 1206, Texas Government Code.

No Commercial Paper Note shall be entitled to any right or benefit under the Ordinance, or be valid or obligatory for any purpose, unless there appears on the Commercial Paper Note a certificate of authentication executed by the Paying Agent/Registrar by manual signature, or, in the case of the Master Note, the Paying Agent/Registrar has executed the Master Note, and the execution of any Commercial Paper Note by the Paying Agent/Registrar is the only evidence necessary for the Commercial Paper Note to be duly certified or registered and delivered.

No Direct Purchase Note shall be entitled to any right or benefit under the Ordinance, or be valid or obligatory for any purpose, unless there appears on the Direct Purchase Note a certificate of authentication executed by the Note Paying Agent by manual signature, and the execution of any Direct Purchase Note by the Note Paying Agent is the only evidence necessary for the Direct Purchase Note to be duly certified or registered and delivered.

SECTION 12: **NOTES MUTILATED, LOST, DESTROYED OR STOLEN**. If any Program Note shall become mutilated, the City, at the expense of the Holder of the Program Note, shall execute and deliver a new Program Note of like tenor and number in exchange and substitution for the Program Note so mutilated, but only upon surrender to the City of the Program Note so mutilated. If any Program Note shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the City and, if evidence be satisfactory to it and indemnity satisfactory to it shall be given, the City, at the expense of the owner, shall execute and deliver a new Program Note of like tenor in lieu of and in substitution for the lost, destroyed or stolen Program Note. Neither the City nor the Paying Agent/Registrar, in the case of a Commercial Paper Note, or the Note Paying Agent, in the case of a Direct Purchase Note, shall be required to treat both the original Program Note and any duplicate Program Note as being outstanding for the purpose of determining the principal amount of Program Notes which may be issued hereunder, but both the original and the duplicate Program Note shall be treated as one and the same.

SECTION 13: **NEGOTIABILITY, REGISTRATION AND EXCHANGEABILITY**. The obligations issued under the Ordinance, including the Bank Note, shall be, and shall have all of the qualities and incidents of, a negotiable instrument under the laws of the State of Texas, and each successive Holder, in accepting any obligation, agrees that the obligations shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

The Registration Books relating to the registration, payment and transfer or exchange of the Commercial Paper Notes shall at all times be kept and maintained by the City at the Designated Office of the Registrar, and the Registrar shall obtain, record and maintain in the Registration Books the name and address of each registered owner of the Commercial Paper Notes, except for Commercial Paper Notes registered to bearer, issued under the Ordinance, and the Registrar shall provide the information to the City as described in **Section 3A**. Any Commercial Paper Note may, in accordance with its terms and the terms of the Ordinance, be transferred or exchanged for Commercial Paper Notes of like tenor and character and in Authorized Denominations upon the Registration Books by the Holder in person or by its duly authorized agent, upon surrender of the Commercial Paper Note to the Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by its duly authorized agent, in form satisfactory to the Registrar.

Upon surrender for transfer of any Commercial Paper Note at the Designated Office of the Registrar, the Registrar shall register and deliver, in the name of each designated transferee (or to bearer, as appropriate), one or more new Commercial Paper Notes executed on behalf of, and furnished by, the City of like tenor and character and in Authorized Denominations and having the same maturity, bearing interest at the same rate or rates and of a like aggregate principal amount as the Commercial Paper Note or Commercial Paper Notes surrendered for transfer.

Commercial Paper Notes may be exchanged for other Commercial Paper Notes of like tenor and character and of Authorized Denominations and having the same maturity, bearing the same rate or rates of interest and of like aggregate principal amount as the Commercial Paper Notes surrendered for exchange, upon surrender of the Commercial Paper Notes to be exchanged at the Designated Office of the Registrar. Whenever any Commercial Paper Notes is surrendered for exchange, the Registrar shall register and deliver new Commercial Paper Notes of like tenor and character as the Commercial Paper Notes exchanged, executed on behalf of, and furnished by, the City to the Holder requesting the exchange.

The City and the Registrar may charge the Noteholder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first exchange or transfer. The Registrar or the City may also require payment from the Holder of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. These charges and expenses shall be paid before a new Commercial Paper Note shall be delivered.

New Commercial Paper Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Commercial Paper Notes surrendered, shall be secured by the Ordinance and shall be entitled to all of the security and benefits of the Ordinance to the same extent as the Commercial Paper Notes surrendered.

The City reserves the right to change the registration and transferability provisions of the Commercial Paper Notes at any time on or prior to the delivery of Commercial Paper Notes in order to comply with applicable laws and regulations of the United States in effect at the time of their issuance.

The Note Paying Agent shall maintain the Registration Books for the Direct Purchase Notes in the manner provided in the Note Paying Agent Agreement.

SECTION 14: **CANCELLATION**. All Commercial Paper Notes which at maturity are surrendered to the Paying Agent/Registrar for the collection of the principal and interest due and payable or are surrendered for transfer or exchange pursuant to the provisions of the Ordinance shall be cancelled by the Paying Agent/Registrar, and the Paying Agent/Registrar shall transmit to the City a certificate identifying the Commercial Paper Notes that have been duly cancelled and destroyed.

All Direct Purchase Notes which at maturity are surrendered to the Note Paying Agent for the collection of the principal and interest due and payable or are surrendered for transfer or exchange pursuant to the provisions of the Ordinance shall, upon payment or issuance of new Direct Purchase Notes, be cancelled by the Note Paying Agent, and the Note Paying Agent shall transmit to the City a certificate identifying the Direct Purchase Notes that have been duly cancelled and destroyed.

SECTION 15: **FISCAL AND OTHER AGENTS**. The City may from time to time appoint and provide for the payment of additional fiscal, paying or other agents and trustees as council determines are necessary or appropriate in connection with the Program Notes.

SECTION 16: **NOTE PAYMENT FUND**. The creation, establishment and maintenance of a separate and special fund designated as the **"City of Austin, Texas Combined Utility Systems Tax-Exempt Program Notes, Commercial Paper Sub-Series Note Payment Fund"** (Note Payment Fund) with the Issuing and Paying Agent is confirmed. Moneys on deposit in the Note Payment Fund shall be used to pay principal of and interest on Commercial Paper Notes as the same shall become due and payable as provided in the Ordinance and to repay any Advances and any other obligations of the City to the Bank under the Revolving Credit Agreement (evidenced by the Bank Note). Amounts remaining in the Note Payment Fund not then necessary for the payment of Commercial Paper Notes or the repayment of Advances may be transferred to the Note Construction Account (created pursuant to **Section 18**) at the request of an Authorized Representative; provided, that if any amount is due and payable under the Bank Note or the Revolving Credit Agreement, no amounts shall be transferred to the Note Construction Account without the prior written consent of the Bank.

Additionally all proceeds of Advances shall be deposited into the Note Payment Fund and used to pay the principal of and interest on the Commercial Paper Notes.

Pending the expenditure of moneys in the Note Payment Fund for authorized purposes, moneys deposited therein may be invested at the direction of the City Treasurer or the designee thereof in Eligible Investments; provided, that moneys received by the City under the terms of the Revolving Credit Agreement and moneys received in connection with a rollover of Commercial Paper Notes shall remain uninvested. Any investment income shall be deposited, as received, into the Electric Fund or the Water and Sewer Fund established by ordinances authorizing the issuance of the Prior Lien Bonds and shall not be considered an amount held in the Note Payment Fund.

SECTION 17. **DIRECT PURCHASE PAYMENT FUND**. The creation, establishment and maintenance on the records of the City of a separate and special fund designated as the **"City of Austin, Texas Combined Utility Systems Tax-Exempt Program Notes, Direct Purchase Sub-Series Payment Fund"** (Direct Purchase Payment Fund) is confirmed. Moneys on deposit in the Direct Purchase Payment Fund shall be used to pay principal of and interest on Direct Purchase Notes as the same shall become due and payable as provided in the Ordinance and the Note Purchase Agreement. The City agrees that it will timely transfer funds to the Note Paying Agent in amounts sufficient to pay the interest on and principal of the Direct Purchase Notes when due, no later than the date payment of principal and interest is due and payable. Amounts remaining in the Direct Purchase Payment Fund not then necessary for the payment of Direct Purchase Notes may

be transferred to the Note Construction Account at the request of an Authorized Representative.

Pending the expenditure of moneys in the Direct Purchase Payment Fund for authorized purposes, moneys deposited therein may be invested at the direction of the City Treasurer or the designee thereof in Eligible Investments. Any investment income shall be deposited, as received, into the Electric Fund or the Water and Sewer Fund established by ordinances authorizing the issuance of the Prior Lien Bonds and shall not be considered an amount held in the Direct Purchase Payment Fund.

SECTION 18: **NOTE CONSTRUCTION ACCOUNT**. The creation, establishment and maintenance of a separate account designated as the **"City of Austin, Texas Combined Utility Systems Program Notes Note Construction Account"** (Note Construction Account) is confirmed. The Note Construction Account shall be held by the City with the City's depository bank, currently JPMorgan Chase Bank, National Association. The City shall account for moneys deposited into the Note Construction Account from Commercial Paper Notes and Direct Purchase Notes issued. Moneys deposited in the Note Construction Account shall be expended to pay for Project Costs, and to refund Priority Lien Obligations or Program Notes issued in connection with Eligible Projects, and shall not be used for any other purpose, except as provided below, and pending their expenditure, moneys therein may be invested at the direction of the City Treasurer of the City or his designee in Eligible Investments. Any investment income received (except as otherwise required to be rebated to the United States of America in accordance with the provisions of **Section 29**) shall be deposited, as received, into the Electric Fund or the Water and Sewer Fund established by ordinances authorizing the issuance of the Prior Lien Bonds and shall not be considered an amount held in the Note Construction Account.

Amounts on deposit in the Note Construction Account funded with proceeds of Commercial Paper Notes and designated by an Authorized Representative as eligible to pay interest during construction and up to one year after construction is completed may be transferred from time to time at the direction of an Authorized Representative to the credit of the Note Payment Fund for use in accordance with the terms of **Section 16**. Any amounts that were funded with the proceeds of Commercial Paper Notes remaining in the Note Construction Account after the payment of all Project Costs shall be paid into the Note Payment Fund and used either for the payment of the maturities of the Commercial Paper Notes coming due as may be selected by an Authorized Representative or for the payment of Advances or other amounts owing under the Agreement. In the event no Commercial Paper Notes are Outstanding and there are no outstanding Advances

or other amounts owing under the Agreement, any amounts in the Note Construction Account that were originally provided from the proceeds of Commercial Paper Notes not anticipated to be needed to pay Project Costs shall be transferred to the debt service fund established for the payment of the Bonds, when issued.

Amounts on deposit in the Note Construction Account funded with proceeds of Direct Purchase Notes and designated by an Authorized Representative as eligible to pay interest during construction and up to one year after construction is completed may be transferred from time to time at the direction of an Authorized Representative to the credit of the Direct Purchase Payment Fund for use in accordance with the terms of **Section 17**. Any amounts that were funded with the proceeds of Direct Purchase Notes remaining in the Note Construction Account after the payment of all Project Costs shall be paid into the Direct Purchase Payment Fund and used for the payment of the maturities of the Direct Purchase Notes coming due as may be selected by an Authorized Representative. In the event no Direct Purchase Notes are Outstanding, any amounts in the Note Construction Account that were originally funded from the proceeds of Direct Purchase Notes not anticipated to be needed to pay Project Costs shall be transferred to the debt service fund established for the payment of the Bonds, when issued.

SECTION 19: **PLEDGE; PAYMENTS**. The Program Notes and any obligations of the City to the Bank under the Revolving Credit Agreement (including the Bank Note), the Note Purchase Agreement and the Fee Letter are obligations of the City payable from and secured solely by the pledged funds pursuant to the Ordinance. The City agrees to make payments into the Note Payment Fund and the Direct Purchase Payment Fund at the times and in the amounts as are necessary to provide for the full payment of the principal of and the interest on the Commercial Paper Notes and the Direct Purchase Notes, as the case may be, when due, and the repayment of Advances made under and pursuant to the Revolving Credit Agreement and any obligations of the City to the Bank under the Revolving Credit Agreement, the Note Purchase Agreement and the Fee Letter.

To provide security for the payment of the principal of and interest on the Commercial Paper Notes as the same shall become due and payable, the City grants a lien on and pledge of, subject only to the provisions of the Ordinance permitting the application of the sources listed for purposes and on the terms and conditions set forth in the Ordinance, (i) the proceeds from (a) the sale of bonds issued and to be used to pay outstanding Commercial Paper Notes and (b) the sale of Commercial Paper Notes issued pursuant to the Ordinance and to be used to refund outstanding Commercial Paper Notes, (ii) Advances, (iii) the amounts held in the Note Payment Fund until those amounts are used for authorized purposes, (iv) the Pledged

Revenues of the Systems, however, (a) on a parity with the lien and pledge securing the payment of the Direct Purchase Notes, the Taxable Commercial Paper Notes and the Taxable Advances and the lien and pledge securing the payment of Advances made under and pursuant to the Revolving Credit Agreement and all other amounts payable by the City under the Revolving Credit Agreement, and (b) subordinate to the lien on and pledge securing the payment of Priority Lien Obligations, and (v) the amounts remaining on deposit in the Note Construction Account after the payment of all Project Costs. Council declares that the principal of and interest on the Commercial Paper Notes, the Bank Note and any other amounts due under the Revolving Credit Agreement shall be and are hereby equally and ratably secured by and payable from a lien on and pledge of the sources identified in clauses (i), (ii), (iii), (iv) and (v) subject and subordinate only to the exceptions noted above.

To provide security for the payment of the principal of and interest on Advances and any other amounts payable under the Revolving Credit Agreement and the Fee Letter as the same shall become due and payable, the City grants a lien on and pledge of the Pledged Revenues, subject only to the provisions of the Ordinance permitting the application of Pledged Revenues for purposes and on the terms and conditions set forth in the Ordinance; however, this lien on and pledge of the Pledged Revenues, and the lien and pledge securing the Commercial Paper Notes, the Direct Purchase Notes, the Taxable Commercial Paper Notes and the Taxable Advances is subordinate only to the lien on and pledge of the Pledged Revenues securing the payment of Priority Lien Obligations and the debt service and reserve funds relating to the Priority Lien Obligations, and being on a parity and of equal dignity with the lien and pledge securing the payment of the Program Notes and the Taxable Commercial Paper Notes. It is ordained that the payment obligations under the Bank Note are secured by a lien on and pledge of Pledged Revenues, and as provided in Chapter 1208, Texas Government Code, the lien is valid, binding and fully perfected on the passage of the Ordinance without physical delivery or transfer of control of the Pledged Revenues, the filing of the Ordinance or any other act.

To provide security for the payment of the principal of and interest on the Direct Purchase Notes as the same shall become due and payable, the City grants a lien on and pledge of, subject only to the provisions of the Ordinance permitting the application of the sources listed for purposes and on the terms and conditions set forth in the Ordinance, (i) the proceeds from (a) the sale of bonds issued and to be used to pay outstanding Direct Purchase Notes and (b) the sale of Direct Purchase Notes issued pursuant to the Ordinance and to be used to refund outstanding Direct Purchase Notes, (ii) the amounts held in the Direct Purchase Payment Fund until those amounts are used for authorized purposes, (iii) the Pledged Revenues of the Systems, however, (a) on a parity with the lien and

pledge securing the payment of the Commercial Paper Notes, the Taxable Commercial Paper Notes and the Taxable Advances and the lien and pledge securing the payment of Advances made under and pursuant to the Revolving Credit Agreement and all other amounts payable by the City under the Revolving Credit Agreement, and (b) subordinate to the lien on and pledge securing the payment of Priority Lien Obligations, and (iv) the amounts remaining on deposit in the Note Construction Account after the payment of all Project Costs. Council declares that the principal of and interest on the Direct Purchase Notes shall be and are hereby equally and ratably secured by and payable from a lien on and pledge of the sources identified in clauses (i), (ii), (iii) and (iv) subject and subordinate only to the exceptions noted above.

Consistent with the provisions of **Section 27**, the City intends to refinance Program Notes issued from time to time pursuant to the terms of the Ordinance through the issuance of refunding bonds issued under authority of Chapter 1207, Texas Government Code, and the Program Notes so refunded shall be treated as having the intended terms and payment schedule of the refunding bonds issued under Chapter 1207, Texas Government Code, as provided in Section 1371.057(c), Texas Government Code.

Chapter 1208, Texas Government Code, applies to the issuance of the Program Notes and the pledge of the Pledged Revenues granted by the City, and the pledge is valid, effective and perfected. If Texas law is amended at any time while the Program Notes or the Bank Note are outstanding or any amount is owing under the Revolving Credit Agreement, the Note Purchase Agreement or the Fee Letter such that the pledge of the Pledged Revenues granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then to preserve to the Noteholders and the Bank the perfection of the security interest in the pledge, the City agrees to take measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to perfect the security interest in the pledge to occur.

SECTION 20: **FUNDS SECURED**. Moneys in all funds and accounts, to the extent not invested, shall be secured in the manner prescribed by law for securing moneys of the City.

SECTION 21: **REVOLVING CREDIT AGREEMENT**. The Revolving Credit Agreement and the Fee Letter, substantially in the forms attached to the Ordinance as **Exhibit C**, are approved, and shall be entered into with the Bank. Upon the approval by the City Attorney, evidenced by executing the Revolving Credit Agreement, the City Manager is authorized to execute and deliver the

Revolving Credit Agreement, the Fee Letter and the Related Documents (as defined in the Revolving Credit Agreement), and the City Clerk or Deputy City Clerk is authorized to place the City seal on these instruments.

The City reserves the right to issue Commercial Paper Notes without credit or liquidity support, as provided in **Section 22(b)**.

SECTION 22: **MAINTENANCE OF AVAILABLE CREDIT AND LIQUIDITY FACILITIES REQUIREMENT**. (a) Except as provided in **Section 22(b)**, the City covenants that at all times up to and including the Maximum Maturity Date, unless the Commercial Paper Notes are no longer outstanding, it will maintain credit or liquidity facilities with banks, assuming that all then outstanding Commercial Paper Notes were to become due and payable immediately, in amounts available for borrowing under the credit or liquidity facilities sufficient at that time to pay principal of and interest on all Commercial Paper Notes, as and when due. No Commercial Paper Note shall be issued if after giving effect to its issuance and, if applicable, the immediate application of its proceeds to retire other Commercial Paper Notes secured by the credit or liquidity facility, the aggregate principal amount of all Commercial Paper Notes secured by the credit or liquidity facility would exceed the amount of the Commitment under the related credit or liquidity facility. The availability for borrowing of amounts under the credit or liquidity facilities may be subject to reasonable conditions precedent, including, but not limited to, bankruptcy of the City. In furtherance of this covenant, the City agrees that it will not issue any Commercial Paper Notes or make any borrowings which will result in a violation of the covenant, will not amend the Revolving Credit Agreement in a manner which will cause a violation of this covenant and, if and to the extent necessary to maintain compliance with this covenant, will arrange for new credit or liquidity facilities.

(b) The provisions of **Section 22(a)** notwithstanding, council may amend the Ordinance, in accordance with the provisions of **Section 37**, to provide that Commercial Paper Notes issued under authority of the Ordinance may be issued without support of liquidity and/or credit facilities. To exercise the authority reserved by this **Section 22(b)**, the City shall provide written notice to the Dealer, the Issuing and Paying Agent and the Rating Agencies (as defined in the Issuing and Paying Agent Agreement) of council's determination to amend the Ordinance to permit Commercial Paper Notes to be issued without liquidity and/or credit support. This notice shall be provided no later than ninety (90) days prior to the proposed date council is to consider for adoption an ordinance amending the Ordinance for the purpose described in this **Section 22(b)**. The City shall cause written notice to be provided to the Noteholders no less than fifteen (15) days prior to the date council enacts the amendatory ordinance. No amendatory ordinance

shall be adopted if, on or before the date council considers the amendatory ordinance, the ratings to be assigned to the Commercial Paper Notes not being supported by a liquidity and/or credit facility are lower than A-1 or its equivalent. Commercial Paper Notes issued under the Ordinance with liquidity and/or credit facility support shall be retired in full either through the issuance of Bonds or with the proceeds of Commercial Paper Notes issued without the support of a liquidity and/or credit facility.

SECTION 23: **ORDINANCE TO CONSTITUTE A CONTRACT; EQUAL SECURITY**. In consideration of the acceptance of the Program Notes and the Bank Note by those who shall hold the same from time to time, the Ordinance constitutes a contract between the City and the Holders from time to time of the Program Notes and the Bank (with respect to the Bank Note) and the pledge made in the Ordinance by the City and the covenants and agreements set forth in the Ordinance to be performed by the City shall be for the equal and proportionate benefit, security and protection of all Holders of the Program Notes and the Bank (with respect to the Bank Note), without preference, priority or distinction as to security or otherwise of any of the Program Notes or the Bank Note authorized by the Ordinance over any of the others by reason of time of issuance, sale or maturity or otherwise for any cause, except as expressly provided in or permitted by the Ordinance or, with respect to Advances, the Revolving Credit Agreement.

SECTION 24: **APPLICATION OF PRIOR COVENANTS**. The covenants and agreements (to the extent the same do not conflict with the covenants and agreements in the Ordinance) contained in the ordinances authorizing the issuance of the Priority Lien Obligations are incorporated by reference into the Ordinance and are for the benefit and protection of the Bank and its rights under and pursuant to the Revolving Credit Agreement and the Note Purchase Agreement in like manner as applicable to the Priority Lien Obligations; provided, however, in the event of any conflict between the terms, covenants and agreements contained in the Ordinance and the terms, covenants and agreements contained in the ordinances authorizing the issuance of the Priority Lien Obligations, the provisions of the ordinances authorizing the issuance of the Priority Lien Obligations shall control.

SECTION 25: **RATES AND CHARGES**. The City hereby agrees and reaffirms its covenants to the holders of the Priority Lien Obligations and covenants to the Bank that it will at all times maintain rates and charges for the services furnished, provided, and supplied by the Electric Light and Power System and the Waterworks and Sewer System which shall comply with the provisions of ordinances authorizing the issuance of the Priority Lien Obligations, be reasonable

and non-discriminatory and produce Gross Revenues in each Fiscal Year from each of the Systems sufficient:

(1) To pay the respective system's Maintenance and Operating Expenses,

(2) To produce Net Revenues of the Systems, collectively or individually, as the case may be, sufficient (i) to pay the amounts required to be deposited in any reserve or contingency fund and interest and sinking fund maintained for the payment and security of the Priority Lien Obligations and (ii) to satisfy any annual debt service coverage requirement specified in the ordinances authorizing the issuance of Priority Lien Obligations.

(3) To comply with any provisions contained in the Revolving Credit Agreement and the Note Purchase Agreement and to the extent the same are incurred or reasonably anticipated to be paid with Pledged Revenues, to pay the interest on and principal of the Similarly Secured Notes or the repayment of Advances or the Bank Note or the Direct Purchase Notes and any other amounts payable to the Bank under the Revolving Credit Agreement, the Note Purchase Agreement and the Fee Letter, as and when the same shall become due; and

(4) any other legal debt or obligation of the Systems, either or both, as and when the same shall become due.

SECTION 26: **SYSTEM FUNDS**. The City reaffirms its covenants to the holders of the Priority Lien Obligations, and covenants to the Holders of the Program Notes and to the Bank, as follows:

(a) Gross Revenues of the Electric Light and Power System shall be, as collected, deposited into a separate account maintained with a depository bank of the City and known as the "Electric Light and Power System Fund" (Electric Fund) and Gross Revenues of the Electric Light and Power System shall be kept separate and apart from all other funds of the City. All revenues deposited in the Electric Fund shall be pledged and appropriated to the extent required for the following uses and order of priority:

FIRST: To the payment of all necessary and reasonable Maintenance and Operating Expenses of the Electric Light and Power System, and expenses required by statute to be a first charge on and claim against its Gross Revenues.

SECOND: To the payment of the amounts required to be deposited in the special funds or accounts created for the payment and security of the Priority Lien

Obligations in accordance with the provisions of the ordinances authorizing the issuance of the Priority Lien Obligations.

THIRD: On a pro rata basis, to the payment of the amounts required to be deposited in the Note Payment Fund, the Direct Purchase Payment Fund, and the debt service payment fund established for the Taxable Commercial Paper Notes, to the extent the principal of and interest on the Commercial Paper Notes, as the same becomes due and payable, are not paid with Advances, and for the payment of the principal of and interest on Advances, if any.

(b) Gross Revenues of the Waterworks and Sewer System shall be, as collected, deposited into a separate account maintained with a depository bank of the City and known as the "Water and Sewer System Fund" (Water and Sewer Fund) and Gross Revenues of the Waterworks and Sewer System shall be kept separate and apart from all other funds of the City. All revenues deposited in the Water and Sewer Fund shall be pledged and appropriated to the extent required for the following uses and order of priority:

FIRST: To the payment of all necessary and reasonable Maintenance and Operating Expenses of the Waterworks and Sewer System, and expenses required by statute to be a first charge on and claim against its Gross Revenues.

SECOND: To the payment of the amounts required to be deposited in the special funds or accounts created for the payment and security of the Priority Lien Obligations in accordance with the provisions of the ordinances authorizing the issuance of the Priority Lien Obligations.

THIRD: On a pro rata basis, to the payment of the amounts required to be deposited in the Note Payment Fund, the Direct Purchase Payment Fund, and the debt service payment fund established for the Taxable Commercial Paper Notes, to the extent, with respect to amounts required to be deposited in the Note Payment Fund, the principal of and interest on the Commercial Paper Notes, as the same becomes due and payable, are not paid with Advances, and for the payment of the principal of and interest on Advances, if any.

(c) Any Net Revenues remaining in the Electric Fund or the Water and Sewer Fund after satisfying the priority payments, or making adequate and sufficient provision for the their payment, and after paying all other amounts due under the Revolving Credit Agreement, the Note Purchase Agreement and the Fee Letter, may be appropriated and used for any other City purpose permitted by law.

SECTION 27: **BONDS**. The City hereby acknowledges that the Program Notes are being issued as bond anticipation notes, and the City in good faith shall endeavor to sell a sufficient principal amount of Bonds in order to have funds available, together with other available moneys, to pay the principal and interest on the Program Notes, or any renewals of the Program Notes (including the Bank Note), as the same shall become due, and any other amounts due under the Agreement, the Note Purchase Agreement and the Fee Letter. The City does not reasonably expect to pay the principal and interest on the Program Notes (including the Bank Note) with Pledged Revenues.

SECTION 28: **COMPLIANCE WITH PRIORITY LIEN OBLIGATION ORDINANCES AND OTHER DOCUMENTS**. The City will comply with the terms and provisions of the ordinances authorizing the Priority Lien Obligations, and any other ordinance or contract to which the City is a party, the non-compliance with which would materially adversely affect the ability of the City to make payments on the Program Notes and the Bank Note when due.

SECTION 29: **PROGRAM NOTES TO REMAIN TAX EXEMPT**. The City covenants to take any action to assure, or refrain from any action which would adversely affect, the treatment of the Program Notes as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation if the Program Notes are designated by the City as "tax exempt", and further covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Program Notes or the projects financed with these proceeds (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 are so used, that amounts, whether received by the City, with respect to the private business use, do not, under the terms of the 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 Program Notes, in contravention of section 141(b)(2) of the Code;

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

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

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

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

(f) to refrain from using any proceeds of the Program Notes, 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 Program Notes, other than investment property acquired with --

(1) proceeds of Program Notes invested for a reasonable temporary period until the proceeds are needed for the purpose for which the obligations are issued,

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

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

(g) to otherwise restrict the use of the proceeds of the Program Notes or amounts treated as proceeds of the Program Notes, as may be necessary, so that the Program Notes do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Program Notes) 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 Program Notes have been paid in full, 100 percent of the

amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code;

(i) to refrain from using the proceeds of the Program Notes or the proceeds of any prior obligations to pay debt service on another issue more than ninety (90) days after the issuance of the Program Notes in contravention of section 149(d) of the Code (relating to advance refundings); and

(j) to timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on the forms, at the places and in the manner as may be prescribed by law.

The City represents and covenants that it will not expend, or permit to be expended, the proceeds of any Program Notes in any manner inconsistent with its reasonable expectations as certified in a federal tax certificate to be executed from time to time with respect to the Program Notes; provided, however, that the City may expend Program Note proceeds in any manner if the City first obtains an unqualified opinion of Bond Counsel that the expenditure will not impair the exemption from federal income taxation of interest paid on the Program Notes. The City represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon.

The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Regulations and, in the case of a refunding bond, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of the issuance of the Program Notes. It is the understanding of the City that the covenants contained in this Section are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant to the Code. In the event that regulations or rulings are promulgated which modify or expand provisions of the Code, as applicable to the Program Notes, the City will not be required to comply with any covenant contained in this Section to the extent that a failure to comply, in the opinion of Bond Counsel, will not adversely affect the exemption from federal income taxation of interest on the Program Notes under section 103 of the Code. In the event that regulations or rulings are promulgated which impose additional requirements applicable to the Program Notes, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of Bond Counsel, to preserve the exemption from federal income taxation of interest on the Program Notes under section 103 of the Code. Council hereby authorizes the Mayor, the City Manager, the Chief Financial Officer of the City and the City Treasurer to execute any documents, certificates or reports required by the Code, and to make

elections on behalf of the City which may be permitted by the Code as are consistent with the purpose for the issuance of the Program Notes.

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

SECTION 30: **ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR ELIGIBLE PROJECTS**. The City covenants to account for on its books and records the expenditure of proceeds from the sale of the Program Notes and any investment earnings earned by the investment of the proceeds to be used for Eligible Projects by allocating proceeds to expenditures within eighteen (18) months of the later of the date that (a) the expenditure on a Eligible Project is made or (b) each Eligible Project is completed. The foregoing notwithstanding, the City shall not expend proceeds or investment earnings more than sixty (60) days after the later of (a) the fifth anniversary of the date of delivery of the Program Notes or (b) the date the Program Notes are retired, unless the City obtains an opinion of Bond Counsel substantially to the effect that the expenditure will not adversely affect the tax-exempt status of the Program Notes. The City shall not be obligated to comply with this covenant if it obtains an opinion of Bond Counsel to the effect that a failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

SECTION 31: **DISPOSITION OF ELIGIBLE PROJECTS**. The City covenants that the property constituting an Eligible Project 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 Bond Counsel substantially to the effect that the sale or other disposition will not adversely affect the tax-exempt status of the Program Notes. Personal property disposed of in the ordinary course of business shall not be treated as a transaction resulting in the receipt of cash or other compensation. The City shall not be obligated to comply with this covenant if it obtains an opinion of Bond Counsel to the effect that a failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

SECTION 32: **ONGOING CONTINUING DISCLOSURE COVENANT**. To the extent required by the provisions of Rule 15c2-12 (Rule) promulgated by the U.S. Securities and Exchange Commission, the City agrees to enter into an agreement to file financial information and operating data with respect to the Commercial Paper Notes with the Electronic Municipal Marketplace

Access (EMMA) system administered by the MSRB. The City agrees to provide the Bank a written copy of the City's continuing disclosure undertaking filings in connection with its Separate Lien Obligations that it files with the MSRB.

SECTION 33: **EVENTS OF DEFAULT**. If one or more of the following events shall occur:

(a) if default in the due and punctual payment of any installment of principal of and interest on any Program Note occurs, when and as the same shall become due and payable, whether at maturity or otherwise;

(b) an "Event of Default" shall have occurred and be continuing under the Revolving Credit Agreement;

(c) (i) an "Event of Default" as defined in the Taxable Agreement shall have occurred and be continuing under the Taxable Agreement;

(d) an "Event of Default" shall have occurred and be continuing under the Note Purchase Agreement and notice, if required under the terms of the Note Purchase Agreement, of the event shall have been furnished to the City by the Bank;

(e) if default by the City in the performance or observance of any other of the covenants, agreements or conditions on its part in the Ordinance or in the Commercial Paper Notes occurs, and the default shall continue for a period of sixty (60) days after written notice has been received by the City from the Bank, a Holder of the Program Notes, the Dealer or the Issuing and Paying Agent; provided, however, if the default cannot be cured within the sixty (60) day period but corrective action to cure the default is commenced and diligently pursued by the City until the default is corrected, the default shall not be an Event of Default; and provided, further, that so long as the Agreement is in effect and the Bank has not failed to honor a properly presented and conforming request for an Advance under the Agreement, no Event of Default shall be deemed to have occurred under this clause (d) unless the notice provided above to the City has been consented to in writing by the Bank;

(f) if there shall occur the dissolution (without a successor being named to assume the rights and obligations) or liquidation of the City or the filing by the City of a voluntary petition in bankruptcy, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of its creditors, or the entry by the City into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any

proceeding for the adjustment of its debts instituted under the provisions of the Bankruptcy Code, as amended, or under any similar act in any jurisdiction which may is in effect or enacted; or

(g) if an order or decree shall be entered, with the consent or acquiescence of the City, appointing a receiver or receivers of the Systems, or any part of the Systems, or of the rents, fees, charges or other revenues of the Systems, or if an order or decree, having been entered without the consent or acquiescence of the City shall not be vacated or discharged or stayed within ninety (90) days of its entry;

then any event described above is an "Event of Default" under the Ordinance.

SECTION 34: **SUITS AT LAW OR IN EQUITY AND MANDAMUS**. In case any Event of Default occurs, then the Bank and the Holder of any Program Note at the time outstanding, is entitled to proceed to protect and enforce its rights by appropriate judicial proceeding as the Holder or the Bank, respectively, determines most effectual to protect and enforce its rights, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in the Ordinance, or in aid of the exercise of any power granted in the Ordinance, or to enforce any other legal or equitable right vested in the Holders of any Program Notes by the Ordinance or the Program Notes or by law. The provisions of the Ordinance shall be a contract with each and every Holder of Program Notes and the Bank, and the duties of the City shall be enforceable by any Noteholder or the Bank, respectively, by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

SECTION 35: **REMEDIES NOT EXCLUSIVE**. No remedy conferred upon or reserved to the Bank or the Holders of Program Notes by the Ordinance is intended to be exclusive of any other remedy, and every remedy shall be cumulative, and may be exercised at any time or from time to time, and as often as may be necessary, by the Bank or the Holder of any one or more of the Program Notes.

SECTION 36: **SUPPLEMENTAL ORDINANCES**. Except as permitted by the Ordinance, including **Section 28**, with respect to the issuance or incurrence of additional obligations of the City secured by the Pledged Revenues, the City will not adopt any supplemental ordinances with respect to the Pledged Revenues, pursuant to the ordinances authorizing the issuance of Priority Lien Obligations or otherwise, without the prior written consent of the Bank.

SECTION 37: **AMENDMENTS OR MODIFICATIONS WITHOUT CONSENT OF HOLDERS OF PROGRAM NOTES**. The Ordinance and the rights and obligations of the City and of the Holders of Program Notes may be modified or amended at any time by a supplemental ordinance, subject to the provisions of the Revolving Credit Agreement and the Note Purchase Agreement, without notice to or the consent of any Holders, but only to the extent permitted by law, and, subject to the rights of the Bank and the Holders of the Program Notes:

(1) to add to the covenants and agreements of the City in the Ordinance, other covenants and agreements thereafter to be observed, or to surrender any right or power herein reserved to or conferred upon the City by the Ordinance;

(2) to increase the principal amount of Similarly Secured Notes that may be outstanding at any one time under the terms of the ordinances authorizing the issuance of Similarly Secured Notes, or to issue additional commercial paper notes under the Act; provided that, with respect to the Commercial Paper Notes, the City satisfies either (i) the requirements of **Section 22(a)** in providing liquidity or credit support with respect to the increased principal amount of Commercial Paper Notes authorized to be outstanding at any one time or (ii) the requirements of **Section 22(b)** to issue the increased principal amount of Commercial Paper Notes without liquidity and/or credit support;

(3) to cure any ambiguity or inconsistency, or to cure or correct any defective provision contained in the Ordinance, upon receipt by the City of an approving opinion of Bond Counsel, that the amendment is necessary or advisable, and will more clearly express the intent of the Ordinance;

(4) to effect changes council determines are necessary or advisable in connection with exercising the authority reserved to the City in **Section 22(b)**; or

(5) to supplement the security for the Program Notes, replace or provide additional credit or liquidity facilities, make changes, modifications or amendments as may be necessary or desirable in order to obtain the approval of the Ordinance by the Attorney General of Texas, as required by **Section 44**, or to obtain or maintain the granting of a rating on the Program Notes by a nationally recognized municipal bond rating agency, or change the form of the Program Notes, or make any other changes in the provisions that are necessary or desirable and which shall not materially adversely affect the security, rights or interests of the Bank or the Holders of the Program Notes;

provided, however, that no amendment to the Ordinance or of the Program Notes is permitted to:

(A) Make any change in the maturity of any outstanding Program Notes or the Bank Note;

(B) Reduce the rate of interest borne by any outstanding Program Notes or the Bank Note;

(C) Reduce the amount of the principal payable on any outstanding Program Notes or the Bank Note;

(D) Modify the terms of payment of principal of or interest on the outstanding Program Notes or the Bank Note, or impose any conditions with respect to their payment;

(E) Affect the security, rights or interests of the Bank or the Holders of less than all of the outstanding Program Notes; or

(F) Reduce or restrict the pledge made pursuant to **Section 19** for payment of the Program Notes or the Bank Note;

and provided, further, that no change, modification or amendment shall be made in the Ordinance or become valid and effective (i) without the approval of the change, modification or amendment by the Attorney General of the State of Texas, to the extent required by the Act, and (ii) without the prior written consent of the Bank (which, in the case of an amendment authorizing an increase in the principal amount of Program Notes at any one time outstanding, shall mean the written consent of the Bank providing, as of the effective date of the authority to issue additional Program Notes in excess of the maximum principal amount of Program Notes then authorized at any one time to be outstanding, the liquidity or credit support, if any, required by **Section 22(a)**).

SECTION 38: **ADDITIONAL ACTIONS.** Any Authorized Representative, the Mayor, the City Clerk, and the other officers of the City, each are authorized, jointly and severally, to do any and all things and to execute and deliver any and all certificates, instruments and other documents which they may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Program Notes and to effectuate the purposes of the Ordinance, the Revolving Credit Agreement, the Fee Letter, the Dealer Agreement, the Issuing and Paying Agent Agreement, the Note Purchase Agreement, the Note Paying Agent Agreement and the Offering Memorandum. By passing the Ordinance, council authorizes the payment of the fees and expenses incurred and to be paid by the City in connection with the issuance, sale and delivery of the Program Notes and the execution and delivery of the Revolving Credit Agreement, the Fee Letter,

the Dealer Agreement, the Note Purchase Agreement, the Note Paying Agent Agreement, and the Issuing and Paying Agent Agreement, including, without limitation, fees of Rating Agencies.

SECTION 39: **LIMITATION OF BENEFITS WITH RESPECT TO THE ORDINANCE**. With the exception of the rights or benefits expressly conferred by the Ordinance, nothing expressed or contained in, or implied from the provisions of, the Ordinance or the Program Notes is intended or should be construed to confer upon or give to any person other than the City, the Holders of the Program Notes, the Bank, the Issuing and Paying Agent, the Note Paying Agent, and the parties to the Dealer Agreement and the Revolving Credit Agreement, any legal or equitable right, remedy or claim under or by reason of or in respect to the Ordinance or any of its covenants, conditions, stipulations, promises, agreements or provisions. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Holders of the Program Notes, the Issuing and Paying Agent, the Note Paying Agent, and the parties to the Dealer Agreement and the Revolving Credit Agreement.

SECTION 40: **ISSUING AND PAYING AGENT AGREEMENT; NOTE PAYING AGENT AGREEMENT; DEALER AGREEMENT; NOTE PURCHASE AGREEMENT**. (a) *Issuing and Paying Agent Agreement*. The Issuing and Paying Agent Agreement by and between the City and U.S. Bank National Association, relating to the Commercial Paper Notes, substantially in the form to the Ordinance as **Exhibit D**, is approved as to form and content, and, upon the approval of the City Attorney, whose approval shall be evidenced by executing the Issuing and Paying Agent Agreement, the City Manager is authorized to execute the Issuing and Paying Agent Agreement for and on behalf of the City, and the City Clerk or Deputy City Clerk is authorized to place the City seal on the Issuing and Paying Agent Agreement. Any Authorized Representative is hereby authorized to enter into any supplemental agreement with the Issuing and Paying Agent or with any successor Issuing and Paying Agent in order to implement the functions of the Issuing and Paying Agent or Registrar with respect to the Commercial Paper Notes. Any successor Issuing and Paying Agent shall be a financial institution of recognized national standing organized and existing under the laws of the United States of America or the State of Texas and which has trust powers. The successor Issuing and Paying Agent shall have assumed the duties of the Issuing and Paying Agent to be replaced before it shall be relieved of the obligation to perform the duties as Issuing and Paying Agent, and the successor Issuing and Paying Agent shall have executed an agreement substantially in the same form and substance as the Issuing and Paying Agent Agreement approved by the Ordinance.

(b) *Note Paying Agent Agreement.* The Note Paying Agent Agreement by and between the City and JPMorgan Chase Bank, National Association, relating to the Direct Purchase Notes, substantially in the form to the Ordinance as **Exhibit E**, is approved as to form and content, and, upon the approval of the City Attorney, whose approval shall be evidenced by executing the Note Paying Agent Agreement, the City Manager is authorized to execute the Note Paying Agent Agreement for and on behalf of the City, and the City Clerk or Deputy City Clerk is authorized to place the City seal on the Note Paying Agent Agreement. Any Authorized Representative is hereby authorized to enter into any supplemental agreement with the Note Paying Agent or with any successor Note Paying Agent in order to implement the functions of the Note Paying Agent with respect to the Direct Purchase Notes. Any successor Note Paying Agent shall be a financial institution of recognized national standing organized and existing under the laws of the United States of America or the State of Texas and which has trust powers. The successor Note Paying Agent shall have assumed the duties of the Note Paying Agent to be replaced before it shall be relieved of the obligation to perform the duties as Note Paying Agent, and the successor Note Paying Agent shall have executed an agreement substantially in the same form and substance as the Note Paying Agent Agreement approved by the Ordinance.

(c) *Dealer Agreement.* Council confirms the appointment of Goldman, Sachs & Co. to continue to serve as the dealer for the Commercial Paper Notes (Dealer). The Dealer Agreement by and between the City and the Dealer pertaining to the sale, from time to time, of Program Notes or the purchase of Commercial Paper Notes from the City, at a fee as set forth in the Dealer Agreement, substantially in the form to the Ordinance as **Exhibit F**, is approved as to form and content, and, upon the approval of the Dealer Agreement by the City Attorney, whose approval shall be evidenced by executing the Dealer Agreement, the City Manager is authorized to execute and deliver the Dealer Agreement for and on behalf of the City, and the City Clerk or Deputy City Clerk is authorized to place the City seal on the Dealer Agreement. Any Authorized Representative is hereby authorized to enter into any supplemental agreement with the Dealer or with any successor Dealer in order to implement the functions of the Dealer with respect to the Commercial Paper Notes.

(d) *Note Purchase Agreement.* The Note Purchase Agreement by and between the City and the Bank, relating to the sale and purchase of Direct Purchase Notes, substantially in the form to the Ordinance as **Exhibit G**, is approved as to form and content, and, upon the approval of the City Attorney, whose approval shall be evidenced by executing the Note Purchase Agreement, the City Manager is authorized to execute the Note Purchase Agreement for and on behalf of the City,

and the City Clerk or Deputy City Clerk is authorized to place the City seal on the Note Purchase Agreement. Any Authorized Representative is hereby authorized to enter into any supplemental agreement with the Bank or with any successor to the Bank in order to implement the functions of the Bank with respect to the purchase and sale of Direct Purchase Notes.

SECTION 41: **SECTION 2252.908, TEXAS GOVERNMENT CODE**. The City shall not execute the Revolving Credit Agreement, the Note Purchase Agreement, the Issuing and Paying Agency Agreement or the Note Paying Agent Agreement unless the each of the parties has confirmed to an Authorized Representative that either it (i) has made disclosure filings to the Texas Ethics Commission in accordance with Section 2252.908, Texas Government Code or (ii) is exempt from making filings under Section 2252.908(c)(4), Texas Government Code. If clause (i) of this Section 41 applies to any party, within 30 days of receipt of any such disclosure filing the filing will be acknowledged by the City in accordance with the rules of the Texas Ethics Commission.

SECTION 42: **OPINION OF BOND COUNSEL**. The City shall cause the legal opinion of Bond Counsel as to the validity of the Program Notes and as to the exemption of interest on the Program Notes from federal income taxation to be furnished to any Holder without cost. In connection with the annual updating of the Offering Memorandum (as provided in accordance with **Section 43**) if required by the Dealer Agreement, an annual updated opinion of Bond Counsel shall be furnished, at the cost of the City or the Dealer, as may be requested by either the City or the Dealer.

SECTION 43: **USE OF OFFERING MEMORANDUM**. The use by the Dealer of the Offering Memorandum, prepared by the Dealer in consultation with Authorized Representatives, in connection with the sale of Program Notes, and the distribution of the Offering Memorandum by the Dealer, is approved. Any Authorized Representative is hereby authorized to provide to the Dealer information as may be necessary, in the reasonable judgment of the Dealer, to prepare and update, on an annual basis, the Offering Memorandum.

SECTION 44: **APPROVAL OF ATTORNEY GENERAL**. The Authorized Representative shall submit the Ordinance and a transcript of proceedings to the Attorney General of the State of Texas for approval, as required by the Act. No Program Notes shall be sold or delivered by an Authorized Representative until the Attorney General of the State of Texas shall have approved the Ordinance, the Agreement, the Note Purchase Agreement and other agreements and proceedings as may be required by the Act. Council authorizes the payment of the fee of the Office of the Attorney General of the State of Texas for

the examination of the proceedings relating to the issuance of the Program Notes, in the amount determined in accordance with the provisions of Section 1202.004, Texas Government Code.

SECTION 45: **SEVERABILITY**. If any one or more of the covenants, agreements or provisions contained in the Ordinance shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason be held invalid, then those covenants, agreements or provisions shall be null and void and shall be separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions of, or of the Program Notes issued under, the Ordinance.

SECTION 46: **EXPIRATION OF AUTHORITY UNDER ORDINANCE NO. 20170831-012**. Upon the effective date of the Revolving Credit Agreement, the authority of the City to issue notes under Ordinance No. 20170831-012 shall expire.

SECTION 47: **EFFECTIVE DATE**. The Ordinance is passed on one reading as authorized by Section 1201.028, Texas Government Code, and is effective immediately upon its passage.

PASSED AND APPROVED
August 27, 2020

CITY OF AUSTIN, TEXAS

§
§
§

Steve Adler
Mayor

APPROVED:

Anne L. Morgan
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk

(City Seal)

EXHIBIT A

Form of Commercial Paper Note:

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF AUSTIN, TEXAS
COMBINED UTILITY SYSTEMS
TAX-EXEMPT PROGRAM NOTE,
COMMERCIAL PAPER SUB-SERIES

No.: _____
Principal Amount: _____
Interest to Maturity: _____
Due at Maturity: _____
Note Date: _____
Maturity Date: _____
Number of Days: _____
Interest Rate (%): _____
Owner: _____

The City of Austin (the "City"), in Travis, Williamson and Hays Counties, State of Texas, FOR VALUE RECEIVED, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of the party specified above on the maturity date specified above, the principal sum specified above and to pay interest, if any, on said principal amount at said maturity date, from the above specified note date to said maturity date at the per annum interest rate shown above (computed on the basis of actual days elapsed and a 365-day year); both principal and interest on this Note being payable in lawful money of the United States of America at the designated corporate trust office of the Issuing and Paying Agent executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor. No interest will accrue on the principal amount hereof after the maturity date hereof. Defined terms used herein shall have the same meaning given to said terms in the hereinafter defined Ordinance, unless the context of the use of such term indicates otherwise. The interest rate borne by this Note shall not exceed the Maximum Interest Rate.

This Note is one of an issue of commercial paper notes (the "Commercial Paper Notes" or the "Notes") which has been duly authorized and issued in accordance with the provisions of an ordinance (the "Ordinance") passed by the City Council of the City for the purpose of financing Project Costs of Eligible Projects for the City's Electric Light and Power System and the City's Waterworks and Sewer System (collectively, the "Systems"); to refund obligations issued in

connection with an Eligible Project; and to refinance, renew or refund Program Notes or Priority Lien Obligations and any other authorized obligations of the Systems, including interest thereon, issued for Eligible Projects; all in accordance in strict conformity with the provisions of the laws of the State of Texas, including the Act.

This Commercial Paper Note, together with the other Commercial Paper Notes, is payable from and equally secured by a lien on and pledge of (i) the proceeds from (a) the sale of other Commercial Paper Notes issued for such purpose and (b) the sale of a series or issue of bonds hereafter issued by the City and to be used to pay or refund outstanding Program Notes, (ii) Advances under and pursuant to the Revolving Credit Agreement providing liquidity support to the City under the terms and conditions set forth therein, (iii) the Pledged Revenues (identified and defined in the Ordinance) of the Systems, such lien on and pledge of the Pledged Revenues, however, being (a) on an equal and ratable basis with the lien and pledge securing the payment of the Program Notes (identified and defined in the Ordinance) and the Taxable Commercial Paper Notes (identified and defined in the Ordinance) and (b) subordinate to the lien and pledge securing the payment of Priority Lien Obligations (identified and defined in the Ordinance) now outstanding and hereafter issued, and (iv) amounts in certain funds and accounts established pursuant to the Ordinance. As provided in the Ordinance, this Commercial Paper Note is being issued as a bond anticipation note.

This Commercial Paper Note, together with the other Commercial Paper Notes, is payable solely from the sources hereinabove identified securing the payment thereof, and the Commercial Paper Notes do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City or the Systems. The holder hereof shall never have the right to demand payment of this obligation from taxation or any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Ordinance to exist, to have happened and to have been performed precedent to and in the issuance of this Commercial Paper Note, do exist, have happened and have been performed in regular and in due time, form and manner as required by law and that the issuance of this Commercial Paper Note, together with all other Commercial Paper Notes, is not in excess of the principal amount of Commercial Paper Notes permitted to be issued under the Ordinance.

This Commercial Paper Note has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This Commercial Paper Note shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this Commercial Paper Note shall have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN TESTIMONY WHEREOF, the City Council has caused the seal of the City to be duly impressed or placed in facsimile hereon, and this Note to be signed with the imprinted facsimile signature of the Mayor and attested by the facsimile signature of the City Clerk.

********	**********
City Clerk, City of Austin, Texas	Mayor, City of Austin, Texas

(SEAL)

ISSUING AND PAYING AGENT'S
CERTIFICATE OF AUTHENTICATION

This Commercial Paper Note is one of the Commercial Paper Notes delivered pursuant to the within mentioned Ordinance.

_____,
as Issuing and Paying Agent

By:_____
Authorized Signatory

EXHIBIT B

Form of Direct Purchase Note:

THE TRANSFERABILITY OF THIS NOTE IS RESTRICTED AS DESCRIBED IN THE NOTE PURCHASE AGREEMENT

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF AUSTIN, TEXAS
COMBINED UTILITY SYSTEMS
TAX-EXEMPT PROGRAM NOTE,
DIRECT PURCHASE SUB-SERIES

No.: _____
Principal Amount: _____
Interest to Maturity: _____
Due at Maturity: _____
Note Date: _____
Maturity Date: _____
Number of Days: _____
Interest Rate: As set forth in the Note Purchase Agreement
Owner: _____

The City of Austin (the "City"), in Travis, Williamson and Hays Counties, State of Texas, FOR VALUE RECEIVED, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of the party specified above on the maturity date specified above, the principal sum specified above and to pay interest, if any, on said principal amount on _____, 20_, and on each _____ thereafter until the maturity date, from the above specified note date to said maturity date at the rate set forth in and determined in accordance with the terms of the Note Purchase Agreement pursuant to which this Note was purchased; both principal and interest on this Note being payable in lawful money of the United States of America at the designated corporate trust office of the Issuing and Paying Agent executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor. No interest will accrue on the principal amount hereof after the maturity date hereof. Defined terms used herein shall have the same meaning given to said terms in the hereinafter defined Ordinance, unless the context of the use of such term indicates otherwise. The interest rate borne by this Note shall not exceed the Maximum Interest Rate.

This Note is one of an issue of direct purchase notes (the "Direct Purchase Notes" or the "Notes") which has been duly authorized and issued in accordance with the provisions of an ordinance (the "Ordinance") passed by the City Council of the City for the purpose of financing Project Costs of Eligible Projects for the City's Electric Light and Power System and the City's Waterworks and Sewer System (collectively, the "Systems"); to refund obligations issued in connection with an Eligible Project; and to refinance, renew or refund Program Notes or Priority Lien Obligations and any other authorized obligations of the Systems, including interest thereon, issued for Eligible Projects; all in accordance in strict conformity with the provisions of the laws of the State of Texas, including the Act.

This Direct Purchase Note, together with the other Direct Purchase Notes, is payable from and equally secured by a lien on and pledge of (i) the proceeds from (a) the sale of other Direct Purchase Notes issued for such purpose and (b) the sale of a series or issue of bonds hereafter issued by the City and to be used to pay or refund outstanding Direct Purchase Notes, (ii) the Pledged Revenues (identified and defined in the Ordinance) of the Systems, such lien on and pledge of the Pledged Revenues, however, being (a) on an equal and ratable basis with the lien and pledge securing the payment of the Program Notes (identified and defined in the Ordinance) and the Taxable Commercial Paper Notes (identified and defined in the Ordinance) and (b) subordinate to the lien and pledge securing the payment of Priority Lien Obligations (identified and defined in the Ordinance) now outstanding and hereafter issued, and (iii) amounts in certain funds and accounts established pursuant to the Ordinance. As provided in the Ordinance, this Direct Purchase Note is being issued as a bond anticipation note.

This Direct Purchase Note, together with the other Direct Purchase Notes, is payable solely from the sources hereinabove identified securing the payment thereof, and the Direct Purchase Notes do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any other property of the City or the Systems. The holder hereof shall never have the right to demand payment of this obligation from taxation or any sources or properties of the City except as identified above.

It is hereby certified and recited that all acts, conditions and things required by law and the Ordinance to exist, to have happened and to have been performed precedent to and in the issuance of this Direct Purchase Note, do exist, have happened and have been performed in regular and in due time, form and manner as required by law and that the issuance of this Direct Purchase Note, together with all other Direct Purchase Notes, is not in excess of the principal amount of Direct Purchase Notes permitted to be issued under the Ordinance.

This Direct Purchase Note has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This Direct Purchase Note shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this Direct Purchase Note shall have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN TESTIMONY WHEREOF, the City Council has caused the seal of the City to be duly impressed or placed in facsimile hereon, and this Note to be signed with the imprinted facsimile signature of the Mayor and attested by the facsimile signature of the City Clerk.

********	**********
City Clerk, City of Austin, Texas	Mayor, City of Austin, Texas

(SEAL)

ISSUING AND PAYING AGENT'S
CERTIFICATE OF AUTHENTICATION

This Direct Purchase Note is one of the Direct Purchase Notes delivered pursuant to the within mentioned Ordinance.

_____,
as Issuing and Paying Agent

By:_____
Authorized Signatory