

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7

**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

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

3  
4 "Bonds" shall mean a series or issue of bonds, notes, or similar obligations  
5 (other than the Program Notes, the Bank Note or the Revolving Credit Agreement)  
6 issued or incurred by the City after the passage of the Ordinance, payable from and  
7 secured solely by a lien on and pledge of the Net Revenues of the Systems, equal  
8 or subordinate in rank and dignity to the lien and pledge securing the payment of  
9 the Prior Lien Bonds or the Priority Lien Obligations.

10  
11 "Business Day" shall mean any day (a) when (i) the office of the Bank is not  
12 authorized or required to be closed and (ii) banks are not authorized to be closed in  
13 the City and (b) when banks or the New York Stock Exchange are not authorized  
14 to be closed in New York, New York.

15  
16 "City" shall mean the City of Austin, Texas.

17  
18 "Code" shall mean the Internal Revenue Code of 1986.

19  
20 "Commercial Paper Notes" shall mean Program Notes issued as commercial  
21 paper notes pursuant to the terms of the Ordinance.

22  
23 "Commitment" shall mean \$429,589,042, the maximum amount available to  
24 be drawn under the Revolving Credit Agreement for the payment of the principal  
25 of and interest on the Commercial Paper Notes, as this amount may be reduced and  
26 reinstated from time to time as provided in the Revolving Credit Agreement.

27  
28 "Contractual Obligations" shall mean those obligations (i) issued or incurred  
29 by the City payable from the Net Revenues of the Electric Light and Power System  
30 and the Net Revenues of the Waterworks and Sewer System, (ii) incurred pursuant  
31 to express charter or statutory authority and (iii) which by the terms of the  
32 ordinance authorizing their issuance or the incurring of the obligation provide for  
33 payments to be made by the City for their retirement or payment to be equally and  
34 ratably secured with the Prior Lien Bonds by a lien on and pledge of the Net  
35 Revenues of the Systems.

36  
37 "Council" or "council" shall mean the governing body of the City.

38  
39 "Dealer" shall mean the entity designated in **Section 41(c)**.

40  
41 "Dealer Agreement" shall mean the agreement authorized to be entered into  
42 by **Section 41(c)**, as from time to time amended or supplemented.

1  
2 "Designated Office" means, with respect to the Commercial Paper Notes, the  
3 corporate trust office of the Paying Agent/Registrar designated as the place for  
4 payment, transfer and exchange of the Commercial Paper Notes, initially, the  
5 corporate trust office of the Paying Agent/Registrar in New York, New York; and,  
6 with respect to the Direct Purchase Notes, the corporate office of the Note Paying  
7 Agent designated as the place for payment, transfer and exchange of the Direct  
8 Purchase Notes, initially, the corporate trust office of the Note Paying Agent in  
9 Newark, Delaware.

10  
11 "Direct Purchase Payment Fund" shall mean the account so designated in  
12 **Section 17.**

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

16  
17 "DTC" shall mean The Depository Trust Company, New York, New York.

18  
19 "DTC Participant" shall mean the securities brokers and dealers, banks, trust  
20 companies, clearing corporations and certain other organizations on whose behalf  
21 DTC was created to hold securities to facilitate the clearance and settlement of  
22 securities transactions among DTC Participants.

23  
24 "Electric Fund" shall mean the fund so designated in **Section 26.**

25  
26 "Electric Light and Power System" shall mean all properties, facilities and  
27 plants currently owned, operated and maintained by the City, wholly or partially in  
28 participation with others, for the generation, transmission, supply and distribution  
29 of electrical energy and power, together with all future extensions, improvements,  
30 replacements and additions to, and all replacements of, the properties, facilities and  
31 plants; provided that, notwithstanding the foregoing, and to the extent authorized  
32 or permitted by law, the term "Electric Light and Power System" shall not include  
33 facilities of any kind (including any electric power generating and transmission  
34 facilities) which are declared not to be a part of the Electric Light and Power  
35 System and which are acquired or constructed by the City, or in participation with  
36 others, with the proceeds from the issuance of "Special Facilities Bonds," which  
37 are defined as being special revenue obligations of the City which are not Priority  
38 Lien Obligations but which are payable from and secured by other liens on and  
39 pledges of any revenues, sources or payments not pledged to the payment of  
40 Priority Lien Obligations including, but not limited to, special contract revenues or

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

3  
4 "Eligible Investments" shall mean any or all of the authorized investments  
5 described in the Public Funds Investment Act, Chapter 2256, Texas Government  
6 Code, and the City's investment policy, in which the City may purchase, sell and  
7 invest its funds and funds under its control.

8  
9 "Eligible Project" shall mean the acquisition or construction of improvements,  
10 additions or extensions for the Systems, including capital assets and facilities  
11 incident and related to their operation, maintenance and administration, all as  
12 provided in the Act.

13  
14 "Fee Letter" shall mean the fee letter between the City and the Bank  
15 executed in connection with the Revolving Credit Agreement and the Note  
16 Purchase Agreement.

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

20  
21 "Gross Revenues of the Systems" and "Gross Revenues" shall mean, with  
22 respect to the Electric Light and Power System or the Waterworks and Sewer  
23 System, all income, receipts and revenues of every nature derived or received from  
24 the operation and ownership (excluding refundable meter deposits, restricted gifts  
25 and grants and proceeds derived from the sale or other disposition of all or part of  
26 the City's participating interest in the South Texas Project and revenues, sources or  
27 payment from facilities acquired or constructed with Special Facilities Bonds) of  
28 the respective System, including earnings and income derived from the investment  
29 or deposit of moneys in any special funds or accounts created and established by  
30 the City for the payment and security of the Priority Lien Obligations.

31  
32 "Holder" or "Noteholder" shall mean any person, firm, association, or  
33 corporation who is in possession of any Program Note drawn, issued or endorsed  
34 to that person, firm, association or corporation or to the order of that person, firm,  
35 association or corporation or to bearer or in blank, including, unless the context  
36 shall otherwise require, the Bank.

37  
38 "Issuing and Paying Agent," "Paying Agent/Registrar" or "Registrar" shall  
39 mean the agent appointed pursuant to **Section 3A**, or any successor to the agent.

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

4  
5 "Maintenance and Operating Expenses" shall mean, with respect to the  
6 Electric Light and Power System or the Waterworks and Sewer System, all current  
7 expenses of operating and maintaining the respective system, including all salaries,  
8 labor, materials, repairs and extensions necessary to render efficient service;  
9 provided, however, that only repairs and extensions, as in the judgment of council,  
10 reasonably and fairly exercised, are necessary to maintain the operations and  
11 render adequate service to the City and its inhabitants, or as might be necessary to  
12 meet some physical accident or condition which would otherwise impair the  
13 Priority Lien Obligations shall be deducted in determining Net Revenues.  
14 Depreciation shall never be considered as an expense of Maintenance and  
15 Operation. Maintenance and Operating Expenses shall include payment under  
16 contracts for the purchase of power and energy, water supply or other materials,  
17 goods or services for the Systems to the extent authorized by law and the  
18 provisions of the contract.

19 "Maximum Interest Rate" shall mean 10%.

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

21 "MSRB" shall mean the Municipal Securities Rulemaking Board.

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

26 "Note Construction Account" shall mean the account so designated in **Section**  
27 **18**.

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

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

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

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

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

3 "Ordinance" shall mean this ordinance.

4 "Outstanding Tax-Exempt Program Notes" shall mean those commercial  
5 paper notes or direct purchase notes issued under authority of Ordinance No.  
6 20170831-012 that are outstanding on the Business Day prior to the effective date  
7 of the Revolving Credit Agreement.

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

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

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

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

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

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

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

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

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

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

24 "Subordinate Lien Bonds" shall mean:

25 *City of Austin, Texas, Subordinate Lien Revenue Refunding Bonds, Series*  
26 *1998, dated October 1, 1998.*

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

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

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

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

3 "Taxable Commercial Paper Notes" shall mean the "City of Austin, Texas  
4 Combined Utility Systems Commercial Paper Notes, Taxable Series" authorized  
5 by Ordinance No. 2020\_\_\_\_-\_\_\_\_, and as from time to time amended or  
6 supplemented by council.

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

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

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

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

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

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



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

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

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

24 Program Notes issued under authority of the Ordinance shall consist of (i)  
25 Commercial Paper Notes and (ii) Direct Purchase Notes. Commercial Paper Notes  
26 shall be designated as “**CITY OF AUSTIN, TEXAS COMBINED UTILITY**  
27 **SYSTEMS TAX-EXEMPT PROGRAM NOTES, COMMERCIAL PAPER SUB-**  
28 **SERIES.**” Direct Purchase Notes shall be designated as “**CITY OF AUSTIN,**  
29 **TEXAS COMBINED UTILITY SYSTEMS TAX-EXEMPT PROGRAM NOTES,**  
30 **DIRECT PURCHASE SUB-SERIES.**”

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

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

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

28 In connection with the refinancing or refunding of Program Notes, Priority  
29 Lien Obligations and any other authorized obligations of the System (including,  
30 without limitation, the Outstanding Tax-Exempt Program Notes), including  
31 accrued interest, the Program Notes, Priority Lien Obligations and any other  
32 authorized obligations of the System shall qualify as "obligations", as defined in  
33 the Act, at the time any refinancing or refunding occurs. The refunding or  
34 refinancing, other than a simultaneous refunding, of Program Notes, Priority Lien  
35 Obligations and other obligations of the System (including, without limitation, the  
36 Outstanding Tax-Exempt Program Notes), to the extent then required by applicable  
37 law, shall be by means of a gross defeasance established at the time of the issuance  
38 of the refunding Commercial Paper Notes or Direct Purchase Notes, and the  
39 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1                   SECTION 5: ISSUANCE AND SALE OF PROGRAM NOTES.  
2

3           (a)   *Completion of Commercial Paper Notes.* Commercial Paper Notes  
4 shall be completed and delivered by the Issuing and Paying Agent in accordance  
5 with telephonic, electronic or written instructions of the Authorized Representative  
6 and the Issuing and Paying Agent Agreement. To the extent instructions are not  
7 written, they shall be confirmed in writing by the Authorized Representative within  
8 twenty-four (24) hours. The instructions shall specify the Commercial Paper Notes  
9 to be sold and the principal amounts, dates of issue, maturities, rates of discount or  
10 interest, or the formula or method of calculating interest and the basis upon which  
11 it is to be computed, and other terms and conditions which may be determined by  
12 the Authorized Representative at the time of sale of the Commercial Paper Notes.  
13 The instructions shall include the purchase price of the Commercial Paper Notes,  
14 and, if the Commercial Paper Notes are not held in accordance with a book-entry  
15 only system, a request that the Issuing and Paying Agent authenticate the  
16 Commercial Paper Notes by counter signature of its authorized officer or employee  
17 and deliver them to the named purchaser upon receipt of payment in accordance  
18 with the custom then prevailing in the New York financial market in regard to the  
19 Commercial Paper Notes. The rules of the New York Clearinghouse shall apply.  
20 The instructions shall also contain provisions representing that all action on the  
21 part of the City necessary for the valid issuance of the Commercial Paper Notes  
22 then to be issued has been taken, that all provisions of Texas and federal law  
23 necessary for the valid issuance of the Commercial Paper Notes with provision for  
24 interest exemption from federal income taxation have been complied with, if  
25 applicable, and that the Commercial Paper Notes in the hands of the Holders will  
26 be valid and enforceable obligations of the City according to their terms, subject to  
27 the exercise of judicial discretion in accordance with general principles of equity  
28 and bankruptcy, insolvency, reorganization, moratorium and other similar laws  
29 affecting creditors' rights to the extent constitutionally applicable and that, if  
30 applicable, based upon the advice of Bond Counsel, the stated interest on the  
31 Commercial Paper Notes is exempt from federal income taxation. The instructions  
32 shall also certify that:  
33

34           (i)   no Event of Default under **Section 33** has occurred and is continuing  
35 as of the date of the instructions and that the Issuing and Paying Agent has not  
36 received a Notice of No-Issuance (as defined in the Agreement);  
37

38           (ii)   the City has been advised by Bond Counsel that the projects to be  
39 financed with the proceeds of the Commercial Paper Notes will constitute Eligible  
40 Projects or that the obligations to be refunded were issued in connection with  
41 Eligible Projects;  
42



1 (iii) the City is in compliance with the covenants set forth in **Sections 7,**  
2 **22, 25, 26, and 28** as of the date of the instructions;

3  
4 (iv) the City has been advised by Bond Counsel that the proposed  
5 expenditure of the proceeds of Commercial Paper Notes for Eligible Projects and  
6 the refunding of Commercial Paper Notes issued for Eligible Projects will not  
7 cause the City to be in violation of its covenants set forth in **Sections 29, 30, and**  
8 **31;**

9  
10 (v) the sum of the interest payable on the Commercial Paper Note will not  
11 exceed a yield (calculated on the principal amount of the Commercial Paper Note  
12 on the basis of actual number of days elapsed, and a 365-day year) to the maturity  
13 date of the Commercial Paper Note in excess of the Maximum Interest Rate;

14  
15 (vi) all action on the part of the City necessary for the valid issuance of the  
16 Commercial Paper Notes then to be issued has been taken;

17  
18 (vii) all provisions of Texas and federal law necessary for the valid  
19 issuance of the Commercial Paper Notes have been complied with;

20  
21 (viii) the Commercial Paper Notes held by the Holders will be valid and  
22 enforceable obligations of the City according to their terms, subject to the exercise  
23 of judicial discretion in accordance with general principles of equity and  
24 bankruptcy, insolvency, reorganization, moratorium, and other similar laws  
25 affecting creditors' rights, to the extent constitutionally applicable; and

26  
27 (ix) any and all conditions to the issuance of Commercial Paper Notes  
28 under the Revolving Credit Agreement have been fully satisfied.

29  
30 (b) *Execution of Revolving Credit Agreement.* Upon its execution and  
31 delivery, the Revolving Credit Agreement is in full force and effect and loans may  
32 be made in accordance with the terms of the Revolving Credit Agreement.

33  
34 (c) *Completion of Direct Purchase Notes.* Direct Purchase Notes shall be  
35 completed and delivered by the Note Paying Agent in accordance with telephonic,  
36 electronic or written instructions of the Authorized Representative and the Note  
37 Paying Agent Agreement. To the extent instructions are not written, they shall be  
38 confirmed in writing by the Authorized Representative within twenty-four (24)  
39 hours. The instructions shall specify the Direct Purchase Notes to be sold and the  
40 principal amounts, dates of issue, maturities, and other terms and conditions which  
41 may be determined by the Authorized Representative at the time of sale of the  
42 Direct Purchase Notes. The Direct Purchase Notes will bear interest at the rates

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

18  
19 (i) no Event of Default under **Section 33** has occurred and is continuing  
20 as of the date of the instructions;

21  
22 (ii) the City has been advised by Bond Counsel that the projects to be  
23 financed with the proceeds of the Direct Purchase Notes will constitute Eligible  
24 Projects or that the obligations to be refunded were issued in connection with  
25 Eligible Projects;

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

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

34  
35 (v) any and all conditions to the issuance of Direct Purchase Notes under  
36 the Note Purchase Agreement have been fully satisfied;

37  
38 (vi) all action on the part of the City necessary for the valid issuance of the  
39 Direct Purchase Notes then to be issued has been taken;

40  
41 (vii) all provisions of Texas and federal law necessary for the valid  
42 issuance of the Direct Purchase Notes have been complied with; and

1  
2 (viii) the Direct Purchase Notes held by the Bank will be valid and  
3 enforceable obligations of the City according to their terms, subject to the exercise  
4 of judicial discretion in accordance with general principles of equity and  
5 bankruptcy, insolvency, reorganization, moratorium, and other similar laws  
6 affecting creditors' rights, to the extent constitutionally applicable.  
7

8 (d) *Execution of Note Purchase Agreement.* Upon its execution and  
9 delivery, the Note Purchase Agreement is in full force.  
10

11 **SECTION 6: PROCEEDS OF SALE OF PROGRAM NOTES.** (a)  
12 *Commercial Paper Note Proceeds.* The proceeds of the sale of any Commercial  
13 Paper Notes (net of all expenses and costs of sale and issuance) shall be applied for  
14 any or all of the following purposes as directed by an Authorized Representative:  
15

16 (i) Proceeds shall first be used for the payment of outstanding  
17 Commercial Paper Notes at or prior to maturity and the repayment in full of  
18 Advances and any other amounts due under the Revolving Credit Agreement shall  
19 be deposited to the Note Payment Fund;  
20

21 (ii) Proceeds not retained in the Note Payment Fund as provided in  
22 subparagraph (i) above shall be transferred and deposited to the Note Construction  
23 Account and used and applied in accordance with the provisions of **Section 18**; and  
24

25 (iii) Proceeds to be used for the payment of outstanding Priority Lien  
26 Obligations (if prior approval is given by council and the Bank) shall be transferred  
27 to the appropriate account or fund established pursuant to the proceedings  
28 authorizing the issuance of the Priority Lien Obligations.  
29

30 (b) *Direct Purchase Note Proceeds.* The proceeds of the sale of any  
31 Direct Purchase Notes (net of all expenses and costs of sale and issuance) shall be  
32 applied for any or all of the following purposes as directed by an Authorized  
33 Representative:  
34

35 (i) Proceeds shall first be used for the payment of outstanding Direct  
36 Purchase Notes at or prior to maturity and the payment in full of any amounts due  
37 under the Note Purchase Agreement shall be deposited to the Direct Purchase  
38 Payment Fund;  
39

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

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

3  
4 (iii) Proceeds to be used for the payment of outstanding Priority Lien  
5 Obligations (if prior approval is given by council and the Bank) shall be transferred  
6 to the appropriate account or fund established pursuant to the proceedings  
7 authorizing the issuance of the Priority Lien Obligations.  
8

9 **SECTION 7: LIMITATION ON ISSUANCE.** Unless council amends the  
10 Ordinance in accordance with the provisions of **Section 37**, the City covenants that  
11 there will not be issued and outstanding at any time under the Ordinance more than  
12 \$400,000,000 in aggregate principal amount of Program Notes. For purposes of  
13 this **Section 7** any portion of outstanding Program Notes to be paid from money on  
14 deposit in the Note Payment Fund (in the case of Commercial Paper Notes) or the  
15 Direct Purchase Payment Fund (in the case of Direct Purchase Notes), and  
16 available proceeds of Program Notes or Bonds shall not be considered outstanding  
17 on that day. Any improvement or extension to the Systems to be funded with  
18 Program Notes must qualify as an Eligible Project, and the City shall not direct the  
19 Issuing and Paying Agent to issue Commercial Paper Notes that mature after the  
20 Maximum Maturity Date.  
21

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

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

32 **SECTION 9: PAYMENT AND PERFORMANCE ON BUSINESS DAYS.**  
33 Whenever under the terms of the Ordinance or the Program Notes, the performance  
34 date of any of their provisions, including the payment of principal of or interest on  
35 the Program Notes, shall occur on a day other than a Business Day, then  
36 performance, including the payment of principal of and interest on the Program  
37 Notes, need not be made on that day but may be performed or paid on the next  
38 succeeding Business Day with the same force and effect as if made on that day.  
39

1        **SECTION 10: FORM OF PROGRAM NOTES.** (a) *Commercial Paper*  
2 *Notes.* The Commercial Paper Notes and the Certificate of Authentication to  
3 appear on each of the Commercial Paper Notes shall be substantially in the form  
4 set forth in **Exhibit A**, with appropriate insertions, omissions, substitutions and  
5 other variations as are permitted or required by the Ordinance, and may have  
6 letters, numbers or other marks of identification (including identifying numbers  
7 and letters of the Committee on Uniform Securities Identification Procedures of the  
8 American Bankers Association) and legends and endorsements as may be  
9 approved by an Authorized Representative. The Commercial Paper Notes shall be  
10 printed, lithographed, or engraved or produced in any other similar manner, or  
11 typewritten, all as determined and approved by an Authorized Representative.  
12

13        If Commercial Paper Notes are issued in book-entry only form pursuant to  
14 **Section 3A**, they shall be issued in the form of the Master Note approved by  
15 council pursuant to the Ordinance, to which there shall be attached the form of  
16 Commercial Paper Note as prescribed above, and council declares that the  
17 provisions of the Commercial Paper Note are incorporated into and shall be a part  
18 of the Master Note. Council declares that the Ordinance and the form of  
19 Commercial Paper Note shall constitute the "underlying records" referred to in the  
20 Master Note. Notwithstanding the provisions of **Section 11**, the Master Note may  
21 be executed on behalf of the City with the manual signature of the City Manager or  
22 the Chief Financial Officer of the City.  
23

24        (b) *Direct Purchase Notes.* The Direct Purchase Notes and the Certificate  
25 of Authentication to appear on each of the Direct Purchase Notes shall be  
26 substantially in the form set forth in **Exhibit B**, with appropriate insertions,  
27 omissions, substitutions and other variations as are permitted or required by the  
28 Ordinance, and may have letters, numbers or other marks of identification  
29 (including identifying numbers and letters of the Committee on Uniform Securities  
30 Identification Procedures of the American Bankers Association) and legends and  
31 endorsements as may be approved by an Authorized Representative. The Direct  
32 Purchase Notes shall be printed, lithographed, or engraved or produced in any  
33 other similar manner, or typewritten, all as determined and approved by an  
34 Authorized Representative.  
35

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

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

8  
9 No Commercial Paper Note shall be entitled to any right or benefit under the  
10 Ordinance, or be valid or obligatory for any purpose, unless there appears on the  
11 Commercial Paper Note a certificate of authentication executed by the Paying  
12 Agent/Registrar by manual signature, or, in the case of the Master Note, the Paying  
13 Agent/Registrar has executed the Master Note, and the execution of any  
14 Commercial Paper Note by the Paying Agent/Registrar is the only evidence  
15 necessary for the Commercial Paper Note to be duly certified or registered and  
16 delivered.

17  
18 No Direct Purchase Note shall be entitled to any right or benefit under the  
19 Ordinance, or be valid or obligatory for any purpose, unless there appears on the  
20 Direct Purchase Note a certificate of authentication executed by the Note Paying  
21 Agent by manual signature, and the execution of any Direct Purchase Note by the  
22 Note Paying Agent is the only evidence necessary for the Direct Purchase Note to  
23 be duly certified or registered and delivered.

24  
25 **SECTION 12: NOTES MUTILATED, LOST, DESTROYED OR**  
26 **STOLEN.** If any Program Note shall become mutilated, the City, at the expense  
27 of the Holder of the Program Note, shall execute and deliver a new Program Note  
28 of like tenor and number in exchange and substitution for the Program Note so  
29 mutilated, but only upon surrender to the City of the Program Note so mutilated. If  
30 any Program Note shall be lost, destroyed or stolen, evidence of the loss,  
31 destruction or theft may be submitted to the City and, if evidence be satisfactory to  
32 it and indemnity satisfactory to it shall be given, the City, at the expense of the  
33 owner, shall execute and deliver a new Program Note of like tenor in lieu of and in  
34 substitution for the lost, destroyed or stolen Program Note. Neither the City nor  
35 the Paying Agent/Registrar, in the case of a Commercial Paper Note, or the Note  
36 Paying Agent, in the case of a Direct Purchase Note, shall be required to treat both  
37 the original Program Note and any duplicate Program Note as being outstanding  
38 for the purpose of determining the principal amount of Program Notes which may  
39 be issued hereunder, but both the original and the duplicate Program Note shall be  
40 treated as one and the same.

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

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

22  
23        Upon surrender for transfer of any Commercial Paper Note at the Designated  
24 Office of the Registrar, the Registrar shall register and deliver, in the name of each  
25 designated transferee (or to bearer, as appropriate), one or more new Commercial  
26 Paper Notes executed on behalf of, and furnished by, the City of like tenor and  
27 character and in Authorized Denominations and having the same maturity, bearing  
28 interest at the same rate or rates and of a like aggregate principal amount as the  
29 Commercial Paper Note or Commercial Paper Notes surrendered for transfer.

30  
31        Commercial Paper Notes may be exchanged for other Commercial Paper  
32 Notes of like tenor and character and of Authorized Denominations and having the  
33 same maturity, bearing the same rate or rates of interest and of like aggregate  
34 principal amount as the Commercial Paper Notes surrendered for exchange, upon  
35 surrender of the Commercial Paper Notes to be exchanged at the Designated Office  
36 of the Registrar. Whenever any Commercial Paper Notes is surrendered for  
37 exchange, the Registrar shall register and deliver new Commercial Paper Notes of  
38 like tenor and character as the Commercial Paper Notes exchanged, executed on  
39 behalf of, and furnished by, the City to the Holder requesting the exchange.

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

7  
8       New Commercial Paper Notes delivered upon any transfer or exchange shall  
9 be valid obligations of the City, evidencing the same debt as the Commercial Paper  
10 Notes surrendered, shall be secured by the Ordinance and shall be entitled to all of  
11 the security and benefits of the Ordinance to the same extent as the Commercial  
12 Paper Notes surrendered.

13  
14       The City reserves the right to change the registration and transferability  
15 provisions of the Commercial Paper Notes at any time on or prior to the delivery of  
16 Commercial Paper Notes in order to comply with applicable laws and regulations  
17 of the United States in effect at the time of their issuance.

18  
19       The Note Paying Agent shall maintain the Registration Books for the Direct  
20 Purchase Notes in the manner provided in the Note Paying Agent Agreement.

21  
22       **SECTION 14: CANCELLATION.** All Commercial Paper Notes which at  
23 maturity are surrendered to the Paying Agent/Registrar for the collection of the  
24 principal and interest due and payable or are surrendered for transfer or exchange  
25 pursuant to the provisions of the Ordinance shall be cancelled by the Paying  
26 Agent/Registrar, and the Paying Agent/Registrar shall transmit to the City a  
27 certificate identifying the Commercial Paper Notes that have been duly cancelled  
28 and destroyed.

29  
30       All Direct Purchase Notes which at maturity are surrendered to the Note  
31 Paying Agent for the collection of the principal and interest due and payable or are  
32 surrendered for transfer or exchange pursuant to the provisions of the Ordinance  
33 shall, upon payment or issuance of new Direct Purchase Notes, be cancelled by the  
34 Note Paying Agent, and the Note Paying Agent shall transmit to the City a  
35 certificate identifying the Direct Purchase Notes that have been duly cancelled and  
36 destroyed.

37  
38       **SECTION 15: FISCAL AND OTHER AGENTS.** The City may from time  
39 to time appoint and provide for the payment of additional fiscal, paying or other  
40 agents and trustees as council determines are necessary or appropriate in  
41 connection with the Program Notes.



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

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

19  
20        Pending the expenditure of moneys in the Note Payment Fund for authorized  
21 purposes, moneys deposited therein may be invested at the direction of the City  
22 Treasurer or the designee thereof in Eligible Investments; provided, that moneys  
23 received by the City under the terms of the Revolving Credit Agreement and  
24 moneys received in connection with a rollover of Commercial Paper Notes shall  
25 remain uninvested. Any investment income shall be deposited, as received, into  
26 the Electric Fund or the Water and Sewer Fund established by ordinances  
27 authorizing the issuance of the Prior Lien Bonds and shall not be considered an  
28 amount held in the Note Payment Fund.

29  
30        **SECTION 17. DIRECT PURCHASE PAYMENT FUND.** The creation,  
31 establishment and maintenance on the records of the City of a separate and special  
32 fund designated as the "**City of Austin, Texas Combined Utility Systems Tax-**  
33 **Exempt Program Notes, Direct Purchase Sub-Series Payment Fund**" (Direct  
34 Purchase Payment Fund) is confirmed. Moneys on deposit in the Direct Purchase  
35 Payment Fund shall be used to pay principal of and interest on Direct Purchase  
36 Notes as the same shall become due and payable as provided in the Ordinance and  
37 the Note Purchase Agreement. The City agrees that it will timely transfer funds to  
38 the Note Paying Agent in amounts sufficient to pay the interest on and principal of  
39 the Direct Purchase Notes when due, no later than the date payment of principal  
40 and interest is due and payable. Amounts remaining in the Direct Purchase  
41 Payment Fund not then necessary for the payment of Direct Purchase Notes may

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

3 Pending the expenditure of moneys in the Direct Purchase Payment Fund for  
4 authorized purposes, moneys deposited therein may be invested at the direction of  
5 the City Treasurer or the designee thereof in Eligible Investments. Any investment  
6 income shall be deposited, as received, into the Electric Fund or the Water and  
7 Sewer Fund established by ordinances authorizing the issuance of the Prior Lien  
8 Bonds and shall not be considered an amount held in the Direct Purchase Payment  
9 Fund.  
10

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

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

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

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

20  
21 **SECTION 19: PLEDGE; PAYMENTS.** The Program Notes and any  
22 obligations of the City to the Bank under the Revolving Credit Agreement (including  
23 the Bank Note), the Note Purchase Agreement and the Fee Letter are obligations of  
24 the City payable from and secured solely by the pledged funds pursuant to the  
25 Ordinance. The City agrees to make payments into the Note Payment Fund and the  
26 Direct Purchase Payment Fund at the times and in the amounts as are necessary to  
27 provide for the full payment of the principal of and the interest on the Commercial  
28 Paper Notes and the Direct Purchase Notes, as the case may be, when due, and the  
29 repayment of Advances made under and pursuant to the Revolving Credit  
30 Agreement and any obligations of the City to the Bank under the Revolving Credit  
31 Agreement, the Note Purchase Agreement and the Fee Letter.

32  
33 To provide security for the payment of the principal of and interest on the  
34 Commercial Paper Notes as the same shall become due and payable, the City grants  
35 a lien on and pledge of, subject only to the provisions of the Ordinance permitting  
36 the application of the sources listed for purposes and on the terms and conditions set  
37 forth in the Ordinance, (i) the proceeds from (a) the sale of bonds issued and to be  
38 used to pay outstanding Commercial Paper Notes and (b) the sale of Commercial  
39 Paper Notes issued pursuant to the Ordinance and to be used to refund outstanding  
40 Commercial Paper Notes, (ii) Advances, (iii) the amounts held in the Note Payment  
41 Fund until those amounts are used for authorized purposes, (iv) the Pledged

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

13  
14 To provide security for the payment of the principal of and interest on  
15 Advances and any other amounts payable under the Revolving Credit Agreement  
16 and the Fee Letter as the same shall become due and payable, the City grants a lien  
17 on and pledge of the Pledged Revenues, subject only to the provisions of the  
18 Ordinance permitting the application of Pledged Revenues for purposes and on the  
19 terms and conditions set forth in the Ordinance; however, this lien on and pledge of  
20 the Pledged Revenues, and the lien and pledge securing the Commercial Paper  
21 Notes, the Direct Purchase Notes, the Taxable Commercial Paper Notes and the  
22 Taxable Advances is subordinate only to the lien on and pledge of the Pledged  
23 Revenues securing the payment of Priority Lien Obligations and the debt service  
24 and reserve funds relating to the Priority Lien Obligations, and being on a parity  
25 and of equal dignity with the lien and pledge securing the payment of the Program  
26 Notes and the Taxable Commercial Paper Notes. It is ordained that the payment  
27 obligations under the Bank Note are secured by a lien on and pledge of Pledged  
28 Revenues, and as provided in Chapter 1208, Texas Government Code, the lien is  
29 valid, binding and fully perfected on the passage of the Ordinance without physical  
30 delivery or transfer of control of the Pledged Revenues, the filing of the Ordinance  
31 or any other act.

32  
33 To provide security for the payment of the principal of and interest on the  
34 Direct Purchase Notes as the same shall become due and payable, the City grants a  
35 lien on and pledge of, subject only to the provisions of the Ordinance permitting  
36 the application of the sources listed for purposes and on the terms and conditions  
37 set forth in the Ordinance, (i) the proceeds from (a) the sale of bonds issued and to  
38 be used to pay outstanding Direct Purchase Notes and (b) the sale of Direct  
39 Purchase Notes issued pursuant to the Ordinance and to be used to refund  
40 outstanding Direct Purchase Notes, (ii) the amounts held in the Direct Purchase  
41 Payment Fund until those amounts are used for authorized purposes, (iii) the  
42 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

1 Revolving Credit Agreement, the Fee Letter and the Related Documents (as  
2 defined in the Revolving Credit Agreement), and the City Clerk or Deputy City  
3 Clerk is authorized to place the City seal on these instruments.  
4

5 The City reserves the right to issue Commercial Paper Notes without credit  
6 or liquidity support, as provided in **Section 22(b)**.  
7

8 **SECTION 22: MAINTENANCE OF AVAILABLE CREDIT AND**  
9 **LIQUIDITY FACILITIES REQUIREMENT.** (a) Except as provided in  
10 **Section 22(b)**, the City covenants that at all times up to and including the  
11 Maximum Maturity Date, unless the Commercial Paper Notes are no longer  
12 outstanding, it will maintain credit or liquidity facilities with banks, assuming that  
13 all then outstanding Commercial Paper Notes were to become due and payable  
14 immediately, in amounts available for borrowing under the credit or liquidity  
15 facilities sufficient at that time to pay principal of and interest on all Commercial  
16 Paper Notes, as and when due. No Commercial Paper Note shall be issued if after  
17 giving effect to its issuance and, if applicable, the immediate application of its  
18 proceeds to retire other Commercial Paper Notes secured by the credit or liquidity  
19 facility, the aggregate principal amount of all Commercial Paper Notes secured by  
20 the credit or liquidity facility would exceed the amount of the Commitment under  
21 the related credit or liquidity facility. The availability for borrowing of amounts  
22 under the credit or liquidity facilities may be subject to reasonable conditions  
23 precedent, including, but not limited to, bankruptcy of the City. In furtherance of  
24 this covenant, the City agrees that it will not issue any Commercial Paper Notes or  
25 make any borrowings which will result in a violation of the covenant, will not  
26 amend the Revolving Credit Agreement in a manner which will cause a violation  
27 of this covenant and, if and to the extent necessary to maintain compliance with  
28 this covenant, will arrange for new credit or liquidity facilities.  
29

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

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

8  
9 **SECTION 23: ORDINANCE TO CONSTITUTE A CONTRACT;**  
10 **EQUAL SECURITY.** In consideration of the acceptance of the Program Notes  
11 and the Bank Note by those who shall hold the same from time to time, the  
12 Ordinance constitutes a contract between the City and the Holders from time to  
13 time of the Program Notes and the Bank (with respect to the Bank Note) and the  
14 pledge made in the Ordinance by the City and the covenants and agreements set  
15 forth in the Ordinance to be performed by the City shall be for the equal and  
16 proportionate benefit, security and protection of all Holders of the Program Notes  
17 and the Bank (with respect to the Bank Note), without preference, priority or  
18 distinction as to security or otherwise of any of the Program Notes or the Bank  
19 Note authorized by the Ordinance over any of the others by reason of time of  
20 issuance, sale or maturity or otherwise for any cause, except as expressly provided  
21 in or permitted by the Ordinance or, with respect to Advances, the Revolving  
22 Credit Agreement.

23  
24 **SECTION 24: APPLICATION OF PRIOR COVENANTS.** The  
25 covenants and agreements (to the extent the same do not conflict with the  
26 covenants and agreements in the Ordinance) contained in the ordinances  
27 authorizing the issuance of the Priority Lien Obligations are incorporated by  
28 reference into the Ordinance and are for the benefit and protection of the Bank and  
29 its rights under and pursuant to the Revolving Credit Agreement and the Note  
30 Purchase Agreement in like manner as applicable to the Priority Lien Obligations;  
31 provided, however, in the event of any conflict between the terms, covenants and  
32 agreements contained in the Ordinance and the terms, covenants and agreements  
33 contained in the ordinances authorizing the issuance of the Priority Lien  
34 Obligations, the provisions of the ordinances authorizing the issuance of the  
35 Priority Lien Obligations shall control.

36  
37 **SECTION 25: RATES AND CHARGES.** The City hereby agrees and  
38 reaffirms its covenants to the holders of the Priority Lien Obligations and  
39 covenants to the Bank that it will at all times maintain rates and charges for the  
40 services furnished, provided, and supplied by the Electric Light and Power System  
41 and the Waterworks and Sewer System which shall comply with the provisions of  
42 ordinances authorizing the issuance of the Priority Lien Obligations, be reasonable

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

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

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

10  
11 (3) To comply with any provisions contained in the Revolving Credit  
12 Agreement and the Note Purchase Agreement and to the extent the same are  
13 incurred or reasonably anticipated to be paid with Pledged Revenues, to pay the  
14 interest on and principal of the Similarly Secured Notes or the repayment of  
15 Advances or the Bank Note or the Direct Purchase Notes and any other amounts  
16 payable to the Bank under the Revolving Credit Agreement, the Note Purchase  
17 Agreement and the Fee Letter, as and when the same shall become due; and

18  
19 (4) any other legal debt or obligation of the Systems, either or both, as  
20 and when the same shall become due.

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

24  
25 (a) Gross Revenues of the Electric Light and Power System shall be, as  
26 collected, deposited into a separate account maintained with a depository bank of  
27 the City and known as the "Electric Light and Power System Fund" (Electric Fund)  
28 and Gross Revenues of the Electric Light and Power System shall be kept separate  
29 and apart from all other funds of the City. All revenues deposited in the Electric  
30 Fund shall be pledged and appropriated to the extent required for the following  
31 uses and order of priority:

32  
33 **FIRST:** To the payment of all necessary and reasonable Maintenance and  
34 Operating Expenses of the Electric Light and Power System, and expenses  
35 required by statute to be a first charge on and claim against its Gross Revenues.

36  
37 **SECOND:** To the payment of the amounts required to be deposited in the  
38 special funds or accounts created for the payment and security of the Priority Lien



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

3  
4 THIRD: On a pro rata basis, to the payment of the amounts required to be  
5 deposited in the Note Payment Fund, the Direct Purchase Payment Fund, and the  
6 debt service payment fund established for the Taxable Commercial Paper Notes, to  
7 the extent the principal of and interest on the Commercial Paper Notes, as the same  
8 becomes due and payable, are not paid with Advances, and for the payment of the  
9 principal of and interest on Advances, if any.

10  
11 (b) Gross Revenues of the Waterworks and Sewer System shall be, as  
12 collected, deposited into a separate account maintained with a depository bank of  
13 the City and known as the "Water and Sewer System Fund" (Water and Sewer  
14 Fund) and Gross Revenues of the Waterworks and Sewer System shall be kept  
15 separate and apart from all other funds of the City. All revenues deposited in the  
16 Water and Sewer Fund shall be pledged and appropriated to the extent required for  
17 the following uses and order of priority:

18  
19 FIRST: To the payment of all necessary and reasonable Maintenance and  
20 Operating Expenses of the Waterworks and Sewer System, and expenses required  
21 by statute to be a first charge on and claim against its Gross Revenues.

22  
23 SECOND: To the payment of the amounts required to be deposited in the  
24 special funds or accounts created for the payment and security of the Priority Lien  
25 Obligations in accordance with the provisions of the ordinances authorizing the  
26 issuance of the Priority Lien Obligations.

27  
28 THIRD: On a pro rata basis, to the payment of the amounts required to be  
29 deposited in the Note Payment Fund, the Direct Purchase Payment Fund, and the  
30 debt service payment fund established for the Taxable Commercial Paper Notes, to  
31 the extent, with respect to amounts required to be deposited in the Note Payment  
32 Fund, the principal of and interest on the Commercial Paper Notes, as the same  
33 becomes due and payable, are not paid with Advances, and for the payment of the  
34 principal of and interest on Advances, if any.

35  
36 (c) Any Net Revenues remaining in the Electric Fund or the Water and  
37 Sewer Fund after satisfying the priority payments, or making adequate and  
38 sufficient provision for the their payment, and after paying all other amounts due  
39 under the Revolving Credit Agreement, the Note Purchase Agreement and the Fee  
40 Letter, may be appropriated and used for any other City purpose permitted by law.

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

10  
11        **SECTION 28: COMPLIANCE WITH PRIORITY LIEN**  
12 **OBLIGATION ORDINANCES AND OTHER DOCUMENTS.** The City will  
13 comply with the terms and provisions of the ordinances authorizing the Priority  
14 Lien Obligations, and any other ordinance or contract to which the City is a party,  
15 the non-compliance with which would materially adversely affect the ability of the  
16 City to make payments on the Program Notes and the Bank Note when due.

17  
18        **SECTION 29: PROGRAM NOTES TO REMAIN TAX EXEMPT.** The  
19 City covenants to take any action to assure, or refrain from any action which would  
20 adversely affect, the treatment of the Program Notes as obligations described in  
21 section 103 of the Code, the interest on which is not includable in the "gross  
22 income" of the holder for purposes of federal income taxation if the Program Notes  
23 are designated by the City as "tax exempt", and further covenants as follows:

24  
25        (a) to take any action to assure that no more than 10 percent of the  
26 proceeds of the Program Notes or the projects financed with these proceeds (less  
27 amounts deposited to a reserve fund, if any) are used for any "private business  
28 use", as defined in section 141(b)(6) of the Code or, if more than 10 percent of the  
29 proceeds are so used, that amounts, whether received by the City, with respect to  
30 the private business use, do not, under the terms of the Ordinance or any  
31 underlying arrangement, directly or indirectly, secure or provide for the payment of  
32 more than 10 percent of the debt service on the Program Notes, in contravention of  
33 section 141(b)(2) of the Code;

34  
35        (b) to take any action to assure that in the event that the "private business  
36 use" described in subsection (a) exceeds 5 percent of the proceeds of the Program  
37 Notes or the projects financed with these proceeds (less amounts deposited into a  
38 reserve fund, if any) then the amount in excess of 5 percent is used for a "private  
39 business use" which is "related" and not "disproportionate", within the meaning of  
40 section 141(b)(3) of the Code, to the governmental use;

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

6  
7 (d) to refrain from taking any action which would otherwise result in the  
8 Program Notes being treated as "private activity bonds" within the meaning of  
9 section 141(b) of the Code;

10  
11 (e) to refrain from taking any action that would result in the Program  
12 Notes being "federally guaranteed" within the meaning of section 149(b) of the  
13 Code;

14  
15 (f) to refrain from using any proceeds of the Program Notes, directly or  
16 indirectly, to acquire or to replace funds which were used, directly or indirectly, to  
17 acquire "investment property" (as defined in section 148(b)(2) of the Code) which  
18 produces a materially higher yield over the term of the Program Notes, other than  
19 investment property acquired with --

20  
21 (1) proceeds of Program Notes invested for a reasonable temporary  
22 period until the proceeds are needed for the purpose for which the  
23 obligations are issued,

24  
25 (2) amounts invested in a bona fide debt service fund, within the  
26 meaning of section 1.148-1(b) of the Regulations, and

27  
28 (3) amounts deposited in any reasonably required reserve or  
29 replacement fund to the extent the amounts do not exceed 10 percent of the  
30 proceeds of the Program Notes;

31  
32 (g) to otherwise restrict the use of the proceeds of the Program Notes or  
33 amounts treated as proceeds of the Program Notes, as may be necessary, so that the  
34 Program Notes do not otherwise contravene the requirements of section 148 of the  
35 Code (relating to arbitrage);

36  
37 (h) to pay to the United States of America at least once during each five-  
38 year period (beginning on the date of delivery of the Program Notes) an amount  
39 that is at least equal to 90 percent of the "Excess Earnings", within the meaning of  
40 section 148(f) of the Code, and to pay to the United States of America, not later  
41 than 60 days after the Program Notes have been paid in full, 100 percent of the

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

3  
4 (i) to refrain from using the proceeds of the Program Notes or the  
5 proceeds of any prior obligations to pay debt service on another issue more than  
6 ninety (90) days after the issuance of the Program Notes in contravention of  
7 section 149(d) of the Code (relating to advance refundings); and

8  
9 (j) to timely file the information required by section 149(e) of the Code  
10 with the Secretary of the Treasury on the forms, at the places and in the manner as  
11 may be prescribed by law.

12  
13 The City represents and covenants that it will not expend, or permit to be  
14 expended, the proceeds of any Program Notes in any manner inconsistent with its  
15 reasonable expectations as certified in a federal tax certificate to be executed from  
16 time to time with respect to the Program Notes; provided, however, that the City  
17 may expend Program Note proceeds in any manner if the City first obtains an  
18 unqualified opinion of Bond Counsel that the expenditure will not impair the  
19 exemption from federal income taxation of interest paid on the Program Notes.  
20 The City represents that it has not been notified of any listing or proposed listing  
21 by the Internal Revenue Service to the effect that it is an issuer whose arbitrage  
22 certifications may not be relied upon.

23  
24 The City understands that the term "proceeds" includes "disposition  
25 proceeds" as defined in the Regulations and, in the case of a refunding bond,  
26 transferred proceeds (if any) and proceeds of the refunded bonds expended prior to  
27 the date of the issuance of the Program Notes. It is the understanding of the City  
28 that the covenants contained in this Section are intended to assure compliance with  
29 the Code and any regulations or rulings promulgated by the U.S. Department of the  
30 Treasury pursuant to the Code. In the event that regulations or rulings are  
31 promulgated which modify or expand provisions of the Code, as applicable to the  
32 Program Notes, the City will not be required to comply with any covenant  
33 contained in this Section to the extent that a failure to comply, in the opinion of  
34 Bond Counsel, will not adversely affect the exemption from federal income  
35 taxation of interest on the Program Notes under section 103 of the Code. In the  
36 event that regulations or rulings are promulgated which impose additional  
37 requirements applicable to the Program Notes, the City agrees to comply with the  
38 additional requirements to the extent necessary, in the opinion of Bond Counsel, to  
39 preserve the exemption from federal income taxation of interest on the Program  
40 Notes under section 103 of the Code. Council hereby authorizes the Mayor, the  
41 City Manager, the Chief Financial Officer of the City and the City Treasurer to  
42 execute any documents, certificates or reports required by the Code, and to make

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

3  
4 In order to facilitate compliance with the above clause (h), a "Rebate Fund"  
5 is established by the City for the sole benefit of the United States of America, and  
6 the Rebate Fund shall not be subject to the claim of any other person, including  
7 without limitation the Holders. The Rebate Fund is established for the additional  
8 purpose of compliance with section 148 of the Code.

9  
10 **SECTION 30: ALLOCATION OF, AND LIMITATION ON,**  
11 **EXPENDITURES FOR ELIGIBLE PROJECTS.** The City covenants to  
12 account for on its books and records the expenditure of proceeds from the sale of  
13 the Program Notes and any investment earnings earned by the investment of the  
14 proceeds to be used for Eligible Projects by allocating proceeds to expenditures  
15 within eighteen (18) months of the later of the date that (a) the expenditure on a  
16 Eligible Project is made or (b) each Eligible Project is completed. The foregoing  
17 notwithstanding, the City shall not expend proceeds or investment earnings more  
18 than sixty (60) days after the later of (a) the fifth anniversary of the date of delivery  
19 of the Program Notes or (b) the date the Program Notes are retired, unless the City  
20 obtains an opinion of Bond Counsel substantially to the effect that the expenditure  
21 will not adversely affect the tax-exempt status of the Program Notes. The City  
22 shall not be obligated to comply with this covenant if it obtains an opinion of Bond  
23 Counsel to the effect that a failure to comply will not adversely affect the  
24 excludability for federal income tax purposes from gross income of the interest.

25  
26 **SECTION 31: DISPOSITION OF ELIGIBLE PROJECTS.** The City  
27 covenants that the property constituting an Eligible Project will not be sold or  
28 otherwise disposed in a transaction resulting in the receipt by the City of cash or  
29 other compensation, unless the City obtains an opinion of Bond Counsel  
30 substantially to the effect that the sale or other disposition will not adversely affect  
31 the tax-exempt status of the Program Notes. Personal property disposed of in the  
32 ordinary course of business shall not be treated as a transaction resulting in the  
33 receipt of cash or other compensation. The City shall not be obligated to comply  
34 with this covenant if it obtains an opinion of Bond Counsel to the effect that a  
35 failure to comply will not adversely affect the excludability for federal income tax  
36 purposes from gross income of the interest.

37  
38 **SECTION 32: ONGOING CONTINUING DISCLOSURE**  
39 **COVENANT.** To the extent required by the provisions of Rule 15c2-12 (Rule)  
40 promulgated by the U.S. Securities and Exchange Commission, the City agrees to  
41 enter into an agreement to file financial information and operating data with  
42 respect to the Commercial Paper Notes with the Electronic Municipal Marketplace

1 Access (EMMA) system administered by the MSRB. The City agrees to provide  
2 the Bank a written copy of the City's continuing disclosure undertaking filings in  
3 connection with its Separate Lien Obligations that it files with the MSRB.  
4

5 **SECTION 33: EVENTS OF DEFAULT.** If one or more of the following  
6 events shall occur:  
7

8 (a) if default in the due and punctual payment of any installment of  
9 principal of and interest on any Program Note occurs, when and as the same shall  
10 become due and payable, whether at maturity or otherwise;  
11

12 (b) an "Event of Default" shall have occurred and be continuing under the  
13 Revolving Credit Agreement;  
14

15 (c) (i) an "Event of Default" as defined in the Taxable Agreement shall  
16 have occurred and be continuing under the Taxable Agreement;  
17

18 (d) an "Event of Default" shall have occurred and be continuing under the  
19 Note Purchase Agreement and notice, if required under the terms of the Note  
20 Purchase Agreement, of the event shall have been furnished to the City by the  
21 Bank;  
22

23 (e) if default by the City in the performance or observance of any other of  
24 the covenants, agreements or conditions on its part in the Ordinance or in the  
25 Commercial Paper Notes occurs, and the default shall continue for a period of sixty  
26 (60) days after written notice has been received by the City from the Bank, a  
27 Holder of the Program Notes, the Dealer or the Issuing and Paying Agent;  
28 provided, however, if the default cannot be cured within the sixty (60) day period  
29 but corrective action to cure the default is commenced and diligently pursued by  
30 the City until the default is corrected, the default shall not be an Event of Default;  
31 and provided, further, that so long as the Agreement is in effect and the Bank has  
32 not failed to honor a properly presented and conforming request for an Advance  
33 under the Agreement, no Event of Default shall be deemed to have occurred under  
34 this clause (d) unless the notice provided above to the City has been consented to  
35 in writing by the Bank;  
36

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

1 proceeding for the adjustment of its debts instituted under the provisions of the  
2 Bankruptcy Code, as amended, or under any similar act in any jurisdiction which  
3 may is in effect or enacted; or  
4

5 (g) if an order or decree shall be entered, with the consent or  
6 acquiescence of the City, appointing a receiver or receivers of the Systems, or any  
7 part of the Systems, or of the rents, fees, charges or other revenues of the Systems,  
8 or if an order or decree, having been entered without the consent or acquiescence  
9 of the City shall not be vacated or discharged or stayed within ninety (90) days of  
10 its entry;  
11

12 then any event described above is an "Event of Default" under the Ordinance.  
13

#### 14 **SECTION 34: SUITS AT LAW OR IN EQUITY AND MANDAMUS.**

15 In case any Event of Default occurs, then the Bank and the Holder of any Program  
16 Note at the time outstanding, is entitled to proceed to protect and enforce its rights  
17 by appropriate judicial proceeding as the Holder or the Bank, respectively,  
18 determines most effectual to protect and enforce its rights, either by suit in equity  
19 or by action at law, whether for the specific performance of any covenant or  
20 agreement contained in the Ordinance, or in aid of the exercise of any power  
21 granted in the Ordinance, or to enforce any other legal or equitable right vested in  
22 the Holders of any Program Notes by the Ordinance or the Program Notes or by  
23 law. The provisions of the Ordinance shall be a contract with each and every  
24 Holder of Program Notes and the Bank, and the duties of the City shall be  
25 enforceable by any Noteholder or the Bank, respectively, by mandamus or other  
26 appropriate suit, action or proceeding in any court of competent jurisdiction.  
27

28 **SECTION 35: REMEDIES NOT EXCLUSIVE.** No remedy conferred  
29 upon or reserved to the Bank or the Holders of Program Notes by the Ordinance is  
30 intended to be exclusive of any other remedy, and every remedy shall be  
31 cumulative, and may be exercised at any time or from time to time, and as often as  
32 may be necessary, by the Bank or the Holder of any one or more of the Program  
33 Notes.  
34

35 **SECTION 36: SUPPLEMENTAL ORDINANCES.** Except as permitted  
36 by the Ordinance, including **Section 28**, with respect to the issuance or incurrence  
37 of additional obligations of the City secured by the Pledged Revenues, the City  
38 will not adopt any supplemental ordinances with respect to the Pledged Revenues,  
39 pursuant to the ordinances authorizing the issuance of Priority Lien Obligations or  
40 otherwise, without the prior written consent of the Bank.  
41

1           **SECTION 37: AMENDMENTS OR MODIFICATIONS WITHOUT**  
2 **CONSENT OF HOLDERS OF PROGRAM NOTES.** The Ordinance and the  
3 rights and obligations of the City and of the Holders of Program Notes may be  
4 modified or amended at any time by a supplemental ordinance, subject to the  
5 provisions of the Revolving Credit Agreement and the Note Purchase Agreement,  
6 without notice to or the consent of any Holders, but only to the extent permitted by  
7 law, and, subject to the rights of the Bank and the Holders of the Program Notes:  
8

9           (1) to add to the covenants and agreements of the City in the Ordinance,  
10 other covenants and agreements thereafter to be observed, or to surrender any right  
11 or power herein reserved to or conferred upon the City by the Ordinance;  
12

13           (2) to increase the principal amount of Similarly Secured Notes that may  
14 be outstanding at any one time under the terms of the ordinances authorizing the  
15 issuance of Similarly Secured Notes, or to issue additional commercial paper notes  
16 under the Act; provided that, with respect to the Commercial Paper Notes, the City  
17 satisfies either (i) the requirements of **Section 22(a)** in providing liquidity or credit  
18 support with respect to the increased principal amount of Commercial Paper Notes  
19 authorized to be outstanding at any one time or (ii) the requirements of **Section**  
20 **22(b)** to issue the increased principal amount of Commercial Paper Notes without  
21 liquidity and/or credit support;  
22

23           (3) to cure any ambiguity or inconsistency, or to cure or correct any  
24 defective provision contained in the Ordinance, upon receipt by the City of an  
25 approving opinion of Bond Counsel, that the amendment is necessary or advisable,  
26 and will more clearly express the intent of the Ordinance;  
27

28           (4) to effect changes council determines are necessary or advisable in  
29 connection with exercising the authority reserved to the City in **Section 22(b)**; or  
30

31           (5) to supplement the security for the Program Notes, replace or provide  
32 additional credit or liquidity facilities, make changes, modifications or  
33 amendments as may be necessary or desirable in order to obtain the approval of the  
34 Ordinance by the Attorney General of Texas, as required by **Section 44**, or to  
35 obtain or maintain the granting of a rating on the Program Notes by a nationally  
36 recognized municipal bond rating agency, or change the form of the Program  
37 Notes, or make any other changes in the provisions that are necessary or desirable  
38 and which shall not materially adversely affect the security, rights or interests of  
39 the Bank or the Holders of the Program Notes;  
40

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



- 1 (A) Make any change in the maturity of any outstanding Program Notes or  
2 the Bank Note;  
3  
4 (B) Reduce the rate of interest borne by any outstanding Program Notes or  
5 the Bank Note;  
6  
7 (C) Reduce the amount of the principal payable on any outstanding  
8 Program Notes or the Bank Note;  
9  
10 (D) Modify the terms of payment of principal of or interest on the  
11 outstanding Program Notes or the Bank Note, or impose any  
12 conditions with respect to their payment;  
13  
14 (E) Affect the security, rights or interests of the Bank or the Holders of  
15 less than all of the outstanding Program Notes; or  
16  
17 (F) Reduce or restrict the pledge made pursuant to **Section 19** for  
18 payment of the Program Notes or the Bank Note;

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

29  
30 **SECTION 38: ADDITIONAL ACTIONS.** Any Authorized  
31 Representative, the Mayor, the City Clerk, and the other officers of the City, each  
32 are authorized, jointly and severally, to do any and all things and to execute and  
33 deliver any and all certificates, instruments and other documents which they may  
34 deem necessary or advisable in order to consummate the issuance, sale and  
35 delivery of the Program Notes and to effectuate the purposes of the Ordinance, the  
36 Revolving Credit Agreement, the Fee Letter, the Dealer Agreement, the Issuing  
37 and Paying Agent Agreement, the Note Purchase Agreement, the Note Paying  
38 Agent Agreement and the Offering Memorandum. By passing the Ordinance,  
39 council authorizes the payment of the fees and expenses incurred and to be paid by  
40 the City in connection with the issuance, sale and delivery of the Program Notes  
41 and the execution and delivery of the Revolving Credit Agreement, the Fee Letter,

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

4  
5 **SECTION 39: LIMITATION OF BENEFITS WITH RESPECT TO**  
6 **THE ORDINANCE.** With the exception of the rights or benefits expressly  
7 conferred by the Ordinance, nothing expressed or contained in, or implied from the  
8 provisions of, the Ordinance or the Program Notes is intended or should be  
9 construed to confer upon or give to any person other than the City, the Holders of  
10 the Program Notes, the Bank, the Issuing and Paying Agent, the Note Paying  
11 Agent, and the parties to the Dealer Agreement and the Revolving Credit  
12 Agreement, any legal or equitable right, remedy or claim under or by reason of or  
13 in respect to the Ordinance or any of its covenants, conditions, stipulations,  
14 promises, agreements or provisions. The Ordinance and all of the covenants,  
15 conditions, stipulations, promises, agreements and provisions are intended to be  
16 and shall be for and inure to the sole and exclusive benefit of the City, the Holders  
17 of the Program Notes, the Issuing and Paying Agent, the Note Paying Agent, and  
18 the parties to the Dealer Agreement and the Revolving Credit Agreement.

19  
20 **SECTION 40: ISSUING AND PAYING AGENT AGREEMENT;**  
21 **NOTE PAYING AGENT AGREEMENT; DEALER AGREEMENT; NOTE**  
22 **PURCHASE AGREEMENT.** (a) *Issuing and Paying Agent Agreement.* The  
23 Issuing and Paying Agent Agreement by and between the City and U.S. Bank  
24 National Association, relating to the Commercial Paper Notes, substantially in the  
25 form to the Ordinance as **Exhibit D**, is approved as to form and content, and, upon  
26 the approval of the City Attorney, whose approval shall be evidenced by executing  
27 the Issuing and Paying Agent Agreement, the City Manager is authorized to  
28 execute the Issuing and Paying Agent Agreement for and on behalf of the City, and  
29 the City Clerk or Deputy City Clerk is authorized to place the City seal on the  
30 Issuing and Paying Agent Agreement. Any Authorized Representative is hereby  
31 authorized to enter into any supplemental agreement with the Issuing and Paying  
32 Agent or with any successor Issuing and Paying Agent in order to implement the  
33 functions of the Issuing and Paying Agent or Registrar with respect to the  
34 Commercial Paper Notes. Any successor Issuing and Paying Agent shall be a  
35 financial institution of recognized national standing organized and existing under  
36 the laws of the United States of America or the State of Texas and which has trust  
37 powers. The successor Issuing and Paying Agent shall have assumed the duties of  
38 the Issuing and Paying Agent to be replaced before it shall be relieved of the  
39 obligation to perform the duties as Issuing and Paying Agent, and the successor  
40 Issuing and Paying Agent shall have executed an agreement substantially in the  
41 same form and substance as the Issuing and Paying Agent Agreement approved by  
42 the Ordinance.

1  
2 (b) *Note Paying Agent Agreement.* The Note Paying Agent Agreement by  
3 and between the City and JPMorgan Chase Bank, National Association, relating to  
4 the Direct Purchase Notes, substantially in the form to the Ordinance as **Exhibit E**,  
5 is approved as to form and content, and, upon the approval of the City Attorney,  
6 whose approval shall be evidenced by executing the Note Paying Agent  
7 Agreement, the City Manager is authorized to execute the Note Paying Agent  
8 Agreement for and on behalf of the City, and the City Clerk or Deputy City Clerk  
9 is authorized to place the City seal on the Note Paying Agent Agreement. Any  
10 Authorized Representative is hereby authorized to enter into any supplemental  
11 agreement with the Note Paying Agent or with any successor Note Paying Agent in  
12 order to implement the functions of the Note Paying Agent with respect to the  
13 Direct Purchase Notes. Any successor Note Paying Agent shall be a financial  
14 institution of recognized national standing organized and existing under the laws of  
15 the United States of America or the State of Texas and which has trust powers.  
16 The successor Note Paying Agent shall have assumed the duties of the Note Paying  
17 Agent to be replaced before it shall be relieved of the obligation to perform the  
18 duties as Note Paying Agent, and the successor Note Paying Agent shall have  
19 executed an agreement substantially in the same form and substance as the Note  
20 Paying Agent Agreement approved by the Ordinance.

21  
22 (c) *Dealer Agreement.* Council confirms the appointment of Goldman,  
23 Sachs & Co. to continue to serve as the dealer for the Commercial Paper Notes  
24 (Dealer). The Dealer Agreement by and between the City and the Dealer  
25 pertaining to the sale, from time to time, of Program Notes or the purchase of  
26 Commercial Paper Notes from the City, at a fee as set forth in the Dealer  
27 Agreement, substantially in the form to the Ordinance as **Exhibit F**, is approved as  
28 to form and content, and, upon the approval of the Dealer Agreement by the City  
29 Attorney, whose approval shall be evidenced by executing the Dealer Agreement,  
30 the City Manager is authorized to execute and deliver the Dealer Agreement for  
31 and on behalf of the City, and the City Clerk or Deputy City Clerk is authorized to  
32 place the City seal on the Dealer Agreement. Any Authorized Representative is  
33 hereby authorized to enter into any supplemental agreement with the Dealer or  
34 with any successor Dealer in order to implement the functions of the Dealer with  
35 respect to the Commercial Paper Notes.

36  
37 (d) *Note Purchase Agreement.* The Note Purchase Agreement by and  
38 between the City and the Bank, relating to the sale and purchase of Direct Purchase  
39 Notes, substantially in the form to the Ordinance as **Exhibit G**, is approved as to  
40 form and content, and, upon the approval of the City Attorney, whose approval  
41 shall be evidenced by executing the Note Purchase Agreement, the City Manager is  
42 authorized to execute the Note Purchase Agreement for and on behalf of the City,

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

6 **SECTION 41: SECTION 2252.908, TEXAS GOVERNMENT CODE.**

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

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

24  
25 **SECTION 43: USE OF OFFERING MEMORANDUM.** The use by the  
26 Dealer of the Offering Memorandum, prepared by the Dealer in consultation with  
27 Authorized Representatives, in connection with the sale of Program Notes, and the  
28 distribution of the Offering Memorandum by the Dealer, is approved. Any  
29 Authorized Representative is hereby authorized to provide to the Dealer  
30 information as may be necessary, in the reasonable judgment of the Dealer, to  
31 prepare and update, on an annual basis, the Offering Memorandum.

32  
33 **SECTION 44: APPROVAL OF ATTORNEY GENERAL.** The  
34 Authorized Representative shall submit the Ordinance and a transcript of  
35 proceedings to the Attorney General of the State of Texas for approval, as required  
36 by the Act. No Program Notes shall be sold or delivered by an Authorized  
37 Representative until the Attorney General of the State of Texas shall have  
38 approved the Ordinance, the Agreement, the Note Purchase Agreement and other  
39 agreements and proceedings as may be required by the Act. Council authorizes the  
40 payment of the fee of the Office of the Attorney General of the State of Texas for

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

4  
5 **SECTION 45: SEVERABILITY.** If any one or more of the covenants,  
6 agreements or provisions contained in the Ordinance shall be held contrary to any  
7 express provisions of law or contrary to the policy of express law, though not  
8 expressly prohibited, or against public policy, or shall for any reason be held  
9 invalid, then those covenants, agreements or provisions shall be null and void and  
10 shall be separable from the remaining covenants, agreements or provisions and  
11 shall in no way affect the validity of any of the other provisions of, or of the  
12 Program Notes issued under, the Ordinance.

13  
14 **SECTION 46: EXPIRATION OF AUTHORITY UNDER**  
15 **ORDINANCE NO. 20170831-012.** Upon the effective date of the Revolving  
16 Credit Agreement, the authority of the City to issue notes under Ordinance No.  
17 20170831-012 shall expire.

18  
19 **SECTION 47: EFFECTIVE DATE.** The Ordinance is passed on one  
20 reading as authorized by Section 1201.028, Texas Government Code, and is  
21 effective immediately upon its passage.

22  
23 **PASSED AND APPROVED**

24 **CITY OF AUSTIN, TEXAS**

25  
26  
27  
28 \_\_\_\_\_, 2020

§  
§  
§

\_\_\_\_\_  
STEVE ADLER  
Mayor

31  
32 **APPROVED:**

**ATTEST:**

33  
34  
35  
36 \_\_\_\_\_  
ANNE L. MORGAN  
37 City Attorney

\_\_\_\_\_  
JANNETTE S. GOODALL  
38 City Clerk

39  
40 (City Seal)