

**THIS IS A DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED
ORDINANCE ADOPTED BY THE CITY COUNCIL.**

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE BY THE CITY OF SAN ANTONIO, TEXAS
CONCERNING THE AUTHORIZATION AND EXECUTION OF ONE OR
MORE NOTE PURCHASE AGREEMENTS AND RELATED
DOCUMENTATION UNDER THE EXISTING REVOLVING FINANCE
PROGRAM KNOWN AS THE “CITY OF SAN ANTONIO, TEXAS
ELECTRIC AND GAS SYSTEMS 2021 INFERIOR LIEN FLEXIBLE RATE
REVOLVING NOTE PRIVATE PLACEMENT PROGRAM” WITH
SUBSTITUTE LIQUIDITY PROVIDERS THERETO, AND OTHER
MATTERS IN CONNECTION WITH THE FOREGOING**

WHEREAS, pursuant to the authority contained in Chapter 1502, as amended, Texas Government Code, certain ordinances (the *New Series Bonds Ordinances*) previously adopted by the City Council (the *City Council*) of the City of San Antonio, Texas (the *City*), authorizing the issuance of the currently outstanding first lien revenue bonds (the *New Series Bonds*), the complete management and control of the electric and gas systems (the *Systems*) of the City is vested in a Board of Trustees known as the City Public Service Board of San Antonio, Texas (the *Board*), during the period of time any of the New Series Bonds are outstanding and unpaid; and

WHEREAS, for the purpose of ensuring access to funds necessary to finance its operation of the Systems, the City established, on the Board’s behalf, the “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Note Private Placement Program” (the *Program*), being a revolving line of credit program permitting periodic sales and repayment of obligations the interest on which is excluded for federal income tax purposes (such obligations styled “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Notes, Sub-Series B-1 (Tax-Exempt)”, “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Notes, Sub-Series B-2 (Tax-Exempt)” and “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Notes, Sub-Series B-3 (Tax-Exempt)” and referred to herein as the *Tax Exempt Notes*) and obligations the interest on which is not excluded for federal income tax purposes (such obligations styled “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Notes, Sub-Series B-1 (Taxable)”, “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Notes, Sub-Series B-2 (Taxable)”, and “City of San Antonio, Texas Electric and Gas Systems 2021 Inferior Lien Flexible Rate Revolving Notes, Sub-Series B-3 (Taxable)” and referred to herein as the *Taxable Notes* and, together with the Tax Exempt Notes, collectively the *Notes*) in the maximum principal amount at any one time outstanding not to exceed \$500,000,000; and

WHEREAS, the City, upon request of the Board in the form of a Resolution adopted on March 1, 2021, established, by Ordinance No. 2021-03-18-0163 adopted by the City Council on March 18, 2021 (the *Program Ordinance*), the Program, which has an effective date of April 27, 2021 and a stated termination date of April 1, 2031; and

WHEREAS, the Program and the City proceedings relating to its establishment were reviewed by the Texas Attorney General, and his office issued its approving legal opinion on April 23, 2021; and

WHEREAS, the City, on behalf of the Board, entered into three separate Note Purchase Agreements (collectively, the *Note Purchase Agreements*) with qualified financial institutions (collectively, the *Bank*), relating to each subseries of Notes on the Program's effective date, and currently has effective Note Purchase Agreements with JPMorgan Chase Bank, National Association, Wells Fargo Bank, National Association, and Frost Bank, respectively (the *Current Liquidity Providers*); and

WHEREAS, under and pursuant to the terms of each Note Purchase Agreement, expiring on April 26, 2023, each Bank is obligated to purchase Notes from time to time issued by the City, on behalf of the Board, under the Program; and

WHEREAS, in the event extensions of Note Purchase Agreements with the Current Liquidity Providers are not feasible, and the Board desires to enter into one or more "Amended and Restated Note Purchase Agreements" (the *Additional Agreements*, and together with the Note Purchase Agreements, the *Liquidity Agreements*) with one or more alternate Banks that are not serving as a Current Liquidity Provider, such Additional Agreements and modifications in pricing thereunder must be approved by the City Council in accordance with the Program Ordinance and applicable law; and

WHEREAS, the City Council desires to authorize the execution of any Additional Agreements to preserve and ensure the issuance capacity of the Program matches the liquidity related thereto; now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO, TEXAS THAT:

1. Subject to the provisions of Section 2 hereof, the City Council hereby (i) delegates to the President and Chief Executive Officer and the Chief Financial Officer and Treasurer of the Board or any designee thereof (each, a *Designated Financial Officer*), the authority to, on the Board's behalf, identify one or more Banks and negotiate and enter into the Additional Agreements, which agreements shall be substantially in the form attached hereto as Exhibit A (which form is incorporated herein for all purposes); and (ii) authorizes a Designated Financial Officer to, on the Board's behalf, negotiate, execute, and/or deliver any notices, consents, certifications, or related documentation required by each Bank as a prerequisite to the effectiveness of such agreement in the form heretofore executed by the City, acting by and through the Board, pursuant to or in accordance with the Program or as hereafter approved by a Designated Financial Officer.

2. The City hereby grants authority to any Designated Financial Officer to effectuate each Additional Agreement, subject to the following limitations:

- a. Total liquidity available under the Liquidity Agreements at any one time valid and effective shall never exceed the maximum permitted principal amount of Notes authorized at any one time to be outstanding under the Program, being a principal

amount of \$500,000,000;

- b. Each Additional Agreement shall have an effective term that expires not later than April 1, 2031;
- c. The interest rate on the Notes shall never exceed the Maximum Interest Rate, as defined in the Program Ordinance;
- d. To the extent any Additional Agreement relates to Tax Exempt Notes, a Designated Financial Officer shall deliver the requisite certificates, comply with the continuing covenants, and otherwise take action to maintain, or refrain from any action which would adversely affect the treatment of such Tax Exempt Notes, each as fully described in the Program Ordinance;
- e. Each Additional Agreement shall maintain compliance with the terms and provisions of the Program Ordinance; and
- f. The selected Bank must evidence compliance with applicable State law.

As set forth in Section 2.13 of the Program Ordinance, each Designated Financial Officer retains the ability to act on behalf of the City and determine, from time to time, in connection with entering into an Additional Agreement, the terms and provisions set forth therein related to the issuance of Program Notes (as defined in the Program Ordinance).

3. The City hereby authorizes any and all such other actions necessary or incidental to the effectuation of liquidity support for the Program up to its maximum capacity. Such actions, if necessary, will ensure the City's ability utilize the authorization made available under the Program Ordinance by permitting the issuance from time to time of Notes in an aggregate principal amount at any time outstanding in accordance with the Program Ordinance.

4. The City hereby authorizes its Co-Financial Advisors to coordinate these financial matters in consultation with CPS Energy staff, City staff, and McCall, Parkhurst & Horton L.L.P., and another qualified firm, if any, as Co-Bond Counsel. In addition, the City Council authorizes the payment of the professional fees and expenses associated with this transaction upon the approval of written invoices by the Designated Financial Officer or his or her designee.

5. The officers and employees of the City and the officers and employees of the Board are hereby authorized to execute such certificates, opinions, or other documents deemed necessary to carry out the purposes of this Ordinance.

6. All ordinances, orders, resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

7. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

8. If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

9. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

10. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, Co-Bond Counsel, and the Bank any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, Co-Bond Counsel, and the Bank.

11. No recourse shall be had for the payment of principal of or premium on any fees incurred under the Additional Agreements or for any claim based thereon or on this Ordinance against any official of the City, the Board, or any person executing any Additional Agreements.

12. The recitals contained in the preamble to this Ordinance are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council of the City.

13. The officers and employees of the City and the Board are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the effectuation of liquidity for the Program. In addition, prior to the delivery of such agreements related thereto, the Mayor, the City Manager, the City's Chief Financial Officer, and any Designated Financial Officer and Co-Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance, (ii) obtain information and ratings from any of the national bond rating agencies, or (iii) obtain the approval of the Additional Agreements by the Texas Attorney General's office. In case any officer of the City or the Board whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

14. The Municipal Advisory Council of Texas (the *Texas MAC*), a non-profit membership corporation organized exclusively for non-profit purposes described in section 501(c)(6) of the Internal Revenue Code and which serves as a comprehensive financial information repository regarding municipal debt issuers in Texas, requires provision of written documentation regarding the issuance of municipal debt by the issuers thereof. In support of the purpose of the Texas MAC and in

compliance with applicable law, the City hereby consents to and authorizes any Designated Financial Officer, Co-Bond Counsel to the City, and/or Co-Financial Advisors to the City to provide to the Texas MAC information and documentation requested by the Texas MAC relating to the Additional Agreements; provided, however, that no such information and documentation shall be provided prior to the effective date of the Additional Agreements. This consent and authorization relates only to information and documentation that is a part of the public record concerning the effectuation of the Additional Agreements.

15. Though such parties may be identified, and the entry into a particular contract may be authorized, herein, pursuant to the Act, and any other applicable law, the City Council hereby delegates to each Designated Financial Officer the authority to independently select the counterparty to any agreement with any contract that is determined by a Designated Financial Officer, the Co-Financial Advisors, or Co-Bond Counsel to be necessary or incidental to the effectuation of the Additional Agreements as long as each of such contracts has a value of less than the amount referenced in Section 2252.908 of the Texas Government Code (collectively, the *Ancillary Contracts*) and, as necessary, to execute the Ancillary Contracts on behalf and as the act and deed of the City. The City Council has not participated in the selection of any of the business entities which are counterparties to the Ancillary Contracts.

16. Capitalized terms used herein without definition shall have the respective meanings ascribed thereto in the Program Ordinance.

17. The effective date of this Ordinance shall be governed by the provisions of Section 1-15 of the City Code of San Antonio, Texas. This Ordinance shall take effect immediately if passed by the affirmative vote of at least eight members of the City Council, otherwise the same shall take effect on the tenth day after the date of its passage by the City Council.

* * * *

PASSED AND ADOPTED by an affirmative vote of _____ members of the City Council of the City of San Antonio, Texas, this the 1st day of December, 2022.

CITY OF SAN ANTONIO

M A Y O R

Ron Nirenberg

ATTEST:

City Clerk

(CITY SEAL)

I, the undersigned, City Attorney of the City of San Antonio, Texas, hereby certify that I read, passed upon, and approved as to form the foregoing Ordinance prior to its adoption and passage as aforesaid.

Andrew Segovia, City Attorney,
City of San Antonio, Texas

EXHIBIT A

FORM OF LIQUIDITY AGREEMENT

See Tab No. __

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