

ORDINANCE NO. \_\_\_\_\_-02-2023

AN ORDINANCE authorizing and approving the extension of the Maximum Maturity Date of the City’s Water and Sewer System Commercial Paper Notes, Callable CP Series, as established in Ordinance No. 23028-12-2017; approving an increase in the aggregate principal amount at any one time outstanding of such Commercial Paper Notes from \$150,000,000 to \$225,000,000; restating Ordinance No. 23028-12-2017 as supplemented by this Ordinance; resolving other matters incident and related to the issuance, sale, security and delivery of such Commercial Paper Notes, including approving and authorizing certain authorized officers and employees to act on behalf of the City in executing amendments to the Issuing and Paying Agent Agreement, the Dealer Agreement and the Calculation Agent Agreement currently in effect; and providing an effective date.

THE STATE OF TEXAS :  
COUNTIES OF TARRANT, DENTON, WISE, PARKER AND JOHNSON :  
CITY OF FORT WORTH :

WHEREAS, the City of Fort Worth, Texas (the "City" or the "Issuer") is a home-rule municipality, acting as such under the Constitution and laws of the State of Texas, has a population in excess of 50,000, and has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations; and

WHEREAS, on December 5, 2017, the City Council adopted Ordinance No. 23028-12-2017, which authorized the issuance by the City of Fort Worth, Texas of its Water and Sewer System Commercial Paper Notes, Callable CP Series in an aggregate principal amount at any one time outstanding not to exceed \$150,000,000, for the purposes set forth in Ordinance No. 23028-12-2017; and

WHEREAS, the commercial paper notes authorized to be issued pursuant to Ordinance No. 23028-12-2017 constitute bond anticipation notes which the City intends to retire through the issuance of its revenue bonds; and

WHEREAS, in furtherance of the issuance of commercial paper notes under Ordinance No. 23028-12-2017, the City executed and delivered, and there remain in effect, a Calculation Agent Agreement between the City and Hilltop Securities Inc. (the "2017 Calculation Agent Agreement"), a Dealer Agreement with J.P. Morgan Securities LLC (the "2017 Dealer Agreement"), and an Issuing and Paying Agent Agreement with U.S. Bank National Association (the "2017 Issuing and Paying Agent Agreement"), each agreement dated as of December 1, 2017; and

WHEREAS, there are no Water and Sewer System Commercial Paper Notes, Callable CP Series of the City currently outstanding and unpaid; and

WHEREAS, the City Council hereby finds and determines that Ordinance No. 23028-12-2017 shall be restated, with changes made to extend the program period in which such commercial paper notes may be issued, increase the maximum amount of commercial paper

notes that may at any one time be outstanding, update the terms of Ordinance No. 23028-12-2017 to reflect changes in federal and state law enacted subsequent to the adoption of Ordinance No. 23028-12-2017, and the names of entities with whom the City contracted when the commercial paper program was established, all subject to the terms, conditions and limitations hereinafter prescribed; and

WHEREAS, the City Council hereby finds and determines that the issuance of commercial paper notes, subject to the terms, conditions and limitations hereinafter prescribed, should be approved and authorized at this time;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

Section 1. That Ordinance No. 23028-12-2017 is restated and incorporates the revisions reflected below in Sections 2 through 8 of this Ordinance. For all purposes, references to "Ordinance" shall mean, collectively, Ordinance No. 23028-12-2017 and this Ordinance.

Section 2. That all references in Ordinance No. 23028-12-2017 to "ONE HUNDRED MILLION DOLLARS" and "\$150,000,000" shall be read as "TWO HUNDRED TWENTY-FIVE MILLION DOLLARS" and "\$225,000,000" including, but not limited to, the references set forth in Sections 2.01 and 4.01 therein.

Section 3. That all references in Ordinance No. 23028-12-2017 to "U.S. Bank National Association" shall be read as "U.S. Bank Trust Company, National Association" including, but not limited to, the references set forth in Section 2.03 and Exhibit C-1 therein. In addition, clause (ii) of Exhibit C-1 shall be revised to read: "the maturity date of the Notes shall be \_\_\_\_\_, 20\_\_ (which is a Business Day, is a day that is not more than 270 days from the date of issue and is not a day after February 14, 2043)".

Section 4. That (a) the definition of "Maximum Maturity Date" as set forth in Ordinance No. 23028-12-2017 shall read: "twenty (20) years following the date of passage of Ordinance No. \_\_\_\_-02-2023", (b) the definition of "Outstanding Prior Lien Bonds" as set forth in Ordinance No. 23028-12-2017 shall read: "bonds currently outstanding or hereafter issued secured by a first lien on and pledge of Pledged Revenues, and include the outstanding and unpaid bonds of the following series, to-wit: the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2009; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding Bonds, Series 2012; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding and Improvement Bonds, Series 2014; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2015; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding and Improvement Bonds, Series 2015A; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2015B; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding and Improvement Bonds, Series 2016; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2017; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding and Improvement Bonds, Series 2017A; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2017B; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2018; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2019; the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2020; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding and Improvement Bonds, Series 2020A; the City of Fort Worth, Texas Water and Sewer System Revenue Refunding and Improvement

Bonds, Series 2021; and the City of Fort Worth, Texas Water and Sewer System Revenue Bonds, Series 2022", (c) the definition of "S&P" as set forth in Ordinance No. 23028-12-2017 shall read: "S&P Global Ratings, a Standard & Poor's Financial Services LLC business, or, if such entity is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the City", and (d) the definition of "Subordinate Lien Obligations" as set forth in Ordinance No. 23028-12-2017 shall read: bonds or other obligations currently outstanding or hereafter issued secured by a lien on and pledge of Pledged Revenues subordinate to the Prior Lien Obligations and the Subordinate Lien Bonds, and include the currently outstanding City of Fort Worth, Texas Combination Tax and Revenue Certificates of Obligation, Series 2012, City of Fort Worth, Texas Combination Tax and Revenue Certificates of Obligation, Series 2013A, City of Fort Worth, Texas Combination Tax and Revenue Certificates of Obligation, Series 2013C, and City of Fort Worth, Texas Combination Tax and Revenue Certificates of Obligation, Series 2021. In addition, with respect to the definition of "Subordinate Lien Bonds" set forth in Ordinance No. 23028-12-2017, there currently are no Subordinate Lien Bonds outstanding and unpaid.

Section 5. That Section 4.06 of Ordinance No. 23028-12-2017 shall be updated to reflect changes in the Internal Revenue Code of 1986 enacted subsequent to December 5, 2017, by revising clause (g), and adding a new clause (h) and relettering current clause (h) to clause (i), to read as follows:

**"Section 4.06. Commercial Paper Notes to Remain Tax Exempt.** In order to maintain the exclusion from gross income of the interest on the Commercial Paper Notes for federal income tax purposes, the Issuer will make all calculations required by section 148 of the Code, including, but not limited to, the calculation of rebate, in a reasonable and prudent fashion and to segregate and set aside the lawfully available amounts that such calculations indicate may be required to be paid to the United States of America. The City will at all times do and perform all acts and things within its power and authority necessary to comply with each applicable requirement of section 103 and sections 141 through 150 of the Code. The City will execute or cause to be executed a Federal Tax Certificate as may be required by the Code, in the opinion of Bond Counsel, and the Form 8038-G, or any other forms designated by the Internal Revenue Service in substitution thereof. In furtherance of the foregoing, the Issuer will execute annually, or at any other time necessary in the opinion of Bond Counsel, a Federal Tax Certificate and Form 8038-G necessary to assure the tax-exempt status of the Commercial Paper Notes. In furtherance thereof, the City covenants as follows:

(a) to take any action to assure that no more than ten (10) percent of the proceeds of the Commercial Paper Notes or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use", as defined in section 141(b)(6) of the Code or, if more than ten (10) percent of the proceeds are so used, that amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than ten (10) percent of the debt service on the Commercial Paper Notes, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds five (5) percent of the proceeds of the Commercial Paper Notes or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of five (5) percent is used for a "private

business use" which is "related" and not "disproportionate", within the meaning of section 141(b) (3) of the Code, to the governmental use;

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

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

(e) to refrain from taking any action that would result in the Commercial Paper Notes being "federally guaranteed" within the meaning of section 149(b) of the Code;

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

(1) proceeds of the Commercial Paper Notes invested for a reasonable temporary period until such proceeds are needed for the purpose for which the obligations are issued,

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

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed ten (10) percent of the proceeds of the Commercial Paper Notes;

(g) to otherwise restrict the use of the proceeds of the Commercial Paper Notes or amounts treated as proceeds of the Commercial Paper Notes, as may be necessary, so that the Commercial Paper Notes do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(h) to refrain from using the proceeds of the Commercial Paper Notes or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Commercial Paper Notes in contravention of section 149(d) of the Code (relating to advance refundings); and

(i) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Commercial Paper Notes) an amount that is at least equal to ninety (90) percent of the "Excess Earnings", within the meaning of section 148(f) of the Code, and to pay to the United States of America, not later than sixty (60) days after the Commercial Paper Notes have been paid in full, one hundred

(100) percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

The City shall not expend, or permit to be expended, the proceeds of the Commercial Paper Notes in any manner inconsistent with its reasonable expectations as certified in the Federal Tax Certificates to be executed from time to time with respect to the Commercial Paper Notes; provided, however, that the City may expend proceeds of the Commercial Paper Notes in any manner if the City first obtains an unqualified opinion of Bond Counsel that such expenditure will not impair the exemption from federal income taxation of interest paid on the Commercial Paper Notes. The City hereby elects to treat those Commercial Paper Notes redeemed during each eighteen-month period as one "issue" in accordance with the provisions of section 148(f)(3) of the Code, unless otherwise provided in the Federal Tax Certificate.

The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of a refunding bond, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of the issuance of the Commercial Paper Notes. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify, or expand provisions of the Code, as applicable to the Commercial Paper Notes, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of Bond Counsel, will not adversely affect the exemption from federal income taxation of interest on the Commercial Paper Notes under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Commercial Paper Notes, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of Bond Counsel, to preserve the exemption from federal income taxation of interest on the Commercial Paper Notes under section 103 of the Code. In furtherance of such intention, the City Council hereby authorizes and directs, jointly and severally, the Mayor, the City Manager, any Assistant City Manager and the Chief Financial Officer/Director of Financial Management Services of the City to execute any documents, certificates or reports required by the Code, and to make such elections on behalf of the City which may be permitted by the Code as are consistent with the purpose for the issuance of the Commercial Paper Notes.

In order to facilitate compliance with the above clause (i), upon the issuance of Commercial Paper Notes, a "Rebate Fund" may be established by the City for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the Noteholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code."

Section 6. That the First Amendment to Issuing and Paying Agent Agreement by and between the City and the Issuing and Paying Agent, relating to the Commercial Paper Notes, in substantially the form attached to this Ordinance as **Exhibit A**, is hereby approved, and any Authorized Representative is hereby authorized and directed to execute the same for and on behalf of the City and the City Secretary is authorized to attest and place the City seal on such instrument. Any Authorized Representative is hereby authorized to enter into any supplemental agreements with the Issuing and Paying Agent or with any successor Issuing and Paying Agent in order to implement the functions of the Issuing and Paying Agent or Registrar with respect to the Commercial Paper Notes. For all purposes, the term "Issuing and Paying Agent Agreement"

shall mean, collectively, the 2017 Issuing and Paying Agent Agreement and the First Amendment to Issuing and Paying Agent Agreement.

Section 7. That the First Amendment to Dealer Agreement by and between the City and the Dealer, in substantially the form attached to this Ordinance as **Exhibit B**, is hereby approved, and any Authorized Representative is hereby authorized and directed to execute the same for and on behalf of the City and the City Secretary is authorized to attest and place the City seal on such instrument. For all purposes, the term "Dealer Agreement" shall mean, collectively, the 2017 Dealer Agreement and the First Amendment to Dealer Agreement.

Section 8. That the First Amendment to Calculation Agent Agreement by and between the City and the Calculation Agent, in substantially the form attached to this Ordinance as **Exhibit C**, is hereby approved, and any Authorized Representative is hereby authorized and directed to execute the same for and on behalf of the City and the City Secretary is authorized to attest and place the City seal on such instrument. For all purposes, the term "Calculation Agent Agreement" shall mean, collectively, the 2017 Calculation Agent Agreement and the First Amendment to Calculation Agent Agreement.

Section 9. That any Authorized Representative, the City Secretary, and the other officers of the City, each are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale and delivery of the Notes and otherwise to effectuate the purposes of this Ordinance, the Issuing and Paying Agent Agreement, the Dealer Agreement, the Calculation Agent Agreement and the Offering Memorandum. Specifically, by the adoption of this Ordinance, the City Council hereby authorizes the payment of the fees and expenses incurred and to be paid by the City in connection with the issuance, sale and delivery of the Notes and the execution and delivery of the Dealer Agreement, the Calculation Agent Agreement and the Issuing and Paying Agent Agreement including, without limitation, the fee of the Attorney General of the State of Texas payable in respect to the review of the proceedings authorizing the issuance of the Commercial Paper Notes required under Section 1202.004, Texas Government Code. By adoption of this Ordinance, each Authorized Representative is designated as a special Acting Assistant City Manager for the limited purposes of executing certificates, agreements, notices, instruction letters, requisitions, and other documents on behalf of the City in accordance with this Ordinance.

Section 10. That the City Manager, or his designee, is directed to provide notice of the adoption of this Ordinance to each Rating Agency currently providing a rating for the Commercial Paper Notes, consistent with the provisions of Section 4.16 of Ordinance No. 23028-12-2017.

Section 11. That the preamble to this Ordinance shall be considered an integral part of this Ordinance and is herein incorporated as part of the body of this Ordinance for all purposes.

Section 12. That this Ordinance shall be effective immediately from and after its passage in accordance with the provisions of Section 1201.028, Texas Government Code.

*[Execution Page Follows]*

Section 13. That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code, as amended.

ADOPTED AND EFFECTIVE February 14, 2023.

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Mayor, City of Fort Worth, Texas

ATTEST:

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City Secretary, City of Fort Worth, Texas

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

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City Attorney, City of Fort Worth

THE STATE OF TEXAS :  
COUNTIES OF TARRANT, DENTON, WISE, PARKER AND JOHNSON :  
CITY OF FORT WORTH :

I, Jannette S. Goodall, City Secretary of the City of Fort Worth, in the State of Texas, do hereby certify that I have compared the attached and foregoing excerpt from the minutes of the regular, open, public meeting of the City Council of the City of Fort Worth, Texas held on February 14, 2023, and of the ordinance amending Ordinance No. 23028-12-2017, which was duly passed at said meeting, and that said copy is a true and correct copy of said excerpt and the whole of said ordinance. Said meeting was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code, as amended.

In testimony whereof, I have set my hand and have hereunto affixed the seal of said City of Fort Worth, this \_\_\_\_ day of February, 2023.

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City Secretary of the  
City of Fort Worth, Texas

(SEAL)