

**AGREEMENT AMONG AND BETWEEN THE CITY OF BRYAN, TEXAS, THE CITY OF DENTON, TEXAS, THE CITY OF GARLAND, TEXAS, AND THE CITY OF GREENVILLE, TEXAS REGARDING PREPAYMENT OF FIXED COST POWER PURCHASE PAYMENTS TO BE PAID TO THE TEXAS MUNICIPAL POWER AGENCY**

WHEREAS, this Agreement (this "Prepayment Agreement") is made and entered into as of the Effective Date provided below by, between, and among the City of Bryan, Texas, the City of Denton, Texas, the City of Garland, Texas and the City of Greenville, Texas (collectively, the "Cities"), each in the capacity of a member city of the Texas Municipal Power Agency (the "Agency"); and

WHEREAS, the Agency and each of the Cities, have entered into a Power Sales Contract dated the 1st day of September, 1976, as amended (the "Power Sales Contract"), under which the Agency is obligated to sell electric energy to the Cities, and each City is unconditionally obligated to pay to the Agency, without offset or counterclaim and without regard to whether energy is delivered by the Agency to the respective City or Cities or whether or not any City or Cities actually use energy from the Agency's generating facilities, the percentage of the Agency's Annual System Costs (as defined in the Power Sales Contract), including the payment of the Debt Service Requirements (as defined in the Power Sales Contract) which may from time to time exist; and

WHEREAS, the Agency has adopted Resolution No. 2016-5-10 (the "Agency Resolution") that sets forth options for the Cities to prepay all or a portion of the contractual obligations of the Cities pertaining to the Debt Service Requirements component of the Agency's rates and charges for the purchase of power in accordance with the Power Sales Contract (the "Contractual Obligations"), which relate to the Agency's Subordinate Lien Revenue Refunding Bonds Series 2008 (the "Series 2008 Bonds") and the Agency's Junior Subordinate Lien Revenue Refunding Bonds Series 2013 (the "Series 2013 Bonds" and collectively with the Series 2008 Bonds, the "Candidate Bonds"); and

WHEREAS, the procedures set forth in the Agency Resolution permit each City to use moneys derived in whole or in part from proceeds of a series of City debt issued to discharge all or a portion of its Contractual Obligations (a "City Financing Deposit" as defined in the Agency Resolution) or from a funding source other than proceeds of such City debt (a "City Available Funds" as defined in the Agency Resolution) for the purpose of prepaying all or a portion of its Contractual Obligations; and

WHEREAS, the Agency Resolution provides for the Agency to establish uniform rates and charges for the Cities and to allocate a prepayment credit with respect to such rates and charges (the "Payment Credit") to any City in the amount of the City Financing Deposit or City Available Funds that are deposited into an escrow account, plus interest earnings from the deposit of such funds in the escrow account, which deposit is dedicated to paying the respective City's Contractual Obligations pertaining to the Candidate Bonds; and

WHEREAS, in accordance with the Agency Resolution, the Payment Credit will be calculated with respect to a portion of the City's power purchase payments; and

WHEREAS, this Prepayment Agreement is entered into for the purpose of establishing the agreement of the Cities with respect to the Payment Credit.

NOW THEREFORE, in consideration of the foregoing, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Member City agrees as follows:

Section 1. *Agreements of Cities.* Each City acknowledges and agrees with respect to the Agency Resolution and the transactions provided for therein, and without regard to whether a City elects to use a prepayment option provided therein, as follows:

(a) That a City making a City Financing Deposit or a deposit of Available City Funds in accordance with the Agency Resolution shall be entitled to a Payment Credit determined by the Agency in the manner provided in the Agency Resolution.

(b) That the provision by the Agency to one or more Cities of a Payment Credit (whether for the year in which the deposit is made by a City or in a subsequent year, in accordance with the terms of the Agency Resolution) does not conflict with Section 7 of the Power Sales Contract or any other provisions thereof that require the Agency to establish uniform and non-discriminatory, fair and reasonable and adequate rates and charges for the provision of power and energy to the Cities.

(c) That proceedings of the Agency with respect to the adoption of the Agency Resolution by the Agency have been provided to the Cities, and each City will not contest or challenge the right of the Agency to adopt or administer the Agency Resolution or contest or challenge the adoption of the Agency Resolution as being in any way an improper or unlawful act of the Agency in accordance with applicable laws pertaining to the Agency and the Power Sales Contract.

Section 2. *Severability.* If any term or provision of this Prepayment Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Prepayment Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Prepayment Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 3. *Waiver.* A party shall have the right to waive any requirement contained in this Prepayment Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended pursuant to an authorizing resolution adopted by the governing body of the respective party. No waiver of any breach or violation of any term of this Prepayment Agreement shall be deemed or construed to constitute a waiver of any other

breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 4. *Governing Law.* This Prepayment Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Prepayment Agreement are performable in Travis County, Texas such that exclusive venue for any action arising out of this Prepayment Agreement shall be in Travis County, Texas.

Section 5. *Paragraph Headings; Construction.* The paragraph headings contained in this Prepayment Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. The parties have all participated in the negotiation and preparation of this Prepayment Agreement, have obtained and considered the advice of counsel in its preparation, and accordingly agree that this Prepayment Agreement shall not be construed either more or less strongly against or for any party.

Section 6. *Binding Effect.* Except as limited herein, the terms and provisions of this Prepayment Agreement shall be binding upon and inure to the benefit of the Cities and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 7. *Gender.* Within this Prepayment Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 8. *Counterparts.* This Prepayment Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 9. *Entire Prepayment Agreement.* It is understood and agreed that this Prepayment Agreement contains the entire agreement between and among the Cities and supersedes any and all prior agreements, arrangements or understandings between or among the Cities relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Prepayment Agreement exist. This Prepayment Agreement cannot be changed or terminated orally and no written modification of this Prepayment Agreement shall be effective unless executed by each and all of the Cities pursuant to an authorizing resolution adopted by the governing body of the respective party.

Section 10. *Authority to Execute.* Each party mutually represents and warrants to each and all of the other Cities that the individual signing this Prepayment Agreement on its behalf has complete and full authority to act on behalf and to fully bind that party to the terms of this Prepayment Agreement.

[Execution Pages Follow]

EXECUTED on the dates indicated below but deemed to be effective as of the date this Prepayment Agreement is signed by the last party to do so (the "Effective Date").

CITY OF BRYAN:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

CITY OF DENTON:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

CITY OF GARLAND:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

CITY OF GREENVILLE:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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