

**ORDINANCE NO. 2014-09-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AUTHORIZING THE ISSUANCE OF “CITY OF MCKINNEY, TEXAS, TAX NOTES, SERIES 2014”; LEVYING A CONTINUING DIRECT ANNUAL AD VALOREM TAX FOR THE PAYMENT OF SAID NOTES; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, PAYMENT AND DELIVERY OF SAID NOTES; ESTABLISHING PROCEDURES FOR THE SALE AND DELIVERY OF SAID NOTES; AND DELEGATING MATTERS RELATING TO THE SALE AND ISSUANCE OF SAID NOTES TO AN AUTHORIZED CITY OFFICIAL; ENACTING PROVISIONS INCIDENT AND RELATED TO THE PURPOSES AND SUBJECT OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, pursuant to Texas Government Code Chapter 1431, as amended (the “Act”), the City Council (the “City Council”) of the City of McKinney, Texas (the “City”) is authorized and empowered to issue anticipation notes to pay contractual obligations incurred or to be incurred for (i) the construction of any public work, (ii) the purchase of materials, supplies, equipment, machinery, buildings, lands, and rights-of-way for City authorized needs and purposes and (iii) for professional services rendered on behalf of the City in connection therewith; and

**WHEREAS**, in accordance with the provisions of Act the City Council hereby finds and determines that anticipation notes should be authorized at this time as herein provided to finance the costs of paying contractual obligations to be incurred for (i) the acquisition, installation and improvement of municipal information technology systems and (ii) professional services rendered on behalf of the City in relation to such projects and the financing thereof; and

**WHEREAS**, the City shall by this Ordinance, in accordance with the provisions of Texas Government Code, Chapter 1371, as amended (“Chapter 1371”), delegate to a Pricing Officer (hereinafter designated) the authority to determine the principal amount of Notes to be issued and negotiate the terms of sale thereof; and

**WHEREAS**, the City Council hereby finds and determines that it is a public purpose and in the best interests of the City to authorize the issuance of the notes and the terms of such notes to be included in one or more pricing certificates (the “Pricing Certificate”) to be executed by the Pricing Officer (hereafter designated), all in accordance with the provisions of Chapter 1371.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY:**

Section 1. Authorization - Designation - Principal Amount - Purpose - Note Date. Notes of the City shall be and are hereby authorized to be issued in the maximum aggregate principal amount hereinafter set forth, to be designated and bear the title "CITY OF MCKINNEY, TEXAS, TAX NOTES, SERIES 2014" (hereinafter referred to as the "Notes"), for the purpose of paying contractual obligations to be incurred for (i) the acquisition, installation and improvement of municipal information technology systems and (ii) professional services rendered on behalf of the City in relation to such projects and the financing thereof, in conformity with the Constitution and laws of the State of Texas, including the Act and Chapter 1371. The Notes shall be dated (the "Note Date") as provided in the applicable Pricing Certificate.

Section 2. Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates. The Notes shall be issued as fully registered obligations only, shall be in denominations of \$5,000 or any integral multiple (within a Stated Maturity [defined below]) thereof, and shall become due and payable on a date certain in each of the years and in principal amounts (each a "Stated Maturity" and collectively the "Stated Maturities") and bear interest at the rate(s) per annum in accordance with the details of the Notes as set forth in the Pricing Certificate.

The Notes shall bear interest on the unpaid principal amounts from the date(s) specified in the Pricing Certificate at the rate(s) per annum shown in the Pricing Certificate (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Notes shall be payable in each year, on the dates, and commencing on the date, set forth in the Pricing Certificate.

Section 3. Delegation of Authority to Pricing Officer.

- (a) As authorized by Chapter 1371, the Interim City Manager or the Director of Finance of the City (either, a "Pricing Officer") is hereby authorized to act on behalf of the City in selling and delivering the Notes and carrying out the other procedures specified in this Ordinance, including determining the aggregate original principal amount of the Notes, the date of the Notes, any additional or different designation or title by which the Notes shall be known, the price at which the Notes will be sold, the years in which the Notes will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment dates, the price and terms upon and at which the Notes shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, the terms of any bond insurance applicable to the Notes, and all other matters relating to the issuance, sale, and delivery of the Notes, including any modification of the continuing disclosure undertaking contained in Section 30 hereof as may be required by the purchasers of the Notes in connection with any

amendments to Rule 15c2-12, all of which shall be specified in the Pricing Certificate; provided that:

- (1) the aggregate original principal amount of the Notes shall not exceed \$5,600,000;
- (2) the maximum true interest cost of the Notes shall be 5%; and
- (3) the maximum maturity date of the Notes shall not exceed August 15, 2020.

The execution of the Pricing Certificate shall evidence the sale date of the Notes by the City to the Purchasers (hereinafter defined).

If the Pricing Officer determines that bond insurance results in a net reduction of the City's interest costs associated with the Notes, then the Pricing Officer is authorized, in connection with effecting the sale of the Notes, to make the selection of the municipal bond insurance company for the Notes (the "Insurer") and to obtain from the Insurer a municipal bond policy in support of the Notes. The Pricing Officer shall have the authority to determine the provisions of the commitment for any such policy and to execute any documents to effect the issuance of said policy by the Insurer.

- (b) In establishing the aggregate principal amount of the Notes, the Pricing Officer shall establish an amount which shall be sufficient in amount to provide for the purposes for which the Notes are authorized and to pay costs of issuing the Notes. The delegation made hereby shall expire if not exercised by the Pricing Officer within one (1) year from the date of adoption of this Ordinance. The Notes shall be sold by negotiated sale to the underwriter(s) named in the Pricing Certificate (the "Purchasers"), at such price and with and subject to such terms as set forth in the Pricing Certificate and the Purchase Contract (hereinafter defined).

Section 4. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Notes, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Notes (hereinafter called the "Holders") appearing on the registration and transfer books maintained by the Paying Agent/Registrar, and the payment thereof shall be in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of U.S. Bank National Association, Dallas, Texas (the "Paying Agent/Registrar"), to serve as Paying Agent/Registrar for the Notes is hereby approved and confirmed. Books and records

relating to the registration, payment, exchange and transfer of the Notes (the "Security Register") shall at all times be kept and maintained on behalf of the City by the Paying Agent/Registrar, all as provided herein, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The Mayor or Pricing Officer is hereby authorized to execute and deliver such Paying Agent/Registrar Agreement in connection with the delivery of the Notes. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Notes are paid and discharged, and any successor Paying Agent/Registrar shall be a commercial bank, trust company, financial institution, or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar. Upon any change in the Paying Agent/Registrar for the Notes, the City agrees to promptly cause a written notice thereof to be sent to each Holder by United States Mail, first class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Notes shall be payable at their Stated Maturities or upon their earlier redemption, only upon presentation and surrender of the Notes to the Paying Agent/Registrar at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"); provided, however, while a Note is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount thereof may be accomplished without presentation and surrender of such Note. Interest due on the Notes shall be paid by the Paying Agent/Registrar to the Holders whose names appears in the Security Register at the close of business on the Record Date (which shall be set forth in the Pricing Certificate) and such interest payments shall be made (i) by check sent United States Mail, first class postage prepaid, to the address of the Holder recorded in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder. If the date for the payment of the principal of or interest on the Notes shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on one or more maturities of the Notes on a scheduled payment date, and for thirty (30) days thereafter, a

new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such past due interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder of the Notes appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 5. Registration - Transfer - Exchange of Notes - Predecessor Notes. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each and every owner of the Notes issued under and pursuant to the provisions of this Ordinance, or if appropriate, the nominee thereof. The Security Register shall be kept and maintained at the Designated Payment/Transfer Office of the Paying Agent/Registrar and at a place within the State of Texas. Any Note may be transferred or exchanged for Notes of other authorized denominations by the Holder, in person or by his duly authorized agent, upon surrender of such Note to the Paying Agent/Registrar at the Designated Payment/Transfer Office for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender of any Note (other than the single Initial Note referenced in Section 8) for transfer at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new Notes shall be registered and issued to the assignee or transferee of the previous Holder; such Notes to be in authorized denominations, of like Stated Maturity and of a like aggregate principal amount as the Note or Notes surrendered for transfer.

At the option of the Holder, Notes (other than the single Initial Note referenced in Section 8) may be exchanged for other Notes of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Notes surrendered for exchange, upon surrender of the Notes to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Notes are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new Notes to the Holder requesting the exchange.

All Notes issued in any transfer or exchange of Notes shall be delivered to the Holders at the Designated Payment/Transfer Office of the Paying Agent/Registrar or sent by United States Mail, first class, postage prepaid to the Holders, and, upon the registration and delivery thereof, the same

shall be the valid obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Notes surrendered in such transfer or exchange.

All transfers or exchanges of Notes pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Notes cancelled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Notes," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the new Note or Notes registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Notes" shall include any mutilated, lost, destroyed, or stolen Note for which a replacement Note has been issued, registered and delivered in lieu thereof pursuant to the provisions of Section 11 hereof and such new replacement Note shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Note.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Note called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Note; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Note called for redemption in part.

Section 6. Book-Entry-Only Transfers and Transactions. Notwithstanding the applicable provisions contained hereof relating to the payment, and transfer/exchange of the Notes, the City hereby approves and authorizes the use of "Book-Entry-Only" securities clearance, settlement and transfer system provided by The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC"), in accordance with the operational arrangements referenced in a Blanket Issuer Letter of Representations by and between the City and DTC (the "Depository Agreement").

Pursuant to the Depository Agreement and the rules of DTC, the Notes shall be deposited with DTC who shall hold said Notes for its participants (the "DTC Participants"). While the Notes are held by DTC under the Depository Agreement, the Holder of the Notes on the Security Register for all purposes, including payment and notices, shall be Cede & Co., as nominee of DTC, notwithstanding the ownership of each actual purchaser or owner of each Note (the "Beneficial Owners") being recorded in the records of DTC and DTC Participants.

In the event DTC determines to discontinue serving as securities depository for the Notes or otherwise ceases to provide book-entry clearance and settlement of securities transactions in general or the City determines that DTC is incapable of properly discharging its duties as securities depository for the Notes, the City covenants and agrees with the Holders of the Notes to cause Notes to be printed in definitive form and provide for the Note certificates to be issued and delivered to DTC Participants and Beneficial Owners, as the case may be. Thereafter, the Notes in definitive form shall be assigned, transferred and exchanged on the Security Register maintained by the Paying Agent/Registrar and payment of such Notes shall be made in accordance with the provisions of Sections 3 and 5 hereof.

Section 7. Execution - Registration. The Notes shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and countersigned by the City Secretary. The signature of said officers and the seal on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the Note Date shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Notes to the initial purchaser(s) and with respect to Notes delivered in subsequent exchanges and transfers, all as authorized and provided in the Texas Government Code, Chapter 1201, as amended.

No Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Note either a certificate of registration substantially in the form provided in Section 9C, manually executed by the Comptroller of Public Accounts of the State of Texas, or his duly authorized agent, or a certificate of registration substantially in the form provided in Section 9D, manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate duly signed upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly certified, registered and delivered.

Section 8. Initial Note(s). The Notes herein authorized shall be initially issued either (i) as a single fully registered note in the total principal amount shown in the Pricing Certificate in principal installments to become due and payable as provided in the Pricing Certificate and numbered T-1, or (ii) as multiple fully registered notes, being one note for each year of maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (hereinafter called the "Initial Note(s)") and, in either case, the Initial Note(s) shall be registered in the name of the initial purchaser(s) or the designee thereof. The Initial Note(s) shall be the Note(s) submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the

Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Note(s), the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Note(s) delivered hereunder and exchange therefor definitive Notes of authorized denominations, Stated Maturities, principal amounts and bearing applicable interest rates for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

Section 9. Forms.

(a) Forms Generally. The Notes, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Notes, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and, with the Notes to be completed with the information set forth in the Pricing Certificate, and may have such 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 such legends and endorsements (including insurance legends on insured Notes and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the City or determined by the Pricing Officer. The Pricing Certificate shall set forth the final and controlling form and terms of the Notes. Any portion of the text of any Notes may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The definitive Notes and the Initial Note(s) shall be printed, lithographed, engraved, typewritten, photocopied or otherwise reproduced in any other similar manner, all as determined by the officers executing such Notes as evidenced by their execution thereof.

(b) Form of Definitive Note.

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF MCKINNEY, TEXAS  
TAX NOTE  
SERIES 2014



Note Date: \_\_\_\_\_, 2014                      Interest Rate: \_\_\_\_\_%                      Stated Maturity: \_\_\_\_\_, 20\_\_                      CUSIP NO: \_\_\_\_\_

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

The City of McKinney (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of Collin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption), and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" (affixed upon the Notes by the Paying Agent/Registrar) of each Note (unless a Note bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of a Note is the delivery date of the Note (or its Predecessor Note) to the initial Holder, in which case it shall bear interest from \_\_\_\_\_) at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ in each year until maturity or prior redemption, commencing \_\_\_\_\_, 20\_\_.

Principal of this Note is payable at its Stated Maturity or redemption to the registered owner hereof, upon presentation and surrender, at the Designated Payment/Transfer Office of the Paying Agent/Registrar executing the registration certificate appearing hereon, or its successor; provided however, while this Note is registered to Cede & Co., the payment of principal upon a partial redemption of the principal amount hereof may be accomplished without presentation and surrender of this Note. Interest is payable to the registered owner of this Note (or one or more Predecessor Notes, as defined in the Ordinance hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the \_\_\_\_\_ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Notes shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Note shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Note is one of the series specified in its title issued in the aggregate principal amount of \$\_\_\_\_\_ (herein referred to as the “Notes”) for the purpose of paying contractual obligations to be incurred for (i) the acquisition, installation and improvement of municipal information technology systems and (ii) professional services rendered on behalf of the City in relation to such projects and the financing thereof, under and in strict conformity with the Constitution and laws of the State of Texas, including Chapter 1431 of the Texas Government Code, as amended, and Chapter 1371 of the Texas Government Code, as amended, and pursuant to an Ordinance adopted by the City Council of the City (herein referred to as the “Ordinance”).

<sup>1</sup>[The Notes maturing on the dates hereinafter identified (the “Term Notes”) are subject to mandatory redemption prior to maturity with funds on deposit in the Interest and Sinking Fund established and maintained for the payment thereof in the Ordinance, and shall be redeemed in part prior to maturity at the price of par and accrued interest thereon to the date of redemption, and without premium, on the dates and in the principal amounts as follows:

Term Notes due _____, 20__		Term Notes Due _____ 20__	
<u>Redemption Date</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Principal Amount</u>
_____, 20__	\$	_____, 20__	\$
_____,	\$	_____,	\$
20__*		20__*	
	Term Notes Due _____, 20__		
	<u>Redemption Date</u>	<u>Principal Amount</u>	
	_____, 20__*	\$	
	_____, 20__	\$	

\* Stated maturity.

The particular Notes to be redeemed on each such date shall be chosen by lot by the Paying Agent/Registrar; provided, however, that the principal amount of Term Notes for a given maturity required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the City, by the principal amount of Term Notes of like maturity which, at least 50 days prior to a mandatory redemption date, (1) shall have been acquired by the City at a price not exceeding the principal amount of such Term Notes plus accrued interest to the date of purchase thereof, and delivered to the Paying Agent/Registrar for cancellation or (2) shall have been redeemed pursuant to the optional redemption provisions appearing below and not theretofore credited against a mandatory redemption requirement.]

The Notes maturing on and after \_\_\_\_\_, 20\_\_ may be redeemed prior to their Stated Maturities, at the option of the City, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity by lot by the

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<sup>1</sup> Conform redemption provisions to Pricing Certificate.

Paying Agent/Registrar), on \_\_\_\_\_, 20\_\_\_, or on any date thereafter, at the redemption price of par, together with accrued interest to the date of redemption, and upon 30 days prior written notice being given by United States Mail, first class postage prepaid, to registered owners of the Notes to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Note (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date this Note (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and interest thereon shall cease to accrue from and after the redemption date therefor; provided moneys for the payment of the redemption price and the interest on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar.

In the event of a partial redemption of the principal amount of this Note, payment of the redemption price of such principal amount shall be made to the registered owner only upon presentation and surrender of this Note to the Designated Payment/Transfer Office of the Paying Agent/Registrar, and there shall be issued to the registered owner hereof, without charge, a new Note or Notes of like maturity and interest rate in any authorized denominations provided in the Ordinance for the then unredeemed balance of the principal sum hereof. If this Note is called for redemption, in whole or in part, the City and the Paying Agent/Registrar shall not be required to transfer this Note to an assignee of the registered owner within 45 days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the registered owner of the unredeemed balance hereof in the event of its redemption in part.

With respect to any optional redemption of the Notes, unless moneys sufficient to pay the principal of and premium, if any, and interest on the Notes to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon the satisfaction of any prerequisites set forth in such notice of redemption; and, if sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Notes and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Notes have not been redeemed.

The Notes are payable from the proceeds of an ad valorem tax levied, within the limitations prescribed by law, upon all taxable property in the City. Reference is hereby made to the Ordinance and the Pricing Certificate, copies of which are on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the owner or holder of this Note by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Notes; the terms and conditions relating to the transfer or exchange of this Note; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon

which this Note may be discharged at or prior to its maturity, and deemed to be no longer Outstanding thereunder; and for other terms and provisions contained therein. Capitalized terms used herein have the meanings assigned in the Ordinance.

This Note, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register only upon its presentation and surrender at the Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Notes of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the registered owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Note as the owner entitled to payment of principal hereof at its Stated Maturity or redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States Mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and declared that the City is a body corporate and political subdivision duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas; that the issuance of the Notes is duly authorized by law; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Notes to render the same lawful and valid obligations of the City have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State of Texas, and the Ordinance; that the Notes do not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on the Notes by the levy of a tax as aforesated. In case any provision in this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the City Council of the City has caused this Note to be duly executed under the official seal of the City as of the Note Date.

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
Mayor

COUNTERSIGNED:

\_\_\_\_\_  
City Secretary

(City Seal)

- (c) Form of Registration Certificate of Comptroller of Public Accounts to appear on Initial Note(s) only.

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

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

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 office this \_\_\_\_\_.

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

(SEAL)

- (d) Form of Certificate of Paying Agent/Registrar to appear on Definitive Notes only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Note has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Ordinance; the note or notes of the above entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, as shown by the records of the Paying Agent/Registrar.

The designated offices of the Paying Agent/Registrar in St. Paul, Minnesota, is the Designated Payment/Transfer Office for this Note.

Registration date: U.S. BANK NATIONAL ASSOCIATION,  
Dallas, Texas, as Paying Agent/Registrar

\_\_\_\_\_ By: \_\_\_\_\_  
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:) \_\_\_\_\_

\_\_\_\_\_ ) the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_

attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature guaranteed:  
\_\_\_\_\_

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Note in every particular.

(f) The Initial Note(s) shall be in the form set forth in paragraph B of this Section, except that the heading and first paragraph of the single fully registered Initial Note shall be modified as follows:

REGISTERED  
NO. \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF MCKINNEY, TEXAS  
TAX NOTE  
SERIES 2014

Note Date: \_\_\_\_\_, 2014

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

The City of McKinney (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of Collin, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, the Principal Amount hereinabove stated on \_\_\_\_\_ in each of the years and in principal installments in accordance with the following schedule:

<u>YEAR OF MATURITY</u>	<u>PRINCIPAL INSTALLMENTS</u>	<u>INTEREST RATE</u>
-------------------------	-------------------------------	----------------------

(Information to be inserted from schedule in the Pricing Certificate).

(or so much principal thereof as shall not have been redeemed prior to maturity) and to pay interest on the unpaid Principal Amount hereof from the interest payment date next preceding the "Registration Date" (affixed upon the Notes by the Paying Agent/Registrar) of each Note (unless a Note bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of a Note is the delivery date of the Note or its Predecessor Note to the initial Holder, in which case it shall bear interest from \_\_\_\_\_) at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on \_\_\_\_\_ and \_\_\_\_\_ in each year, commencing \_\_\_\_\_, 20\_\_\_\_. Principal installments of this Note are payable on the Stated Maturity dates or on a redemption date to the registered owner hereof by U.S. Bank National Association, Dallas, Texas (the "Paying Agent/Registrar"), upon its presentation and surrender at its designated offices, initially in St. Paul, Minnesota, or, with respect to a successor paying agent/registrar, at the designated office of such successor (the "Designated Payment/Transfer Office"). Interest is payable to the registered owner of this Note whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the \_\_\_\_\_ day of the month next preceding each interest payment date, and interest shall be paid by the Paying Agent/Registrar by check sent United States Mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Notes shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are authorized by law or executive order to be closed, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to be closed; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Note shall be without exchange or collection charges to the owner hereof and in any coin or currency of the

United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 10. Levy of Taxes. To provide for the payment of the “Debt Service Requirements” of the Notes, being (i) the interest on the Notes and (ii) a sinking fund for their payment at maturity or redemption or a sinking fund of 2% (whichever amount is the greater), there is hereby levied, and there shall be annually assessed and collected in due time, form, and manner, a tax on all taxable property in the City, within the limitations prescribed by law, and such tax hereby levied on each one hundred dollars’ valuation of taxable property in the City for the Debt Service Requirements of the Notes shall be at a rate from year to year as will be ample and sufficient to provide funds each year to pay the principal of and interest on said Notes while Outstanding; full allowance being made for delinquencies and costs of collection; separate books and records relating to the receipt and disbursement of taxes levied, assessed and collected for and on account of the Notes shall be kept and maintained by the City at all times while the Notes are Outstanding, and the taxes collected for the payment of the Debt Service Requirements on the Notes shall be deposited to the credit of a “Special 2014 Note Account” (the “Interest and Sinking Fund”) maintained on the records of the City and deposited in a special fund maintained at an official depository of the City’s funds; and such tax hereby levied, and to be assessed and collected annually, is hereby pledged to the payment of the Notes.

PROVIDED, however, in regard to any payment to become due on the Notes prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Note Date, sufficient current funds will be available and are hereby appropriated to make such payments; and the Mayor, City Manager, Interim City Manager, Director of Finance and City Secretary of the City, individually or jointly, are hereby authorized and directed to transfer and deposit in the applicable Interest and Sinking Fund such current funds which, together with any accrued interest received from the initial purchasers, will be sufficient to pay the payments due on the Notes prior to the tax delinquency date next following the annual assessment of taxes levied which next follows the Note Date.

The Mayor, City Secretary, City Manager, Interim City Manager and Director of Finance, individually or jointly, are hereby authorized and directed to cause to be transferred to the Paying Agent/Registrar for the Notes, from funds on deposit in the Interest and Sinking Fund, amounts sufficient to fully pay and discharge promptly each installment of interest on and principal of the Notes as the same accrues or matures; such transfers of funds to be made in such manner as will cause collected funds to be deposited with the Paying Agent/Registrar on or before each principal and interest payment date for the Notes.



Section 11. Mutilated - Destroyed - Lost and Stolen Notes. In case any Note shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Note of like form and tenor, and in the same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Note, or in lieu of and in substitution for such destroyed, lost or stolen Note, only upon the approval of the City and after (i) the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Note, and of the authenticity of the ownership thereof and (ii) the furnishing to the Paying Agent/Registrar of indemnification in an amount satisfactory to hold the City and the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Note shall be borne by the Holder of the Note mutilated, or destroyed, lost or stolen.

Every replacement Note issued pursuant to this Section shall be a valid and binding obligation of the City, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Notes; notwithstanding the enforceability of payment by anyone of the destroyed, lost, or stolen Notes.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost or stolen Notes.

Section 12. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Notes, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Notes or any principal amount(s) thereof shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Notes or the principal amount(s) thereof at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities have been certified by an independent accounting firm to mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the principal of and interest on such Notes, or the principal

amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof. The City covenants that no deposit of moneys or Government Securities will be made under this Section and no use made of any such deposit which would cause the Notes to be treated as “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or regulations adopted pursuant thereto.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Notes, or any principal amount(s) thereof, or interest thereon with respect to which such moneys have been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Notes and remaining unclaimed for a period of three (3) years after the Stated Maturity of the Notes, or applicable redemption date, such moneys were deposited and are held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the City shall be subject to any applicable unclaimed property laws of the State of Texas.

The term “Government Securities”, as used herein, means (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Notes.

Section 13. Ordinance a Contract - Amendments - Outstanding Notes. This Ordinance together with the Pricing Certificate, shall constitute a contract with the Holders from time to time, be binding on the City, and shall not be amended or repealed by the City so long as any Note remains Outstanding except as permitted in this Section and in Section 30 hereof.

The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance or any provision in the Pricing Certificate in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the consent of Holders holding a majority in aggregate principal amount of the Notes then Outstanding, amend, add to, or rescind any of the provisions of this Ordinance or any provision in the Pricing Certificate; provided that, without the consent of all Holders of Outstanding Notes, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Notes, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Notes, (2) give any preference to any Note over any other Note, or (3) reduce the aggregate principal amount of Notes required to be held by Holders for consent to any such amendment, addition, or rescission.

The term “Outstanding” when used in this Ordinance with respect to Notes means, as of the date of determination, all Notes theretofore issued and delivered under this Ordinance, except:

(1) those Notes cancelled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Notes deemed to be duly paid by the City in accordance with the provisions of Section 12 hereof; and

(3) those mutilated, destroyed, lost, or stolen Notes which have been replaced with Notes registered and delivered in lieu thereof as provided in Section 11 hereof.

#### Section 14. Covenants to Maintain Tax-Exempt Status.

(a) Definitions: When used in this Section, the following terms shall have the following meanings:

“Closing Date” means the date on which the Notes are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Notes.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the Notes are invested and which is not acquired to carry out the governmental purposes of the Notes.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Notes. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Notes has the meaning set forth in Section 1.148-4 of the Regulations.

- (b) Not to Cause Interest to Become Taxable: The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Note to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Note, the City shall comply with each of the specific covenants in this Section.
- (c) No Private Use or Private Payments: Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Notes:

- (i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Notes, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and
  - (ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Notes or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.
- (d) No Private Loan: Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Notes to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.
- (e) Not to Invest at Higher Yield: Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Notes directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or

with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Notes.

- (f) Not Federally Guaranteed: Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Notes to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.
- (g) Information Report: The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.
- (h) Rebate of Arbitrage Profits: Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:
  - (i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Note is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Notes with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.
  - (ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Notes until six years after the final Computation Date.
  - (iii) As additional consideration for the purchase of the Notes by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Notes equals (i) in the case of a

Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148 3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits: Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Notes, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Notes not been relevant to either party.

(j) Elections: The City hereby directs and authorizes the Mayor, City Secretary, City Manager, Interim City Manager and Director of Finance, individually or jointly, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Notes, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

Section 15. Sale of Notes; Purchase Agreement; Official Statement: The Notes authorized by this Ordinance are hereby sold by the City to the Purchasers in accordance with a purchase agreement (the "Purchase Agreement"), the terms and provisions of which Purchase Agreement are to be determined by the Pricing Officer in accordance with Section 3 hereof. The Pricing Officer is hereby authorized and directed to execute

the Purchase Contract for and on behalf of the City, as the act and deed of this City Council, and to make a determination as to whether the terms are in the City's best interests, which determination shall be final.

With regard to such terms and provisions of said Purchase Agreement, the Pricing Officer is hereby authorized to come to an agreement with the Purchasers on the following, among other matters:

1. The details of the purchase and sale of the Notes;
2. The details of the public offering of the Notes by the Purchasers;
3. The details of an Official Statement (and, if appropriate, any Preliminary Official Statement) relating to the Notes and the City's Rule 15c2-12 compliance;
4. A security deposit for the Notes, if any;
5. The representations and warranties of the City to the Purchasers;
6. The details of the delivery of, and payment for, the Notes;
7. The Purchasers' obligations under the Purchase Agreement;
8. The certain conditions to the obligations of the City under the Purchase Agreement;
9. Termination of the Purchase Agreement;
10. Particular covenants of the City;
11. The survival of representations made in the Purchase Agreement;
12. The payment of any expenses relating to the Purchase Agreement;
13. Notices; and
14. Any and all such other details that are found by the Pricing Officer to be necessary and advisable for the purchase and sale of the Notes.

The Pricing Officer is hereby authorized and directed to execute said Purchase Agreement for and on behalf of the City and as the act and deed of this City Council.

Furthermore, the use of the Preliminary Official Statement in connection with the public offering and sale of the Notes is hereby ratified, confirmed and approved in all respects. The Mayor and City Secretary are further authorized and directed to cause to be delivered for and on behalf of the City copies of an Official Statement in final form as may be required by the Purchasers, and such Official Statement in final form as approved by the Pricing Officer shall be deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Purchasers.

Section 16. Control and Custody of Notes: The Mayor shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas,



including the printing and supply of definitive Notes, and shall take and have charge and control of the Initial Note(s) pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Section 17. Proceeds of Sale: Immediately following the delivery of the Notes, the proceeds of sale (less those proceeds of sale designated to pay costs of issuance, bond insurance premium, if any, accrued interest, if any, received from the Purchasers of the Notes and premium in the amount, if any, specified in the applicable Pricing Certificate) shall be deposited to the credit of a construction account maintained on the books and records of the City and, if not immediately invested, in a fund kept at a depository bank of the City. Pending expenditure for authorized projects and purposes, such proceeds of sale deposited to the construction fund may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, including guaranteed investment contracts permitted in Texas Government Code, Section 2256.015, et seq., and any investment earnings realized may be expended for such authorized projects and purposes or deposited in the Interest and Sinking Fund as shall be determined by the City Council. Accrued interest, if any, and premium in the amount, if any, specified in the applicable Pricing Certificate received from the sale of the Notes and any excess Note proceeds, including investment earnings, remaining after completion of all authorized projects or purposes shall be deposited to the credit of the applicable Interest and Sinking Fund.

Section 18. Notices to Holders – Waiver: Wherever this Ordinance or the Pricing Certificate provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States Mail, first class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Notes. Where this Ordinance or the Pricing Certificate provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 19. Cancellation: All Notes surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly cancelled by it and, if surrendered to the City, shall be

delivered to the Paying Agent/Registrar and, if not already cancelled, shall be promptly cancelled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Notes previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Notes so delivered shall be promptly cancelled by the Paying Agent/Registrar. All cancelled Notes held by the Paying Agent/Registrar shall be returned to the City.

- Section 20. **Market Opinion:** The obligation of the Purchasers to accept delivery of the Notes is subject to being furnished a final opinion of Fulbright & Jaworski LLP, Attorneys, Dallas, Texas, approving such Notes as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Notes. A true and correct reproduction of said opinion is hereby authorized to be printed on or attached to definitive printed obligations or an executed counterpart thereof shall accompany the global Notes deposited with The Depository Trust Company.
- Section 21. **CUSIP Numbers:** CUSIP numbers may be printed or typed on the Notes deposited with The Depository Trust Company or on printed definitive Notes. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Notes shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Notes as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Notes.
- Section 22. **Benefits of Ordinance:** Nothing in this Ordinance or the Pricing Certificate, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or the Pricing Certificate or any provision hereof, this Ordinance and the Pricing Certificate and all their provisions being intended to be and being for the sole and exclusive benefit of the City, the Paying Agent/Registrar and the Holders.
- Section 23. **Inconsistent Provisions:** All ordinances or 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.
- Section 24. **Governing Law:** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.
- Section 25. **Effect of Headings.** The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

- Section 26. Construction of Terms: If appropriate in the context of this 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.
- Section 27. Severability: 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.
- Section 28. Incorporation of Findings and Determinations: The findings and determinations of the City Council contained in the preamble hereof are hereby incorporated by reference and made a part of this Ordinance for all purposes as if the same were restated in full in this Section.
- Section 29. Bond Insurance: The Notes may be sold with the principal of and interest thereon being insured by a qualified municipal bond insurance provider. The Pricing Officer is hereby authorized to make the selection of municipal bond insurance (if any) for the Notes and to determine the provisions of any commitment therefor.
- Section 30. Continuing Disclosure Undertaking:
- (a) Definitions: As used in this Section, the following terms have the meanings ascribed to such terms below:
- “MSRB” means the Municipal Securities Rulemaking Board.
- “Rule” means SEC Rule 15c2-12, as amended from time to time.
- “SEC” means the United States Securities and Exchange Commission.
- (b) Annual Reports: The City shall provide annually to the MSRB (1) within six months after the end of each fiscal year ending in the year stated in the Pricing Certificate, financial information and operating data with respect to the City of the general type included in the final Official Statement and described in the Pricing Certificate, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements so to be provided shall be prepared in accordance with the accounting principles described in the Pricing Certificate, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and audited, if the

City commissions an audit of such statements and the audit is completed within the period during which they must be provided.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document available to the public on the MSRB's Internet Web site or filed with the SEC.

- (c) Notices of Certain Events: The City shall provide notice of any of the following events with respect to the Notes to the MSRB in a timely manner and not more than ten (10) business days after occurrence of the event:
- (1) Principal and interest payment delinquencies;
  - (2) Non-payment related defaults, if material;
  - (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
  - (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
  - (5) Substitution of credit or liquidity providers, or their failure to perform;
  - (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Notes, or other material events affecting the tax status of the Notes;
  - (7) Modifications to rights of holders of the Notes, if material;
  - (8) Note calls, if material, and tender offers;
  - (9) Defeasances;
  - (10) Release, substitution, or sale of property securing repayment of the Notes, if material;
  - (11) Rating changes;
  - (12) Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;

- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

For these purposes, any event described in the immediately preceding subsection (c)(12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by this Section.

- (d) Filings with the MSRB: All financial information, operating data, financial statements, notices, and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.
- (e) Limitations, Disclaimers, and Amendments: The City shall be obligated to observe and perform the covenants specified in this Section while, but only while, the City remains an “obligated person” with respect to the Notes within the meaning of the Rule, except that the City in any event will give notice required by subsection (c) hereof of any Note calls and defeasance that cause the City to be no longer such an “obligated person”.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Notes, and nothing in this Section, express or

implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Notes at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY NOTE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

Notwithstanding anything herein to the contrary, the provisions of this Section may be amended by the City from time to time to adapt to changed circumstances resulting from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Notes in the primary offering of the Notes in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Notes consent to such amendment or (b) a Person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Notes. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the

applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Notes from lawfully purchasing or selling Notes in such offering. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Section 31. Further Procedures: Any one or more of the Mayor, City Manager, Interim City Manager, Director of Finance and City Secretary are hereby expressly 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 on behalf of the City all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the issuance of the Notes. In addition, prior to the initial delivery of the Notes, the Mayor, City Manager, Interim City Manager, Director of Finance or Bond Counsel to the City are each hereby authorized and directed to approve any changes or corrections to this Ordinance or to any of the documents authorized and approved by this Ordinance: (i) in order to cure any ambiguity, formal defect, or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Notes by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 32. Public Meeting: 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 Texas Government Code, Chapter 551, as amended.

Section 33. Effective Date: This Ordinance shall be in force and effect from and after its passage on the date hereof in accordance with the provisions of Texas Government Code, Section 1201.028, as amended.

*[Remainder of page intentionally left blank]*

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
McKINNEY, TEXAS, THIS 2<sup>nd</sup> DAY OF SEPTEMBER, 2014.**

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE  
Assistant City Secretary

Date: \_\_\_\_\_

[CITY SEAL]

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney



EXHIBIT A  
**PAYING AGENT/REGISTRAR AGREEMENT**