

**ORDINANCE NO. 20230914-018**

**AUTHORIZING THE ISSUANCE OF CITY OF AUSTIN, TEXAS  
ELECTRIC UTILITY SYSTEM PROGRAM NOTES, TAXABLE  
SERIES**

**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, together, Chapter 1371 and Chapter 1502.

“Agreement” or “Note Purchase Agreement” shall mean the Note Purchase Agreement between the City and the Bank, together with any Program Note, and any amendments, restatements, supplements or other modifications.

“Authorized Installment” shall mean, on the Original Issue Date, an amount equal to \$5,000 and on each Issue Date thereafter, an amount equal to the amount of any draw upon the Financial Security by ERCOT, reflecting payment by the Bank of the purchase price of such Authorized Installment of the Program Notes to ERCOT on behalf of the City.

“Authorized Installment Draw Period” shall mean the period commencing on the Original Issue Date and ending immediately following the effective date of the end of the term of the Financial Security, whether by termination, non-renewal or otherwise.

“Authorized Representative” shall mean one or more of the following officers or employees of the City, acting in concert or individually: the City Manager, General Manager of Austin Energy, the Chief Financial Officer of the City, any Deputy Chief Financial Officer, the 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 Wells Fargo Bank, National Association, and its successors and assigns under the Agreement.

“Base Rate” has the meaning set forth in the Note Purchase Agreement.

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

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

“Chapter 1371” shall mean Chapter 1371 of the Texas Government Code, as amended.

“Chapter 1502” shall mean Chapter 1502 of the Texas Government Code, as amended.

“City” shall mean the City of Austin, Texas.

“Code” shall mean the Internal Revenue Code of 1986.

“Commercial Paper Notes” shall mean, collectively, the taxable commercial paper notes issued pursuant to the terms of Ordinance No. 20200827-071 and the tax-exempt commercial paper notes issued pursuant to the terms of Ordinance No. 20200827-072, each as from time to time amended or supplemented by council, and authorized to be issued in the forms of commercial paper notes and direct purchase notes.

“Council” or “council” shall mean the governing body of the City.

“Designated Office” means the corporate trust office of the Paying Agent/Registrar designated as the place for payment, transfer and exchange of the Program Notes, initially, the corporate trust office of the Paying Agent/Registrar in [Dallas, Texas].

“Electric Fund” shall mean the fund so designated in **Section 25**.

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

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

“Eligible Project” shall mean (a) any eligible project as defined in Section 1371.001(2)(A) of Chapter 1371, as the same may be amended from time to time, (b) acquiring, purchasing, and equipping property, facilities or related infrastructure for the Electric Utility System, or (c) the acquisition of personal property in accordance with Chapter 271 of the Texas Local Government Code, as the same may be amended from time to time.

“ERCOT” shall mean The Electric Reliability Council of Texas and any successor thereto.



“Financial Security” shall mean the letter of credit issued by the Bank pursuant to the terms of the Note Purchase Agreement (and any extension or amendment of such letter of credit or any substitute or replacement letter of credit of the Bank) delivered to ERCOT, as beneficiary, for the account of the City pursuant to Section 16 of the ERCOT Nodal Protocols.

“Fiscal Year” shall mean the twelve-month financial accounting period used by the City in connection with the operation of the Electric Light and Power System, which may be any twelve consecutive month period established by the City

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

“Holder” or “Noteholder” shall mean the registered owner of any Program Note as shown on the registration books maintained by the Registrar, but if a Program Note is not in registered form, such terms shall mean any person, firm, association, or corporation who is in possession of any Program Note drawn, issued or endorsed to such person, firm, association or corporation or to the order of such person, firm, association or corporation or to bearer or in blank.

“Initial Note” shall mean the Program Note, Number T-1, delivered to and held by the Paying Agent/Registrar on the Original Issue Date.

“Issue Date” shall mean the date of delivery of an Authorized Installment of the Program Notes.

“Latest Draw Date” shall mean September 28, 2025, as may be extended in accordance with the Note Purchase Agreement.

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

“Master Ordinance” shall mean Ordinance No. 010118-53A, adopted by the City Council on June 18, 2001, as amended from time to time, relating to, in part, issuance of the Separate Lien Electric Utility Obligations.

“Maximum Available Amount” shall mean the maximum amount that is available to be drawn on the Financial Security on any particular day plus \$5,000, which shall initially be in the principal amount not to exceed \$100,005,000 as evidenced in the Initial Note.

“Maximum Interest Rate” shall mean the lesser of the (i) maximum net effective interest rate (as defined in and calculated in accordance with the provisions of Chapter 1204, Texas Government Code, as amended) and (ii) maximum non usurious lawful rate of interest permitted by applicable law.

“Maximum Maturity Date” shall mean December 27, 2025, being ninety (90) days after the Latest Draw Date, as may be extended in accordance with the Note Purchase Agreement.

“Net Revenues” and “Net Revenues of the Electric Light and Power System” shall mean Gross Revenues of the Electric Light and Power System minus the Electric Light and Power System’s Maintenance and Operating Expenses.

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

“Ordinance” shall mean this ordinance.

“Original Issue Date” shall mean the date of delivery of the initial Authorized Installment, the Note Purchase Agreement and the Financial Security.

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

“Paying Agent/Registrar Agreement” shall mean the agreement authorized to be entered into by **Section 38(a)**, as from time to time amended, restated, supplemented or otherwise modified.

“Pledged Revenues” and “Pledged Revenues of the Electric Light and Power System” shall mean (i) the Net Revenues of the Electric Light and Power System, plus (ii) any additional revenues, income, or other resources, including, without limitation, any grants, donations, or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which in the future may, at the option of the City, be pledged to the payment of the Priority Lien Obligations, the Commercial Paper Notes, and the Program Notes and any other obligations of the City to the Bank under the Note Purchase Agreement and the Related Documents.

“Priority Lien Obligations” shall mean, collectively, the Subordinate Lien Bonds and the Separate Lien Electric Utility Obligations.

“Program Notes” shall mean the “City of Austin, Texas Electric Utility System Program Notes, Taxable Series”, including a promissory note or notes issued hereunder in accordance with the terms and conditions of the Note Purchase Agreement (including, without limitation, the Initial Note and any Authorized Installments) to evidence and secure Authorized Installments made by the Bank under, and having the terms and characteristics contained in, and issued in accordance with, the Note Purchase Agreement.



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

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

“Related Documents” shall have the meaning set forth in the Note Purchase Agreement.

“Schedule of Authorized Installment Deliveries” shall mean the schedule attached to the Initial Note and maintained by the Paying Agent/Registrar evidencing the terms of each Authorized Installment delivered to the Bank.

“Separate Lien Electric Utility Obligations” shall mean the outstanding “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, TAXABLE SERIES 2008”, dated March 1, 2008, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, TAXABLE SERIES 2010B (Direct Subsidy-Build America Bonds)”, dated June 1, 2010, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, SERIES 2012A”, dated December 1, 2012, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, TAXABLE SERIES 2012B”, dated December 1, 2012, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, SERIES 2015A”, dated May 1, 2015, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, TAXABLE SERIES 2015B”, dated May 1, 2015, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, SERIES 2017”, dated February 14, 2017, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE BONDS, TAXABLE SERIES 2019A”, dated June 13, 2019, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, SERIES 2019B,” dated August 21, 2019, “CITY OF AUSTIN, TEXAS, ELECTRIC UTILITY SYSTEM REVENUE REFUNDING AND IMPROVEMENT BONDS, TAXABLE SERIES 2019C,” dated August 21, 2019, “CITY OF AUSTIN, TEXAS ELECTRIC UTILITY SYSTEM REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2020A,” dated November 17, 2020, CITY OF AUSTIN, TEXAS ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS, TAXABLE SERIES 2020B,” dated November 17, 2020, CITY OF AUSTIN, TEXAS ELECTRIC UTILITY SYSTEM REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2023,” dated May 17, 2023; and any Bonds hereinafter issued by the City; all in accordance with and pursuant to the Master Ordinance.

“Similarly Secured Notes” shall mean the Program Notes, the Commercial Paper Notes and any bonds or other obligations of the City payable, in whole or in part, from and secured by a parity lien on and pledge of Pledged Revenues.

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

“Stated Amount” shall mean, initially, \$100,000,000, the maximum amount that is available to be drawn on the Financial Security on the Closing Date, as adjusted from time to time in accordance with the terms of the Note Purchase Agreement and the Financial Security.

“Subordinate Lien Bonds” shall mean CITY OF AUSTIN, TEXAS, SUBORDINATE LIEN REVENUE REFUNDING BONDS, SERIES 1998, dated October 1, 1998.

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

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

The authorized amount of Program Notes to be issued and sold shall be limited to the Maximum Available Amount.

In accordance with the provisions of Chapter 1371, council delegates to each Authorized Representative the authority to affect the issuance and sale of Program Notes and any adjustments to the Stated Amount pursuant to Section 2.1 of the Note Purchase Agreement, all within certain specified parameters set forth in the Ordinance. The sale of Program Notes on the terms determined by an Authorized Representative is in the best interests of the City.

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

**SECTION 2. AUTHORIZATION – DESIGNATION – PRINCIPAL AMOUNT - PURPOSE.** Acting under authority of the Act, council authorizes the issuance of Program Notes designated the “**CITY OF AUSTIN, TEXAS ELECTRIC UTILITY SYSTEM PROGRAM NOTES, TAXABLE SERIES**”. The Program Notes shall be issued as fully registered notes, payable to the Bank, and may be issued from time to time and in an aggregate principal amount not to exceed **ONE HUNDRED MILLION FIVE THOUSAND DOLLARS (\$100,005,000)** at any one time outstanding for the purpose of financing Project Costs of Eligible Projects all in accordance with the Act and the terms, conditions, and limitations contained in this Ordinance. In connection with the issuance of the Financial Security and the execution of the Note Purchase Agreement, an Initial Note shall be issued on the Original Issue Date in an amount equal to the



Maximum Available Amount, reflecting the maximum principal amount of the Program Notes that may be issued, under this Ordinance for the purpose of evidencing Authorized Installments and all other obligations of the City under the Note Purchase Agreement; all in accordance with and subject to the terms, conditions and limitations contained in the Ordinance and the Note Purchase Agreement. The Initial Note shall, after approval by the Attorney General of the State of Texas and registration by the Comptroller of Public Account of the State of Texas, be held by the Paying Agent/Registrar.

The initial Authorized Installment of the Program Notes in the amount of \$5,000 delivered on the Original Issue Date shall be dated as of Original Issue Date. An Authorized Installment of the Program Notes delivered after the Original Issue Date shall be dated as of its Issue Date. The Authorized Installments of the Program Notes shall bear interest as determined in the Note Purchase Agreement from the Issue Date of an Authorized Installment of the Program Notes until payment of the principal amount thereof at maturity or prior redemption or prepayment.

Subject to applicable terms, limitations, and procedures contained herein, after the delivery of the initial Authorized Installment, Authorized Installments of the Program Notes may be purchased and issued pursuant to the terms of the Note Purchase Agreement in consideration of and in the amount of, any draw upon the Financial Security by ERCOT, reflecting payment by the Bank of the purchase price of such Authorized Installments concurrently upon payment to ERCOT, on behalf of the City, pursuant to such draw upon the Financial Security. No Authorized Installments may be issued after the end of the Authorized Installment Draw Period, and no Authorized Installment may be issued in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Financial Security; provided that the aggregate principal amount of all Authorized Installments issued and delivered under this Ordinance may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the terms of the Financial Security, if provided for by the Financial Security. The City shall promptly notify the Paying Agent/Registrar of any changes to the Maximum Available Amount made pursuant to the Note Purchase Agreement and of the end of the Authorized Installment Draw Period, provided that the Paying Agent/Registrar may alternatively receive actual notice of such events from the Bank.

The authority to issue Authorized Installments from time to time under the provisions of the Ordinance shall exist during the Authorized Installment Draw Period until the Latest Draw Date, regardless of whether prior to the Latest Draw Date there are at any time no outstanding Program Notes.

In connection with the refinancing or refunding of outstanding Program Notes, Priority Lien Obligations and any other authorized obligations of the Electric Light and Power System, including accrued interest, the Program Notes, Priority Lien Obligations and any other authorized obligations of the Electric Light and Power System shall qualify as "obligations", as defined in the Act, at the time any refinancing or refunding occurs. The refunding or refinancing, other than a simultaneous refunding, of Program Notes, Priority Lien Obligations and other obligations of the Electric Light and Power System, to the extent then required by applicable law, shall be by means of a gross defeasance established at the time of the issuance of the refunding Program Notes, and the selection of Program Notes, Priority Lien Obligations and any other authorized obligations of

the Electric Light and Power System to be so refunded or refinanced shall be made in the manner council determines.

**SECTION 3. TERMS APPLICABLE TO THE PROGRAM NOTES.** Subject to the limitations contained in the Ordinance, the Initial Note shall be dated as of the Original Issue Date and each Authorized Installment shall be dated as of their Issue Date; shall bear interest in accordance with the terms of the Note Purchase Agreement; and all Program Notes shall be issued on or before the Latest Draw Date and shall mature no later than the Maximum Maturity Date.

Subject to applicable terms, limitations and procedures contained in this Ordinance, after delivery of the Initial Authorized Installment, Authorized Installments may be purchased and issued pursuant to the terms of the Note Purchase Agreement in consideration of and in the amount of, any draw upon the Financial Security by ERCOT, reflecting payment by the Bank of the purchase price of such Authorized Installment concurrently upon payment to ERCOT, on behalf of the City, pursuant to such draw upon the Financial Security.

The Bank shall give notice to the City and the Paying Agent/Registrar of any draw upon the Financial Security by ERCOT, provided such notice is not required for the issuance of an Authorized Installment. The Paying Agent/Registrar shall issue and deliver a Authorized Installment in the principal amount of any draw on the Financial Security to the Bank pursuant to the terms of this Ordinance and the Note Purchase Agreement by noting the issuance of such Authorized Installment on the Schedule of Authorized Installment Issuances attached to the Initial Note; provided, however, in consideration of the delivery of the Financial Security and the unconditional obligation of the Bank thereunder, any particular Authorized Installment corresponding to the related draw of the Financial Security is deemed purchased and issued to the Bank on the date of such drawing.

Council confirms that U.S. Bank Trust Company, National Association shall serve Paying Agent/Registrar for the Program 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 Program 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 Program 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. Any successor Paying Agent/Registrar shall be appointed in accordance with the Note Purchase Agreement. Should a change in the Paying Agent/Registrar for the Program Notes occur, the City agrees to promptly cause a written notice to be (i) sent to the Bank and to each registered owner of the Program 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 Program Notes. The notice shall give the address of the successor Paying Agent/Registrar. Council may appoint a successor Paying Agent/Registrar without the consent of the Holders.

The Program Notes shall be issued in registered form, without coupons; provided, however, Program Notes may be registered to bearer. The principal of and interest on the Program Notes



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

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

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

**SECTION 4. AUTHORIZED INSTALLMENTS.** Authorized Installments of the Program Notes other than the Initial Authorized Installment are authorized to be issued and sold from time to time, but not later than the Latest Draw Date, in consideration of and in the amount of, any draw upon the Financial Security by ERCOT, and to mature and become due and payable, subject to earlier redemption as provided in the Note Purchase Agreement, on the dates as an Authorized Representative shall determine at the time of sale and issuance; provided, however, that no Authorized Installments shall (i) mature after the Maximum Maturity Date, (ii) have a term in excess of ninety (90) days or (iii) be issued in a manner that would cause the City to violate the covenants set forth in **Section 7**. Interest, if any, on Authorized Installments shall be payable at maturity with principal or as otherwise provided in the Note Purchase Agreement.

An Authorized Representative will notify the Bank of each new issuance of an Authorized Installment and confirm that at the time of the new issuance (after giving effect to the new issuance), the aggregate principal amount of Program Notes issued does not exceed \$100,005,000.

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

(a) *Delegation to Authorized Representative.* As authorized by Chapter 1371 and this Ordinance, each Authorized Representative is hereby authorized to act on behalf of the City in selling and delivering the Program Notes, including the Authorized Installments, and carrying out the other procedures specified in this Ordinance, including determining and fixing (i) the Original Issue Date of the Program Notes, (ii) the principal amount of the initial Authorized Installment, (iii) the price at which the Program Notes will be sold, (iv) the date or dates in which the Program Notes will mature, (v) the aggregate principal amount to mature on any such date or dates, (vi) the aggregate principal amount of Program Notes, (vii) the rate of interest to be borne by the Program Notes, (viii) the interest dates and payment periods, (ix) the dates, price, and terms, if any, upon and at which the Program notes shall be subject to redemption or prepayment prior to maturity at

the option of the City, (x) the dated dates of the Initial Note and the initial Authorized Installment of the Program Notes delivered on the Original Issue Date, (xi) any adjustments to the Stated Amount pursuant to Section 2.1 of the Note Purchase Agreement, and (xii) all other matters relating to the issuance, sale, and delivery of the Program Notes and the delivery of the Note Purchase Agreement; provided that (A) the price to be paid for the Program Notes shall not be less than 100% of the aggregate original principal amount thereof plus accrued interest thereon from their date to their delivery and (B) none of the Program Notes shall bear interest at a rate greater than the Maximum Rate. It is further provided, however, that, notwithstanding the foregoing provisions, the Initial Note shall not be delivered unless prior to delivery, the Program Notes have been rated by a nationally recognized rating agency for municipal securities (I) in one of the four highest rating categories for long-term obligations or (II) in one of the three highest rating categories for short-term obligations, as required by Chapter 1371.

(b) *Completion of Authorized Installments.* Authorized Installments shall be completed and issued by the Paying Agent/Registrar in accordance with telephonic, electronic or written instructions of the Authorized Representative and the Paying Agent/Registrar Agreement. To the extent instructions are not written, they shall be confirmed in writing by the Authorized Representative within twenty-four (24) hours. The instructions shall specify the Authorized Installments to be issued and the principal amounts corresponding to the Authorized Installment with respect to the related draw on the Financial Security, the dates of issue, and the maturity (which shall be the earlier of 90 days from the related date of issuance and the Maximum Maturity Date). The instructions shall include the purchase price of the Authorized Installment and a request that the Paying Agent/Registrar register the Authorized Installment in the registration books maintained by the Paying Agent/Registrar, including evidencing the issuance of the Authorized Installment on the Schedule of Authorized Installment Issuances attached to the Initial Note.

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

**SECTION 6. PROCEEDS OF SALE OF PROGRAM NOTES.** The proceeds of the sale of the Initial Authorized Installment shall be applied by an Authorized Representative to pay a portion of the costs of the issuance of the Program Notes. Proceeds relating to any other Authorized Installment corresponding to a draw on the Financial Security by ERCOT will be for the payment, on behalf and for the benefit of the City, of the Project Costs of Eligible Projects.

**SECTION 7. LIMITATION ON ISSUANCE.** Unless council amends the Ordinance in accordance with the provisions of **Section 34**, the City covenants that there will not be issued and outstanding at any time under the Ordinance more than \$100,005,000 in aggregate principal amount of Program Notes. For purposes of this **Section 7** any portion of outstanding Program Notes to be paid from money on deposit in the Note Payment Fund, and available proceeds of Program Notes or Bonds shall not be considered outstanding on that day. The City shall not direct the Paying Agent/Registrar to issue Program Notes that mature after the Maximum Maturity Date.

While the Note Purchase Agreement is in effect and supports the payment of the principal amount of the Program Notes, the City covenants and agrees that the total principal amount of all Program Notes outstanding at any one time shall not exceed the Maximum Available Amount.



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

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

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

**SECTION 11. EXECUTION - AUTHENTICATION.** Under authority granted by Section 1371.055, Texas Government Code, the Initial Note shall be executed on behalf of the City by the Mayor, and attested by the City Clerk under its seal reproduced or impressed thereon, all as provided in **Section 10**. The signatures appearing on the Initial Note may be manual or facsimile. The Initial Note bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the date of passage of the Ordinance are duly executed on behalf of the City, regardless of whether any individual ceases to hold office at the time of the initial sale and delivery of the Initial Note or at the time Authorized Installments are delivered in future sales, exchanges and transfers, all as authorized and provided in Section 1371.055 and Chapter 1206, Texas Government Code.

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

**SECTION 12. NOTES MUTILATED, LOST, DESTROYED OR STOLEN.** If any Program Notes shall become mutilated, the City, at the expense of the Holder of the Program Note, shall execute and deliver a new Program Note of like tenor and number in exchange and substitution for the Program Note so mutilated, but only upon surrender to the City of the Program Note so mutilated. If any Program Note shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the City and, if evidence be satisfactory to it and indemnity satisfactory to it shall be given, the City, at the expense of the owner, shall execute and deliver a new Program Note of like tenor in lieu of and in substitution for the lost, destroyed or stolen Program Note. Neither the City nor the Paying Agent/Registrar shall be required to treat both the

original Program Note and any duplicate Program Note as being outstanding for the purpose of determining the principal amount of Program Notes which may be issued hereunder, but both the original and the duplicate Program Note shall be treated as one and the same.

**SECTION 13. NEGOTIABILITY, REGISTRATION AND EXCHANGEABILITY.**

The obligations issued under the Ordinance, including the Initial Note, shall be, and shall have all of the qualities and incidents of, a negotiable instrument under the laws of the State of Texas, and each successive Holder, in accepting any obligation, agrees that the obligations shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

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

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

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

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

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



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

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

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

**SECTION 16. NOTE PAYMENT FUND.** The creation, establishment and maintenance of a separate and special fund designated as the “**City of Austin, Texas Electric Utility System Taxable Program Note Payment Fund**” (Note Payment Fund) with the Paying Agent/Registrar is confirmed. Moneys on deposit in the Note Payment Fund shall be used to pay the principal of and interest on Program Notes as the same shall become due and payable as provided in the Ordinance and the Note Purchase Agreement to repay any Authorized Installment and any other obligations of the City to the Bank under the Note Purchase Agreement (as evidenced by the Initial Note).

Pending the expenditure of moneys in the Note Payment Fund for authorized purposes, moneys deposited therein may be invested at the direction of the City Treasurer or the designee thereof in Eligible Investments; provided, that moneys received by the City under the terms of the Note Purchase Agreement and moneys received in connection with a rollover of Program Notes shall remain uninvested.

**SECTION 17. [INTENTIONALLY OMITTED].**

**SECTION 18. [INTENTIONALLY OMITTED].**

**SECTION 19. PLEDGE; PAYMENTS.** The Program Notes and any obligations of the City to the Bank under the Note Purchase Agreement (including the Initial Note) are obligations of the City payable from and secured solely by the pledged funds pursuant to this Ordinance. The City agrees to make payments into the Note Payment Fund at the times and in the amounts as are necessary to provide for the full payment of the principal of and the interest on the Program Notes when due, and the repayment of Authorized Installments made under and pursuant to the Note Purchase Agreement and any obligations of the City to the Bank under the Note Purchase Agreement.

To provide security for the payment of the principal of and interest on the Program Notes as the same shall become due and payable and any other amounts due and owing under the Note Purchase Agreement, the City grants a lien on and pledge of, subject only to the provisions of the Ordinance permitting the application of the sources listed for purposes and on the terms and conditions set forth in the Ordinance, (i) the proceeds from (a) the sale of Bonds issued and to be used to pay outstanding Program Notes and (b) the sale of Authorized Installments issued pursuant

to the Ordinance and to be used to refund outstanding Program Notes, (ii) the amounts held in the Note Payment Fund until those amounts are used for authorized purposes, and (iii) the Pledged Revenues, however, (a) on a parity with the lien and pledge securing the payment of the Program Notes made under and pursuant to the Note Purchase Agreement and all other amounts payable by the City under the Note Purchase Agreement and the Similarly Secured Notes, and (b) subordinate to the lien on and pledge securing the payment of Priority Lien Obligations. Council declares that the principal of and interest on the Program Notes and any other amounts due under the Note Purchase Agreement shall be and are hereby equally and ratably secured by and payable from a lien on and pledge of the sources identified in clauses (i), (ii), and (iii) subject and subordinate only to the exceptions noted above.

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

Consistent with the provisions of **Section 26**, 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, as amended, applies to the issuance of the Program Notes and the pledge of the Pledged Revenues granted by the City under this Ordinance, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Program Notes are outstanding or any amount is owing under the Note Purchase Agreement 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. NOTE PURCHASE AGREEMENT.** The Note Purchase Agreement, including, without limitation, the form of Financial Security attached thereto, substantially in the



form attached to the Ordinance as **Exhibit B**, is hereby approved, and shall be entered into with the Bank. Upon the approval by the City Attorney, evidenced by executing the Note Purchase Agreement, the City Manager is authorized to execute and deliver the Note Purchase Agreement and the other Related Documents (as defined in the Note Purchase Agreement), and the City Clerk or Deputy City Clerk is authorized to place the City seal on these instruments, and to take such other actions as shall be required under the Note Purchase Agreement in connection with the issuance of the Financial Security. The Note Purchase Agreement shall constitute a "credit agreement" under Chapter 1371. Each Authorized Representative is hereby authorized to take such action to effectuate the intent of the Note Purchase Agreement, including finalizing the Note Purchase Agreement and making certain non-substantive amendments to the Note Purchase Agreement, including any adjustments to the Stated Amount pursuant to Section 2.1 of the Note Purchase Agreement.

**SECTION 22. ORDINANCE TO CONSTITUTE A CONTRACT; EQUAL SECURITY.** In consideration of the acceptance of the Program Notes by those who shall hold the same from time to time, the Ordinance constitutes a contract between the City and the Holders from time to time of the Program Notes and the Bank and the pledge made in the Ordinance by the City and the covenants and agreements set forth in the Ordinance to be performed by the City shall be for the equal and proportionate benefit, security and protection of all Holders of the Program Notes and the Bank, without preference, priority or distinction as to security or otherwise of any of the Program Notes authorized by the Ordinance over any of the others by reason of time of issuance, sale or maturity or otherwise for any cause, except as expressly provided in or permitted by the Ordinance or, with respect to the Program Notes, the Note Purchase Agreement.

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

**SECTION 24. RATES AND CHARGES.** The City hereby agrees and reaffirms its covenants to the holders of the Priority Lien Obligations and covenants to the Bank that it will at all times maintain rates and charges for the services furnished, provided, and supplied by the Electric Light and Power System which shall comply with the provisions of ordinances authorizing the issuance of the Priority Lien Obligations, be reasonable and non-discriminatory and produce Gross Revenues in each Fiscal Year from the Electric Light and Power System sufficient:

- (1) To pay the Maintenance and Operating Expenses,
- (2) To produce Net Revenues, collectively or individually, as the case may be, sufficient (i) to pay the amounts required to be deposited in any reserve or contingency fund and interest and sinking fund maintained for the payment and security of the Priority Lien Obligations

and (ii) to satisfy any annual debt service coverage requirement specified in the ordinances authorizing the issuance of Priority Lien Obligations.

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

(4) any other legal debt or obligation of the Electric Light and Power System, as and when the same shall become due .

**SECTION 25. SYSTEM FUNDS.** The City reaffirms its covenants to the holders of the Priority Lien Obligations, and covenants to the Holders of the Notes and to the Bank, as follows:

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

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

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

**THIRD:** On a pro rata basis, to the payment of the amounts required to be deposited in the Note Payment Fund for the payment of the principal of and interest on the Program Notes, if any, and any other amounts owing under the Note Purchase Agreement, and any debt service payment funds established for the Similarly Secured Notes.

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

**SECTION 26. BONDS.** The City hereby acknowledges that the Program Notes are being issued as bond anticipation notes, and the City in good faith shall endeavor to sell a sufficient principal amount of Bonds in order to have funds available, together with other available moneys, to pay the principal and interest on the Program Notes, or any renewals of the Program Notes, as the same shall become due, and any other amounts due under the Note Purchase Agreement. The



City does not reasonably expect to pay the principal and interest on the Program Notes with Pledged Revenues.

**SECTION 27. COMPLIANCE WITH PRIORITY LIEN OBLIGATION ORDINANCES AND OTHER DOCUMENTS.** The City will comply with the terms and provisions of the ordinances authorizing the Priority Lien Obligations, and any other ordinance or contract to which the City is a party, the non-compliance with which would materially adversely affect the ability of the City to make payments on the Program Notes when due.

**SECTION 28. TAXABLE PROGRAM NOTES NOT TAX EXEMPT.** The Program Notes are not obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. **ONGOING CONTINUING DISCLOSURE COVENANT.** To the extent required by the provisions of Rule 15c2-12 (Rule) promulgated by the U.S. Securities and Exchange Commission, the City agrees to enter into an agreement to file financial information and operating data with respect to the Program Notes with the Electronic Municipal Marketplace Access (EMMA) system administered by the MSRB. The City agrees to provide the Bank a written copy of the City's continuing disclosure undertaking filings in connection with its Separate Lien Electric Utility Obligations that it files with the MSRB.

occur: **SECTION 30. EVENTS OF DEFAULT.** If one or more of the following events shall

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

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

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

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

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

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

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

**SECTION 31. SUITS AT LAW OR IN EQUITY AND MANDAMUS.** In case any Event of Default occurs, then the Bank and the Holder of any Program Note at the time outstanding is entitled to proceed to protect and enforce its rights by appropriate judicial proceeding as the Holder or the Bank, respectively, determines most effectual to protect and enforce its rights, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in the Ordinance, or in aid of the exercise of any power granted in the Ordinance, or to enforce any other legal or equitable right vested in the Holders of Program Notes by the Ordinance or the Program Notes or by law. The provisions of the Ordinance shall be a contract with each and every Holder of Program Notes and the Bank, and the duties of the City shall be enforceable by any Noteholder or the Bank, respectively, by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction.

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

**SECTION 33. SUPPLEMENTAL ORDINANCES.** Except as permitted by the Ordinance, including **Section 27**, with respect to the issuance or incurrence of additional obligations of the City secured by the Pledged Revenues, the City will not adopt any supplemental ordinances with respect to the Pledged Revenues, pursuant to the ordinances authorizing the issuance of Priority Lien Obligations or otherwise, without the prior written consent of the Bank.

**SECTION 34. AMENDMENTS OR MODIFICATIONS WITHOUT CONSENT OF HOLDERS OF NOTES.** The Ordinance and the rights and obligations of the City and of the Holders of Program Notes may be modified or amended at any time by a supplemental ordinance, subject to the requirements of the Note Purchase Agreement, but only to the extent permitted by law, and, subject to the consent of the Bank and the Holders of the Program Notes:

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



(2) to increase the principal amount of Similarly Secured Notes that may be outstanding at any one time under the terms of the ordinances authorizing the issuance of Similarly Secured Notes, or to issue additional Program Notes or commercial paper notes under the Act;

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

(4) to supplement the security for the Notes, replace or provide additional credit or liquidity facilities, make changes, modifications or amendments as may be necessary or desirable in order to obtain the approval of the Ordinance by the Attorney General of Texas, as required by **Section 41**, or to obtain or maintain the granting of a rating on the Program Notes by a nationally recognized municipal bond rating agency, or change the form of the Program Notes, or make any other changes in the provisions that are necessary or desirable and which shall not materially adversely affect the security, rights or interests of the Bank or the Holders of the Program Notes;

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

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

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

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

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

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

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

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

**SECTION 35. ADDITIONAL ACTIONS.** Any Authorized Representative, the Mayor, the City Clerk, and the other officers of the City, each are authorized, jointly and severally, to do any and all things and to execute and deliver any and all certificates, instruments and other documents which they may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Program Notes and to effectuate the purposes of the Ordinance, the Note Purchase Agreement, and the Paying Agent/Registrar Agreement. By passing the Ordinance, council authorizes the payment of the fees and expenses incurred and to be paid by the City in connection with the issuance, sale and delivery of the Program Notes and the execution and delivery of the Note Purchase Agreement, and the Paying Agent/Registrar Agreement, including, without limitation, fees of Rating Agencies.

**SECTION 36. LIMITATION OF BENEFITS WITH RESPECT TO THE ORDINANCE.** With the exception of the rights or benefits expressly conferred by the Ordinance, nothing expressed or contained in, or implied from the provisions of, the Ordinance or the Program Notes is intended or should be construed to confer upon or give to any person other than the City, the Holders of the Program Notes, the Bank, the Paying Agent/Registrar, and the parties to the Note Purchase Agreement, any legal or equitable right, remedy or claim under or by reason of or in respect to the Ordinance or any of its covenants, conditions, stipulations, promises, agreements or provisions. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Holders of the Program Notes, the Paying Agent/Registrar, and the parties to the Note Purchase Agreement.

**SECTION 37. [INTENTIONALLY OMITTED].**

**SECTION 38. PAYING AGENT/REGISTRAR AGREEMENT.** The Paying Agent/Registrar Agreement by and between the City and U.S. Bank Trust Company, National Association, relating to the Program Notes, substantially in the form to the Ordinance as **Exhibit C**, is approved as to form and content, and, upon the approval of the City Attorney, whose approval shall be evidenced by executing the Paying Agent/Registrar Agreement, the City Manager is authorized to execute the Paying Agent/Registrar Agreement for and on behalf of the City, and the City Clerk or Deputy City Clerk is authorized to place the City seal on the Paying Agent/Registrar Agreement. Any Authorized Representative is hereby authorized to enter into any supplemental agreement with the Paying Agent/Registrar or with any successor Paying Agent/Registrar in order to implement the functions of the Paying Agent/Registrar with respect to the Program Notes. Any successor Paying Agent/Registrar shall be a financial institution of recognized national standing organized and existing under the laws of the United States of America or the State of Texas and which has trust powers. The successor Paying Agent/Registrar shall have assumed the duties of the Paying Agent/Registrar to be replaced before it shall be relieved of the obligation to perform the duties as Paying Agent/Registrar, and the successor Paying Agent/Registrar shall have



executed an agreement substantially in the same form and substance as the Paying Agent/Registrar Agreement approved by the Ordinance.

**SECTION 39. OPINION OF BOND COUNSEL.** The City shall cause the legal opinion of Bond Counsel as to the validity of the Program Notes to be furnished to any Holder without cost.

**SECTION 40. [INTENTIONALLY OMITTED].**

**SECTION 41. APPROVAL OF ATTORNEY GENERAL.** The Authorized Representative shall submit the Ordinance and a transcript of proceedings to the Attorney General of the State of Texas for approval, as required by the Act. No Program Notes shall be sold or delivered by an Authorized Representative until the Attorney General of the State of Texas shall have approved the Ordinance, the Note Purchase Agreement and other agreements and proceedings as may be required by the Act. Council authorizes the payment of the fee of the Office of the Attorney General of the State of Texas for the examination of the proceedings relating to the issuance of the Program Notes, in the amount determined in accordance with the provisions of Section 1202.004, Texas Government Code.

**SECTION 42. SECTION 2252.908, TEXAS GOVERNMENT CODE.** The City shall not execute the Note Purchase Agreement or the Paying Agency Agreement unless the each of the parties has confirmed to an Authorized Representative that either it (i) has made disclosure filings to the Texas Ethics Commission in accordance with Section 2252.908, Texas Government Code or (ii) is exempt from making filings under Section 2252.908(c)(4), Texas Government Code. If clause (i) of this **Section 42** applies to any party, within 30 days of receipt of any such disclosure filing the filing will be acknowledged by the City in accordance with the rules of the Texas Ethics Commission.

**SECTION 43. SEVERABILITY.** If any one or more of the covenants, agreements or provisions contained in the Ordinance shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason be held invalid, then those covenants, agreements or provisions shall be null and void and shall be separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions of, or of the Notes issued under, the Ordinance.

**SECTION 44. [INTENTIONALLY OMITTED].**

**SECTION 45. EFFECTIVE DATE.** The Ordinance is passed on one reading as authorized by Section 1201.028, Texas Government Code, and is effective immediately upon its passage.

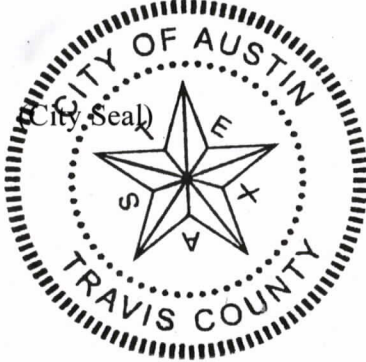
**PASSED AND APPROVED**

September ~~14~~<sup>15</sup>, 2023

**APPROVED:**



ANNE L. MORGAN  
City Attorney



CITY OF AUSTIN, TEXAS



KIRK WATSON  
Mayor

**ATTEST:**



MYRNA RIOS  
City Clerk



**EXHIBIT A**

Form of Program Note:

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF AUSTIN, TEXAS  
ELECTRIC UTILITY SYSTEM  
PROGRAM NOTE, TAXABLE  
SERIES

No.: \_\_\_\_\_  
Maximum Principal Amount: \_\_\_\_\_

Note Date: \_\_\_\_\_  
Maximum Maturity Date: \_\_\_\_\_

Interest Rate (%): Base Rate (as defined in the Note Purchase Agreement)  
Owner: Wells Fargo Bank, National Association

The City of Austin (the "City"), in Travis, Williamson and Hays Counties, State of Texas, FOR VALUE RECEIVED, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of the party specified above on the maturity date recorded by the Paying Agent/Registrar on the attached Schedule of Authorized Installment Deliveries or the date of prior redemption as provided in the Note Purchase Agreement, the principal sum specified above, or if less, the principal amount of each Authorized Installment purchased by the Bank under the Note Purchase Agreement and recorded by the Paying Agent/Registrar on the attached Schedule of Authorized Installment Deliveries, and to pay interest, if any, on said principal amount at said maturity date, from the specified note date recorded by the Paying Agent/Registrar on the attached Schedule of Authorized Installments to said maturity date at the Base Rate (or as otherwise provided in the Note Purchase Agreement) as provided in the Note Purchase Agreement (computed on the basis of actual days elapsed and a 365 day year); both principal and interest on this Note being payable in lawful money of the United States of America at the designated corporate trust office of the Paying Agent/Registrar executing the "Certificate of Authentication" endorsed hereon and appearing below, or its successor, or as otherwise provided in the Ordinance. Defined terms used herein shall have the same meaning given to said terms in the hereinafter defined Ordinance, unless the context of the use of such term indicates otherwise. The Base Rate borne by this Note, as adjusted pursuant to the Note Purchase Agreement, shall not exceed the Maximum Interest Rate.

This Initial Note is one of an issue of Program Notes (the "Program Notes" or the "Notes") which has been duly authorized and issued in accordance with the provisions of an ordinance (the "Ordinance") passed by the City Council of the City for the purpose of financing Project Costs of Eligible Projects for the City's Electric Light and Power System (the "Electric Light and Power System"); to refund obligations issued in connection with an Eligible Project; and to refinance, renew or refund Program Notes or Priority Lien Obligations and any other authorized obligations

of the Electric Light and Power System, including interest thereon, issued for Eligible Projects; all in accordance in strict conformity with the provisions of the laws of the State of Texas, including the Act.

The initial Authorized Installment of the Program Notes issued on the Original Issue Date is in the principal amount of \$5,000. Thereafter, additional Authorized Installments of the Notes in an aggregate principal amount not to exceed \$100,005,000 may be issued on any date so long as the total aggregate principal amount of Notes issued does not exceed \$100,005,000, as reflected in the Schedule of Authorized Installment Deliveries attached to this Note. The foregoing notwithstanding, in no event shall an Authorized Installment of the Program Notes be issued after the end of the Authorized Installment Draw Period, and in no event shall an Authorized Installment be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Financial Security; provided that the aggregate principal amount of all Authorized Installments issued and delivered under the Ordinance may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the terms of the Financial Security but in no case shall the aggregate principal amount of all Authorized Installments issued and delivered under the Ordinance exceed \$100,005,000.

This Program Note and each Authorized Installment recorded on the Schedule of Authorized Installment Deliveries attached to this Note, and any other amounts owing under the Note Purchase Agreement, are payable from and equally secured by a lien on and pledge of (i) the proceeds from the sale of Bonds issued and to be used to pay outstanding Program Notes, (ii) the amounts held in the Note Payment Fund until those amounts are used for authorized purposes, and (iii) the Pledged Revenues of the Electric Light and Power System, however, (a) on a parity with the lien and pledge securing the payment of the Program Notes made under and pursuant to the Note Purchase Agreement and all other amounts payable by the City under the Note Purchase Agreement and the Similarly Secured Notes, and (b) subordinate to the lien on and pledge securing the payment of Priority Lien Obligations. As provided in the Ordinance, this Program Note is being issued as a bond anticipation note.

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

If there is any inconsistency or conflict between the terms or provisions of this Program Note and the Ordinance, the terms and provisions of the Ordinance shall control.

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



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

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

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

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City Clerk, City of Austin, Texas

(SEAL)

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Mayor, City of Austin, Texas



Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Note  
only.

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER                   §  
OF PUBLIC ACCOUNTS                           §  
THE STATE OF TEXAS                         §     REGISTER NO. \_\_\_\_\_

I HEREBY CERTIFY that this Note has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas,

WITNESS my signature and seal of the office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
Of the State of Texas

(SEAL)

Form of Authentication Certificate of Paying Agent/Registrar

PAYING AGENT/REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This Note is one of the Program Notes delivered pursuant to the within mentioned Ordinance; the note or notes of the above titled and designated series originally delivered having been approved by the Attorney General of the State of Texas as registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

\_\_\_\_\_,  
as Paying Agent/Registrar

By: \_\_\_\_\_  
Authorized Signatory

Form of Schedule of Authorized Installment Deliveries to appear on the Program Note(s)

SCHEDULE OF AUTHORIZED INSTALLMENT DELIVERIES

Issue Date	No.	Principal Amount	Remaining Available Principal Balance	Maturity Date	Date Paid	Principal and Interest Paid



**EXHIBIT B**

Form of Note Purchase Agreement

**EXHIBIT C**

Paying Agent/Registrar Agreement