

**ORDINANCE NO. 2017 - \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF DENTON (“CITY”) AUTHORIZING THE MAYOR TO ACT ON THE CITY’S BEHALF IN EXECUTING AN AMENDMENT TO THE JOINT OPERATING AGREEMENT (THE “JOA”) BY AND BETWEEN, AND AMONG, TEXAS MUNICIPAL POWER AGENCY (THE “AGENCY”) AND THE CITIES OF BRYAN, DENTON, GARLAND, AND GREENVILLE (THE “PARTIES”) AND ACKNOWLEDGING EFFECTIVE NOTICE FROM THE AGENCY REGARDING ITS INTENT TO ISSUE TRANSMISSION DEBT (AS DEFINED IN THE JOA) AND APPROVING SUCH ISSUANCE BY THE AGENCY.**

**WHEREAS**, the Parties have previously entered into the JOA; and

**WHEREAS**, amendment No. 1 to the JOA (“Amendment No. 1”) has been conditionally approved by the Parties, but such Amendment No. 1 provided that it would have no force or effect if the “Generation Asset Sale,” as defined in and contemplated by Amendment No. 1, should be terminated or does not close; and

**WHEREAS**, the Parties have agreed to the terms of amendment No. 2 to the JOA (“Amendment No. 2”) to accomplish certain purposes, to-wit: to (1) provide for the sale of portions of TMPA’s Transmission System, in a piecemeal manner, but subject to applicable bond covenants of the Agency that govern the sale of portions of the Transmission System and (2) correct and clarify certain provisions of the JOA that pertain to Mine Reclamation Bonds and (3) clarify certain dates with respect to the Agency’s budgeting process and (4) enable seasonal operation of the Agency’s generating assets; and

**WHEREAS** the Generation Asset Sale, as contemplated by Amendment No. 1, has been terminated and will not close, and therefore, by the terms thereof, Amendment No. 1 is of no force and effect as of the effective date of Amendment No. 2; and

**WHEREAS**, in conformance with Section 2.6.2.5 of the JOA, the Agency has given timely and effective notice, in the form attached hereto as Attachment B, to the City with respect to its intent to issue Transmission Debt as defined in the JOA consisting of the 2017 Refunding Bonds and the 2017 Notes, as described in Attachment B hereto;

**THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:**

**SECTION 1.** The recitals in the preamble are true and correct.

**SECTION 2.** The City of Denton hereby approves and authorizes the Mayor to execute Amendment No. 2 to the JOA in substantially the form and substance shown in Attachment A.

**SECTION 3.** The City of Denton hereby acknowledges timely and effective receipt of notice of intent in the form attached hereto as Attachment B from the Agency with respect to the issuance of Transmission Debt and consents to the issuance of such Transmission Debt on the terms described in Attachment B.

**SECTION 4.** This Ordinance shall become effective immediately upon execution.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

\_\_\_\_\_  
APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

\_\_\_\_\_  
A handwritten signature in blue ink, appearing to read 'Leal', is written over a horizontal line.

**ATTACHMENT A**

**AMENDMENT NO. 2 TO THE**

**JOINT OPERATING AGREEMENT**

**BETWEEN**

**TEXAS MUNICIPAL POWER AGENCY**

**AND**

**CITY OF BRYAN, TEXAS**

**CITY OF DENTON, TEXAS**

**CITY OF GARLAND, TEXAS**

**CITY OF GREENVILLE, TEXAS**

This Amendment No. 2 ( “Amendment No. 2”), effective as of the date set forth below, to the Joint Operating Agreement, effective September 1, 2016 (as conditionally amended by the Amendment No. 1 to the JOA, effective September 15, 2016 (“Amendment No. 1”) and as amended by this Amendment No. 2 (the “JOA” or the “Joint Operating Agreement”), is made and entered into between the Texas Municipal Power Agency (“TMPA” or “Agency”), a municipal corporation and political subdivision of the State of Texas established pursuant to the provisions of Chapter 163 of the Texas Utilities Code, and the City of Bryan, the City of Denton, the City of Garland, and the City of Greenville, Texas (herein collectively “Cities” or individually “City”), each of which cities is a municipal corporation of the State of Texas, a home rule city, and a Participating Public Entity in TMPA (collectively, the “Parties”). Capitalized terms used in this Amendment No. 2 not otherwise defined herein shall have the definition set forth in the JOA.

**WITNESSETH:**

**WHEREAS**, the Parties have previously entered into the JOA; and

**WHEREAS**, Amendment No. 1 provided that Amendment No. 1 would have no force or effect if the Generation Asset Sale, as defined in and contemplated by Amendment No. 1, is terminated or does not close; and

**WHEREAS** the Generation Asset Sale, as contemplated by Amendment No. 1, will not close, and therefore, by the terms thereof, Amendment No. 1 is of no force and effect as of the Effective Date (as defined below) of this Amendment No. 2; and

**WHEREAS**, the Parties have agreed to this Amendment No. 2 to accomplish certain purposes, to-wit: to (1) provide for the sale of portions of TMPA’s Transmission System, in a piecemeal manner, but subject to certain bond covenants described below that govern the sale of portions of the Transmission System and (2) correct and clarify certain provisions of the JOA that pertain to Mine Reclamation Bonds; and

**WHEREAS**, this Amendment No. 2 shall be deemed delivered and effective, assuming the approval and execution of identical resolutions by each of the Parties, on the date that this Amendment No. 2 is executed by the last Party to do so, being the “Effective Date” of this Amendment No. 2; and

**NOW, THEREFORE**, in consideration of the recitals set forth above, the mutual covenants, benefits, agreements and obligations of the Parties, as set forth herein, the Parties, each intending to be legally bound, agree as follows:

**Section 1.** In accordance with the preambles hereof, concurrently with the Effective Date hereof, the provisions of Amendment No. 1 shall be null and void, without further effectiveness.

**Section 2.** Article I of the JOA is hereby amended by modifying or adding to the definitions set forth therein as shown below:

“Mine Reclamation Bonds” shall mean any Debt issued for the purpose of mine reclamation or any obligations related thereto, including any “credit agreements” as defined in Section 1371.001(1), Texas Government Code.

“Series 2010 Bond Resolution” shall mean the applicable Resolution No. 2010-6-2 adopted by the TMPA Board on June 24, 2010.

“Transmission Asset” shall have the same meaning set forth in the Series 2010 Bond Resolution for the term “Transmission Facilities,” and such term may be used interchangeably herein with the term “Transmission Facilities,” including singular and plural variations of such terms.

**Section 3.** Section 2.6.1.1 and 2.6.1.2 are amended to read as follows:

“2.6.1. BUDGETING AND COST RECOVERY.

2.6.1.1. FOR THE PERIOD FROM THE EFFECTIVE DATE AND ENDING SEPTEMBER 1, 2018. For the period effective October 1, 2016, and annually thereafter to September 1, 2018, the TMPA Board shall adopt annual budgets, by business category. For periods prior to September 2, 2018, such Annual Budgets shall be for informational purposes. Recovery of the costs of Agency operations for this period shall be through the (i) Annual System Costs under the Power Sales Contract of the Agency and (ii) Transmission Revenues. From the Effective Date through September 1, 2018, funds otherwise available to be returned to the Cities under Section 7(a)(3) of the Power Sales Contract shall be applied to the following uses: (i) first, to fund the Decommissioning Reserve Account up to the cap for that account as stated in Section 5.5, and (ii) then, to fund the Indemnity Reserve Account up to the cap for that account as stated in Section 6.5. Any net proceeds remaining after the obligations described in (i)-(ii) shall be apportioned to each Participating Public Entity based on the following percentages: Bryan - 21.7%; Denton - 21.3%; Garland - 47%; Greenville - 10%.

2.6.1.2. FOR PERIODS COMMENCING FROM AND AFTER SEPTEMBER 2, 2018. Commencing September 2, 2018, and for each fiscal year thereafter, the TMPA Board shall adopt budgets by business category, and adopt charges for the recovery of the costs of operations by business category, according to the specific requirements in Articles III, IV, and V, respectively.”

**Section 4.** Section 2.6.2.5 of the JOA is amended to read as follows:

“2.6.2.5. LIMITATIONS ON DEBT. From and after September 1, 2016, the Agency shall not incur any form of Debt other than Transmission Debt, whether bonds, notes, a new commercial paper program or increase in an existing commercial paper program, or obligation for borrowed money of any kind, unless such Debt is: (1) attributed to a single business category, (2) approved by a Super Majority Vote of the TMPA Board and by concurrent resolutions of each Participating Public Entity in the business category to which the debt is attributed, and (3) secured solely by assets or revenues or operations of the business category to which it is attributed. From and after September 1, 2016, the Agency shall not incur any form of Transmission Debt, whether bonds, notes, commercial paper or obligations of any kind, unless: (1) prior notice of at least 60 days has been given to each Participating Public Entity in the Transmission Business category of the proposed issuance of such Transmission Debt, which notice shall include the principal terms on which such Debt is proposed to be issued, and (2) such proposed Transmission Debt is: (i) after September 1, 2018, payable solely from Transmission Revenues, and (ii) approved by a Super Majority Vote of the TMPA Board . The restrictions in this Section relating to Debt shall not apply to Mine Reclamation Bonds, surety bonds, banking agreements, letters of credit, or other financial commitment related to providing financial security or assurance for the TMPA's mine reclamation responsibilities. For clarification, Approval of the Participating Public Entities shall not be required for (1) the issuance by TMPA of Transmission Debt or (2) the issuance by TMPA of commercial paper notes under a commercial paper program established prior to September 1, 2016, that is: (A) payable in full on or before September 1, 2018 or (B) by its terms, to be converted to Transmission Debt on or before October 1, 2018.”

**Section 5.** Section 2.6.2.6 of the JOA is amended to read as follows:

“2.6.2.6. LIMITATIONS ON OTHER NEW LONG-TERM OR SIGNIFICANT OBLIGATIONS. In addition to the limitations on incurrence of Debt provided in Section 2.6.2.5, from and after September 1, 2016, the Agency shall not incur any other form of long-term obligation unless such obligation is: (1) attributed to a single business category, (2) approved by a Super Majority Vote of the TMPA Board and by concurrent ordinances of each Participating Public Entity in the business category to which the obligation is attributed, and (3) secured solely by assets and/or revenues of the business category to which it is attributed. For purposes of this paragraph 2.6.2.6, “long-term or significant obligation” shall mean any contract or other form of obligation (i) having a term in excess of twenty-four (24) months unless the contract may be cancelled by the Agency for convenience without penalty at any time after the giving of notice and the expiration of a contractual notice period not to exceed one hundred twenty (120) days, or (ii) in an amount in excess of ten million (\$10,000,000.00) dollars. The restrictions in this Section relating to long-term or significant obligations shall not apply to Mine Reclamation Bonds, surety

bonds, banking agreements, letters of credit, or other financial commitment related to providing financial security or assurance for the TMPA's mine reclamation responsibilities.”

**Section 6.** Section 3.2.1 of the JOA is amended to read as follows:

“3.2.1. BUDGETING AND OPERATIONS. From and after the Effective Date through September 1, 2018, charges for recoupment of such costs as are included in the Annual Budget for the Mining Business category, including any debt service on any Mine Reclamation Bonds and any other costs related to surety bonds, banking agreements, letters of credit, or other financial commitment related to providing financial security or assurance for the TMPA's mine remediation responsibilities, shall be assessed to each Participating Public Entity in the manner provided in Section 2.6.1.1. From and after September 2, 2018, charges for recoupment of such costs as are included in the Annual Budget for the Mining Business category, including any debt service on any Mine Reclamation Bonds and any other costs related to surety bonds, banking agreements, letters of credit, or other financial commitment related to providing financial security or assurance for the TMPA's mine remediation responsibilities, shall be assessed to each Participating Public Entity according to the following percentages: Bryan - 21.7%; Denton - 21.3%; Garland - 47%, Greenville - 10%, and billed to each Participating Public Entity on a monthly basis, unless a different schedule of charges shall be adopted by the unanimous approval of all of the Participating Public Entities in the Mining Business category. In the event a Participating Public Entity exits the Mining Business as permitted under Section 2.11.1, it shall remain responsible for the same percentage share of costs incurred after its exit as set forth above, such that the same percentages shall apply to each exited and remaining Participating Public Entity for any costs of the Mining Business category until all Mining Assets are sold.”

**Section 7.** There is added to the JOA Section 3.2.4, to read as follows:

“3.2.4. SALE OF MINING ASSETS PRIOR TO COMPLETION OF MINE RECLAMATION. Prior to completion of mine reclamation, the TMPA Board may approve leases and license agreements of Mining Assets, including the lease of minerals that are Mining Assets, and may approve the sale of real property interests in Mining Assets provided such sales, in each case, do not exceed \$250,000, or, in the case of multiple sales, \$500,000 in a fiscal year. Such sales of real property interests in Mining Assets shall not be less than the fair market value of such assets as reasonably determined by TMPA. The net funds received from the sale of any mining assets under this section shall be applied for the purposes and in the priority stated in Section 3.2.3.”

**Section 8.** Subsection 4.4.1(6) of the JOA is amended to read as follows:

“(6) Transfers prior to final disposition. Notwithstanding Section 4.4.1(2), nothing herein shall prohibit a sale of a Transmission Asset or portion thereof on a piecemeal basis to a Participating Public Entity or a third party provided that the sale is approved by a Super Majority Vote of the TMPA Board, the sale is not less than the net book value of the asset being sold, and

the sale does not contravene any bond covenants of any outstanding Debt associated with the asset, including any Transmission Debt. Approval of each Participating Public Entity shall be required if the net book value of the asset to be sold exceeds \$250,000 or in the case of multiple sales, the net book value of the assets sold in a fiscal year in the aggregate exceeds \$500,000. In the event that any Transmission Asset, or portion thereof, is sold to a Participating Public Entity pursuant to this section after the Effective Date of this Agreement, but prior to the transfer of ownership of Transmission Assets described in Paragraph (3) above, the following shall occur in the process in subsection (3)(iii) above: (i) the asset sold shall be removed from Schedule C and from the Total Transmission Asset Dollar Value and (ii) the asset sold shall be removed from any geographical assignment to any Participating Public Entity. Additionally, the net funds received from any such sale shall be applied to the purposes and in the priority stated in Section 4.6.

Nothing herein shall prohibit a transfer of a transmission capital project or portion thereof to a Participating Public Entity pursuant to the TMPA Transmission Asset Ownership Policy. In the event that a transmission capital project, or portion thereof, is transferred to a Participating Public Entity pursuant to such policy after the Effective Date of this Agreement, but prior to the transfer of ownership of Transmission Assets described in Paragraph (3) above, and such transmission capital project, or portion thereof, is associated with a rebuild, reconstruction, or replacement of an existing TMPA Transmission Asset the following shall occur in the process in subsection (3)(iii) above: (i) the net book value of the existing asset at the date of transfer of the capital project shall be included in the Total Transmission Asset Dollar Value and (ii) the net book value of the existing asset at the date of transfer of the capital project of that asset shall be attributed to the receiving Participating Public Entity for purposes of determining the value of the Transmission Assets initially geographically-assigned to the receiving Participating Public Entity.”

**Section 9.** There is added to the JOA Section 5.1.3. to read as follows:

“5.1.3 ELECTION TO EXTEND FOR SEASONAL OR OTHER TERM-LIMITED OPERATION. In the event one or more Participating Public Entities that have elected to extend their Power Sales Contracts beyond September 1, 2018 provide written notice to TMPA that they intend to purchase one hundred percent (100%) of the output of the plant at any time after September 1, 2018, for the purpose of providing for seasonal operation of the plant, or for some other operational schedule as ERCOT may require or request, or for some schedule that such Participating Public Entities may deem advisable, the Power Sales Contracts will be extended as to those Participating Public Entities, but only for the duration of time specified in such notice, and a twenty-four month notice of termination of the Power Sales Contract shall not be required. The notice to TMPA shall state that the extension of the Power Sales Contract is being made pursuant to this Section. The terms of Section 5.2 shall apply to any extension under this Section 5.1.3.”

**Section 10.** OTHER AGREEMENTS.

(a) All other terms and conditions of the Joint Operating Agreement shall remain in full force and effect except as modified herein.

(b) Except for Section 1 which shall survive termination, this Amendment shall terminate on the same date the Joint Operating Agreement terminates.

(c) Each Party warrants that all necessary actions have been taken to make this a binding amendment, including TMPA Board or city council action, as applicable.

(d) This Amendment may be executed in multiple counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument. This Amendment may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment No. 2 to Joint Operating Agreement, to be effective upon the Effective Date as set forth in the Recitals.

**TEXAS MUNICIPAL POWER AGENCY**

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

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

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

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

Attest: \_\_\_\_\_

Approved as to form: \_\_\_\_\_

Counsel for Texas Municipal Power Agency

**CITY OF BRYAN, TEXAS**

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

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

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

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

Attest: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Counsel for the City of Bryan, Texas

**CITY OF DENTON, TEXAS**

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

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

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

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

Attest: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
Counsel for the City of Denton, Texas

**CITY OF GARLAND, TEXAS**

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

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

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

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

Attest: \_\_\_\_\_

**CITY OF GREENVILLE, TEXAS**

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

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

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

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

Attest: \_\_\_\_\_

GEUS, acting on behalf of the City of Greenville pursuant to its Charter

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

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

Title: Chair of the Board of Trustees of the Electric Utility Board

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

Attest: \_\_\_\_\_

## ATTACHMENT B



SERVING THE CITIES OF BRYAN, DENTON, GARLAND & GREENVILLE

July 17, 2017

City of Bryan, Texas  
300 S. Texas Avenue  
Bryan, Texas 77803-3937  
Attention: General Manager

City of Garland, Texas  
200 N 5<sup>th</sup> Street  
Garland, Texas 75040  
Attention: City Manager

City of Denton, Texas  
215 E. McKinney St.  
Denton, Texas 76201-4229  
Attention: City Manager

City of Greenville, Texas  
2821 Washington St.  
Greenville, Texas 75401  
Attention: City Manager

Re: Notice of intent of Texas Municipal Power Agency to issue Transmission Debt

Ladies and Gentlemen:

This letter constitutes notice to the each of the addressed Cities pursuant to Section 2.6.2.5. of the Joint Operating Agreement (the “JOA”) by and between and among Texas Municipal Power Agency (the “Agency”) and the cities of Bryan, Denton, Garland, and Greenville, that the Agency intends to incur Transmission Debt not sooner than 60 days from the date of this letter.

In accordance with our previous briefings to the Planning and Operations Committee and the Board of Directors of the Agency (the “Board”), the finance plan and the principal terms on which the Transmission Debt that is planned to be issued is substantially as follows:

The Agency will issue refunding bonds in an aggregate amount not to exceed \$100 million (the “2017 Refunding Bonds”). The proceeds of the 2017 Refunding Bonds will be used to refund all of the Agency’s outstanding Series 2005 Commercial Paper Notes, thereby ending that commercial paper program, and to pay the costs of issuance of the 2017 Refunding Bonds. The 2017 Refunding Bonds will mature not later than September 1, 2047 and will bear interest at a rate not exceeding 7% per annum. In accordance with the JOA, the 2017 Refunding Bonds will not be issued unless the resolution authorizing the 2017 Refunding Bonds is approved by a Super Majority Vote (as defined in the JOA) of the Board. The 2017 Refunding Bonds will be issued as converting security

obligations (similar to the Agency's Subordinate Lien Revenue/Transmission Revenue Converting Security Refunding Bonds Series 2010), and therefore will be secured in a manner provided for in the definition of Transmission Debt in the JOA and the Power Sales Contract Between Texas Municipal Power Agency and City of Bryan, Texas, City of Denton Texas, City of Garland, Texas and City of Greenville, Texas, dated September 1, 1976, as amended (the "PSC"); consequently, the issuance of the 2017 Refunding Bonds as Transmission Debt will not extend the term of the PSC. The issuance of the 2017 Refunding Bonds may require the incurrence of related costs and obligations associated with surety bonds, insurance policies, banking agreements, letters of credit, or other financial commitments relating to the issuance, security and sale of the 2017 Refunding Bonds.

To replace the Agency's existing Series 2005 commercial paper program, the Agency will create a new program of revolving commercial paper or other notes in an aggregate amount not to be outstanding at any time in excess of \$75 million (the "2017 Notes"). The proceeds of the 2017 Notes will be used for the purpose of refinancing commercial paper or other revolving notes that are issued for Transmission System (as defined in the JOA) purposes and/or providing a financing source for Transmission System facilities and operations. The program for the issuance of the 2017 Notes will provide that no obligation issued or incurred thereunder will mature later than September 1, 2047 and that no obligation issued under such program will bear interest at a rate that exceeds the maximum interest rate permitted by State law. In accordance with the JOA, the 2017 Notes will not be authorized for issuance unless the resolution approving the 2017 Notes is passed by a Super Majority Vote (as defined in the JOA) of the Board. The 2017 Notes will be issued as converting security obligations (similar, although possibly subordinate, to the Agency's Subordinate Lien Revenue/Transmission Revenue Converting Security Refunding Bonds Series 2010) and therefore will be secured in a manner provided for in the definition of Transmission Debt in the JOA and the PSC; consequently, the issuance of the 2017 Notes as Transmission Debt will not extend the term of the PSC. The issuance of the 2017 Notes may require the incurrence of related costs and obligations associated with surety bonds, insurance policies, banking agreements, letters of credit, or other financial commitments relating to the issuance, security and sale of the 2017 Notes.

Please let me know if you have any questions. Thank you for your attention to this matter.

Sincerely,

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Texas Municipal Power Agency  
Bob Kahn, General Manager

cc.

General Manager  
Bryan, Texas Utilities  
205 E. 28<sup>th</sup> Street  
Bryan, Texas 77803

General Manager  
Denton Municipal Electric  
1659 Spencer Road  
Denton, Texas 76205

General Manager and CEO  
Garland Power & Light  
217 N. 5<sup>th</sup> Street  
Garland, Texas 75040

Deputy General Manager and COO  
Garland Power & Light  
217 N. 5<sup>th</sup> Street  
Garland, Texas 75040

General Manager  
GEUS  
6000 Joe Ramsey Blvd.  
Greenville, Texas 75402