



“Bond Counsel” - McCall, Parkhurst & Horton L.L.P., or such other firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the County.

“Business Day” - Any day which is not a Saturday, Sunday, legal holiday, or a day on which banking institutions in the State or in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close.

“Note” - The “El Paso County, Texas Tax Note, Series 2023C” shall mean and include collectively the Note initially issued and delivered pursuant to this Order and all substitute Notes exchanged therefor, as well as all other substitute Notes and replacement Notes issued pursuant hereto, and the term “Note” shall mean any such Note.

“Commissioners Court” - The governing body of the County.

“Code” - The Internal Revenue Code of 1986, and any amendments thereto.

“County” - El Paso County, Texas, a political subdivision of the State.

“Date of Delivery” - The date the Note are initially delivered to the Purchaser in exchange for the purchase price therefor.

“Order” - This Order and all amendments hereof and supplements hereto.

“Paying Agent/Registrar” - The bank, trust company, financial institution or other entity so named in accordance with the provisions of Section 4 of this Order.

“Purchaser” - The initial purchaser of the Note designated in Section 16.

“Project” – Shall have the meaning set forth in the preambles hereof.

“Holder” - The registered holder of the Note from time to time as shown in the books kept by the Paying Agent/Registrar as the registrar and transfer agent for the Note.

“State” - The State of Texas.

**SECTION 2. RECITALS, AMOUNT AND PURPOSE OF THE NOTE.** The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section. The Note is hereby authorized to be issued and delivered in the principal amount of [\$6,545,000] FOR THE PURPOSE OF PAYING ALL OR A PORTION OF THE COUNTY’S CONTRACTUAL OBLIGATIONS INCURRED WITH RESPECT TO THE ACQUISITION AND CONSTRUCTION OF THE PROJECT.

**SECTION 3. DESIGNATION, DATE, NUMBER, AND MATURITY OF NOTE.** Each Note issued pursuant to this Order shall be designated: “EL PASO COUNTY, TEXAS TAX NOTE, SERIES 2023C,” and there shall be issued, sold, and delivered hereunder one fully registered Note, without interest coupons, dated June 15, 2023, numbered R-1, with notes issued

in replacement thereof being in the denominations and principal amounts hereinafter stated and numbered consecutively from R-2 upward, payable to the Holder thereof (with the initial note being made payable to the Purchaser as described in Section 16 hereof), or to the registered assignee or assignees of said note (in each case, the "Holder"), and said note shall finally mature on February 15, 2030, but shall be payable in annual installments in each of the years and in the principal amounts, respectively, and shall bear interest from the dates set forth in the FORM OF NOTE set forth in Section 5 of this Order to their respective dates of payment at the rate per annum of [4.62]%, calculated on the basis of a 360-day year composed of twelve 30-day months, as set forth in the following schedule:

<u>Payment Date</u>	<u>Principal Amount</u>
February 15, 2026	\$1,200,000
February 15, 2027	1,300,000
February 15, 2028	1,340,000
February 15, 2029	1,350,000
February 15, 2030	1,355,000

**SECTION 4. CHARACTERISTICS OF THE NOTE.**

(a) Registration, Transfer, Conversion and Exchange; Authentication. In accordance with Section 1203.021 of the Texas Government Code, the County shall serve as its own Paying Agent/Registrar for the Note, and the County Auditor (who is the official who has the powers and duties of the county treasurer) is hereby appointed as the initial Paying Agent/Registrar for all such Note on behalf of the County. The County shall keep or cause to be kept at office of Paying Agent/Registrar books or records for the registration of the transfer, conversion and exchange of the Note (the "Registration Books"), and the County hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers, conversions and exchanges under such reasonable regulations as the County and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations, transfers, conversions and exchanges as herein provided. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the Holder of the Note to which payments with respect to the Note shall be mailed, as herein provided; but it shall be the duty of the Holder to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The County shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. Registration of assignments, transfers, conversions and exchanges of the Note shall be made in the manner provided and with the effect stated in the FORM OF NOTE set forth in this Order. Each substitute Note shall bear a letter and/or number to distinguish it from each other Note.

Except as provided in Section 4(c) hereof, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Note, date and manually sign said Note, and no such Note shall be deemed to be issued or outstanding unless such Note is so executed. The Paying Agent/Registrar promptly shall cancel a Note surrendered for transfer or the Note when paid in full. No additional Orders, orders or resolutions need be passed or adopted by the

governing body of the County or any other body or person so as to accomplish the foregoing transfer of any Note, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Note in the manner prescribed herein. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of transfer of the Note as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Note, said Note shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Note which initially was issued and delivered pursuant to this Order, approved by the Attorney General of the State (the "Attorney General"), and registered by the Comptroller of Public Accounts of the State (the "Comptroller").

(b) Payment of Principal and Interest. The County hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Note, all as provided in this Order. The Paying Agent/Registrar shall keep proper records of all payments made by the County and the Paying Agent/Registrar with respect to the Note and shall properly and accurately record all payments on the Note on the Registration Books, and shall keep proper records of all transfers of the Note, and all replacements of the Note, as provided in this Order. However, in the event of a 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 County. 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 the Holder appearing on the Registration Books at the close of business on the last business day next preceding the date of mailing of such notice.

(c) In General. The Note (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Note to be payable only to the Holder thereof, (ii) may and shall be redeemed prior to its scheduled maturity, (iii) may be transferred and assigned, (iv) shall have the characteristics, (v) shall be signed, sealed, executed and authenticated, (vi) the principal of and interest on the Note shall be payable, and (vii) shall be administered and the Paying Agent/Registrar and the County shall have certain duties and responsibilities with respect to the Note, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF NOTE set forth in this Order. The Note initially issued and delivered pursuant to this Order is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Note issued in exchange for said Note the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF NOTE.

(d) Substitute Paying Agent/Registrar. The County covenants with the Holder of the Note that at all times while the Note remains outstanding the County will provide a competent and legally qualified bank, trust company, financial institution or other agency to act as and perform the services of Paying Agent/Registrar for the Note under this Order, and that the Paying Agent/Registrar will be a single entity. The County reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 40 days written notice to the Holder, to be effective not later than 30 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the County covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial

institution, or other agency to act as Paying Agent/Registrar under this Order. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Note, to the new Paying Agent/Registrar designated and appointed by the County. Upon any change in the Paying Agent/Registrar, the County promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to the Holder of the Note, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Order, and a certified copy of this Order shall be delivered to each Paying Agent/Registrar.

(e) Closing. On the closing date, the initial Note numbered R-1, representing the entire principal amount of this series of Notes, payable in stated principal amounts to the order of the Purchaser of the Note or its designee, executed by manual or facsimile signature of the County Judge and County Clerk of the County, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be electronically delivered to such Purchaser or its designee.

**SECTION 5. FORM OF NOTE.** The form of the Note, including the form of Paying Agent/Registrar’s Authentication Certificate, the form of Assignment and the form of Comptroller’s Registration Certificate to be attached to the Note initially issued and delivered pursuant to this Order, shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Order.

(a) FORM OF NOTE

NO. R-1	UNITED STATES OF AMERICA STATE OF TEXAS EL PASO COUNTY, TEXAS TAX NOTE SERIES 2023C	PRINCIPAL AMOUNT [\$6,545,000]
DATE OF DELIVERY:	July 20, 2023	
MATURITY DATE:	February 15, 2030	
HOLDER:	ZMFU II, Inc.	
PRINCIPAL AMOUNT:	[SIX MILLION FIVE HUNDRED FORTY FIVE THOUSAND DOLLARS]	
INTEREST RATE:	[4.62]%	

The County of El Paso, Texas (the “County”), being a political subdivision of the State of Texas, for value received, promises to pay, from the sources described herein, to the registered holder specified above, or registered assigns (in each case, the “Holder”), the principal amount specified above, and to pay interest thereon at the rate per annum specified above, on the basis of a 360-day year comprised of twelve 30-day months, from the date of delivery set forth above, on

the balance of said principal amount from time to time remaining unpaid. The principal of and interest on this Note is payable in lawful money of the United States of America, without exchange or collection charges. The County shall pay interest on this Note on February 15, 2024 and on each August 15 and February 15 thereafter to the date of the final maturity hereof.

The unpaid principal of this note shall mature on February 15, 2030, but shall be paid in installments on the payment dates and in the amounts set forth in the table below:

<u>Payment Date</u>	<u>Principal Amount</u>
February 15, 2026	\$1,200,000
February 15, 2027	1,300,000
February 15, 2028	1,340,000
February 15, 2029	1,350,000
February 15, 2030	1,355,000

The principal of this Note shall be paid to the Holder hereof at the office in El Paso, Texas of the County Auditor of El Paso County, Texas, which is the “Paying Agent/Registrar” for this Note. The payment of interest on this Note shall be made by the Paying Agent/Registrar to the Holder hereof on each interest payment date by check or draft, dated as of such interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the County required by the Note Order (as defined below) to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest payment date, to the Holder hereof, at its address as it appeared at the close of business on the last business day of the month next preceding each such date (the “Record Date”) on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, principal and interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder.

Any accrued interest due in connection with the payment of the final installment of principal of this Note shall be paid to the Holder at maturity at the designated corporate trust office of the Paying Agent/Registrar. The County covenants with the Holder of this Note that on or before each principal payment date, interest payment date, and accrued interest payment date for this Note it will make available to the Paying Agent/Registrar, from the “Interest and Sinking Fund” created by the Order authorizing the issuance of the Note (the “Note Order”), the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Note, when due.

If the date for the payment of this Note shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the designated corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, 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 close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Note is one of a series of Note dated as of June 15, 2023 and is authorized in accordance with the Constitution and laws of the State of Texas in the aggregate principal amount

of [\$6,545,000] for the purpose of paying all or a portion of the County's contractual obligations incurred with respect to the acquisition and construction of the Project (as defined in the Note Order).

On any date, the unpaid principal of this Note is subject to redemption, in whole or in part, and may be redeemed prior to the scheduled maturity date by the County, at a redemption price equal to the principal amount thereof to be redeemed plus accrued interest thereon to the date of redemption, without premium. The County shall give written notice of its direction to redeem the principal amount of this Note to the Holder of this Note by United States mail, first class postage prepaid, no later than 30 days prior to the Redemption Date.

This Note is issuable solely as a single fully registered Note, without interest coupons in the denomination of the principal amount set forth above or the remaining principal amount of the this Note if an exchange of a Note is made after a reduction in the principal amount (the "Authorized Denomination"). As provided in the Note Order, this Note may, at the request of the Holder or the assignee or assignees hereof, be assigned and transferred for a like aggregate principal amount Note, without interest coupons, payable to the appropriate Holder, assignee or assignees, as the case may be, in the Authorized Denomination, upon surrender of this Note to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Note Order. Among other requirements for such assignment and transfer, this Note must be presented in electronic form to the Paying Agent/Registrar, together with the proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Note to the assignee this Note is to be registered. The form of Assignment printed or endorsed on this Note may be executed by the Holder to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Note from time to time by the Holder. In the case of the assignment and transfer of this Note, the reasonable standard or customary fees and charges of the Paying Agent/Registrar will be paid by the County. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment and transfer, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following Payment Date.

In the event any Paying Agent/Registrar for this Note is changed by the County, resigns, or otherwise ceases to act as such, the County has covenanted in the Note Order that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Holder of this Note.

It is hereby certified, recited, and covenanted that this Note has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance and delivery of this Note has been performed, existed, and been done in accordance with law; that this Note is a general obligation of said County, issued on the full faith and credit thereof; and that annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Note, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in said County, and have been pledged for such payment, within the limit prescribed by law, all as provided in the Note Order.



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(Please print or typewrite name and address,  
including zip code, of Transferee)

\_\_\_\_\_ the  
within Note and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_, attorney, to register the transfer of the  
within Note on the books kept for registration thereof, with full power of substitution in the  
premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

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NOTICE: Signature(s) must be guaranteed  
by an eligible guarantor institution  
participating in a securities transfer  
association recognized signature guarantee  
program.

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NOTICE: The signature above must  
correspond with the name of the holder as it  
appears upon the front of this Note in every  
particular, without alteration or enlargement  
or any change whatsoever.

(d) FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE:

COMPTROLLER'S REGISTRATION CERTIFICATE

OFFICE OF THE COMPTROLLER §  
OF PUBLIC ACCOUNTS §  
OF THE STATE OF TEXAS §

REGISTER NO. \_\_\_\_\_

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 that this Note has been registered by the  
Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this \_\_\_\_\_.

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Comptroller of Public Accounts  
of the State of Texas

**SECTION 6. TAX LEVY.** A special "Interest and Sinking Fund" is hereby created and  
shall be established and maintained by the County at an official depository bank of the County.  
Said Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts  
of the County, and shall be used only for paying the interest on and principal of the Note. All

amounts received from the sale of the Note as accrued interest and ad valorem taxes levied and collected for and on account of the Note shall be deposited, as collected, to the credit of said Interest and Sinking Fund. During each year while the Note remains outstanding and unpaid, the governing body of the County shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the money required to pay the interest on the Note as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Note as such principal matures (but never less than 2% of the original amount of the Note as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the County, with full allowances being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the County, for each year while the Note is outstanding and unpaid, and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Note, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

**SECTION 7. REMEDIES OF HOLDER.** In addition to all rights and remedies of any Holder of the Note provided by the laws of the State, the County and the Commissioners Court of the County covenant and agree that in the event the County defaults in the payments of the principal of or interest on the Note when due, or fails to make the payments required by this Order, the Holder of the Note shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the Commissioners Court and other officers of the County to observe and perform any covenant, obligation or condition prescribed in this Order. No delay or omission by any Holder to exercise any right or power accruing to him upon default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right or power may be exercised from time to time and as often as may be deemed expedient. The specific remedies mentioned in this Order shall be available to the Holder of the Note and shall be cumulative of all other existing remedies.

**SECTION 8. USE OF NOTE PROCEEDS.** The proceeds of the issuance of the Note shall be deposited in the Construction Fund created by Section 18 of this Order and used for the purposes for which the Note are hereby authorized to be issued.

**SECTION 9. INVESTMENTS.** The Commissioners Court may place proceeds of the Note (including investment earnings thereon) and amounts deposited into the Interest and Sinking Fund in investments authorized by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended; provided, however, that the County hereby covenants that the proceeds of the sale of the Note will be used as soon as practicable for the purposes for which the Note is issued.

**SECTION 10. SECURITY FOR FUNDS.** All deposits authorized or required by this Order shall be secured to the fullest extent required by law for the security of public funds.

## **SECTION 11. COUNTY OFFICER'S DUTIES.**

(a) The County Judge, County Clerk, Deputy County Clerk, and County Auditor of the County are hereby instructed and directed to do any and all things necessary in reference to the issuance of the Notes and to make money available for the payment of the Note in the manner provided by law and this Order.

(b) The County Judge and the County Clerk or any Deputy County Clerk are authorized to execute the certificate to which this Order is attached on behalf of the County and to do any and all things proper and necessary to carry out the intent hereof.

## **SECTION 12. DEFEASANCE OF THE NOTE.**

(a) The Note and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Note") within the meaning of this Order, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Note, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the County with the Paying Agent/Registrar for the payment of its services until the Defeased Note shall have become due and payable. At such time as the Note shall be deemed to be a Defeased Note hereunder, as aforesaid, such Note and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem tax herein levied and pledged as provided in this Order, and such principal and interest shall be payable solely from such money or Defeasance Securities. Notwithstanding any other provision of this Order to the contrary, it is hereby provided that any determination not to redeem the Defeased Note that is made in conjunction with the payment arrangements specified in subsection (a)(i) or (ii) of this Section shall not be irrevocable, provided that: (1) in the proceedings providing for such payment arrangements, the County expressly reserves the right to call the Defeased Note for redemption; (2) gives notice of the reservation of that right to the Holder of the Defeased Note immediately following the making of the payment arrangements; and (3) directs that notice of the reservation be included in any redemption notices that it authorizes.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the County also be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Note and interest thereon, with respect to which such money has been so deposited, shall be turned over to the County, or deposited as directed in writing by the County. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of the Defeased Note may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection 13(a)(i) or (ii) of this Section. All income from such

Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Note, with respect to which such money has been so deposited, shall be remitted to the County or deposited as directed in writing by the County.

(c) The term “Defeasance Securities” means any securities and obligations now or hereafter authorized by State law that are eligible to discharge obligations such as the Note.

(d) Until the Defeased Note shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for such Defeased Note the same as if it had not been defeased, and the County shall make proper arrangements to provide and pay for such services as required by this Order.

### **SECTION 13. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED NOTE.**

(a) Replacement Note. In the event the Note is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new Note of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Note, in replacement for such Note in the manner hereinafter provided.

(b) Application for Replacement Note. Application for replacement of damaged, mutilated, lost, stolen, or destroyed Note shall be made by the Holder thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of the Note, the Holder applying for a replacement Note shall furnish to the County and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of the Note, the Holder shall furnish to the County and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Note, as the case may be. In every case of damage or mutilation of the Note, the Holder shall surrender to the Paying Agent/Registrar for cancellation the previous Note so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event the Note shall have matured, and no default has occurred which is then continuing in the payment of the principal of or interest on the Note, the County may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Note) instead of issuing a replacement Note, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Note. Prior to the issuance of a replacement Note, the Paying Agent/Registrar shall charge the Holder of such Note with all legal, printing, and other expenses in connection therewith. Every replacement Note issued pursuant to the provisions of this Section by virtue of the fact that the Note is lost, stolen, or destroyed shall constitute a contractual obligation of the County whether or not the lost, stolen, or destroyed Note shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Order.

(e) Authority for Issuing Replacement Note. In accordance with Subchapter B, Chapter 1206, Texas Government Code, this Section shall constitute authority for the issuance of

any such replacement Note without necessity of further action by the governing body of the County or any other body or person, and the duty of the replacement of such Note is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Note in the form and manner and with the effect, as provided in Section 4(a) of this Order for Note issued in exchange for another Note.

**SECTION 14. CUSTODY, APPROVAL, AND REGISTRATION OF NOTE; BOND COUNSEL'S OPINION.**

(a) The County Auditor of the County is hereby authorized to have control of the initial Note issued and delivered hereunder and all necessary records and proceedings pertaining to the Note pending its delivery and its investigation, examination, and approval by the Attorney General, and its registration by the Comptroller. Upon registration of the Note said Comptroller (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Note, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Note. The approving legal opinion of the County's bond counsel may, at the option of the County, be printed on the Note issued and delivered under this Order, but shall not have any legal effect, and shall be solely for the convenience and information of the Holder of the Note.

**SECTION 15. NOT A QUALIFIED TAX-EXEMPT OBLIGATION.** The Note shall not constitute a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

**SECTION 16. SALE OF NOTE.** The Note is hereby sold and shall be delivered to ZMFU II, Inc. (the "Purchaser") for cash for the par value thereof, pursuant to the Purchase Agreement dated the date of the adoption of this Order. The Note shall initially be registered in the name of the Purchaser. It is hereby officially found, determined, and declared that the terms of this sale are the most advantageous reasonably obtainable.

**SECTION 17. INVESTMENT EARNINGS ON NOTE PROCEEDS.** Investment earnings derived from the investment of proceeds from the sale of the Note shall be used along with other Note proceeds for the purpose for which the Note are issued set forth in Section 2 hereof; provided that after completion of such purpose, if any of such investment earnings remain on hand, such investment earnings shall be deposited in the Interest and Sinking Fund. It is further provided, however, that any investment earnings on Note proceeds which are required to be rebated to the United States of America pursuant to Section 15 hereof in order to prevent the Note from being arbitrage bonds shall be so rebated and not considered as investment earnings for the purposes of this Section.

**SECTION 18. CONSTRUCTION FUND.** The County hereby creates and establishes and shall maintain on the books of the County a separate fund to be entitled the "Series 2023C Tax Note Construction Fund" for use by the County for payment of all lawful costs associated with the acquisition and construction of the Project as hereinbefore provided. Upon payment of all such costs, any moneys remaining on deposit in said Fund shall be transferred to the Interest and Sinking Fund. Amounts so deposited to the Interest and Sinking Fund shall be used in the manner described in Section 6 of this Order.

**SECTION 19. NO RULE 15c2-12 UNDERTAKING.** The County has not made an undertaking in accordance with Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”) due the offering of the Note not being within the purview of the Rule. The County is not, therefore, obligated pursuant to the Rule to provide any on-going disclosure relating to the County or the Note; provided, however, that in consideration of the purchase of the Note by the Purchaser, for so long as the initial Purchaser is the holder of the Holder, the County shall provide to the Purchaser the County’s annual audited financial statements within 270 days following the end of each fiscal year of the County.

**SECTION 20. METHOD OF AMENDMENT.** The County hereby reserves the right to amend this Order subject to the following terms and conditions, to-wit:

(a) The County may from time to time, without the consent of the Holder, except as otherwise required by paragraph (b) below, amend or supplement this Order to (i) cure any ambiguity, defect or omission in this Order that does not materially adversely affect the interests of the Holder, (ii) grant additional rights or security for the benefit of the Holder, (iii) add events of default as shall not be inconsistent with the provisions of this Order and that shall not materially adversely affect the interests of the Holder, (v) qualify this Order under the Trust Indenture Act of 1939, as amended, or corresponding provisions of federal laws from time to time in effect, or (iv) make such other provisions in regard to matters or questions arising under this Order as shall not be materially inconsistent with the provisions of this Order and that shall not, in the opinion of nationally-recognized bond counsel, materially adversely affect the interests of the Holder.

(b) Except as provided in paragraph (a) above, the Holder shall have the right from time to time to approve any amendment hereto that may be deemed necessary or desirable by the County; provided, however, that without the consent of the Holder, nothing herein contained shall permit or be construed to permit amendment of the terms and conditions of this Order or the Notes so as to:

- (1) Make any change in the maturity of the Note;
- (2) Reduce the rate of interest borne by the Note;
- (3) Reduce the amount of the principal of, or redemption premium, if any, payable on any Note;
- (4) Modify the terms of payment of principal or of interest on the Note or impose any condition with respect to such payment; or
- (5) Change the requirement of with respect to Holder consent to such amendment.

(c) If at any time the County shall desire to amend this Order under this Section, the County shall send by U.S. mail to the Holder of the Note a copy of the proposed amendment.

(d) Whenever at any time within one year from the date of mailing of such notice the County shall receive an instrument or instruments executed by the Holder, which instrument or

instruments shall refer to the proposed amendment and which shall specifically consent to and approve such amendment, the County may adopt the amendment in substantially the same form.

(e) Upon the adoption of any amendatory Order pursuant to the provisions of this Section, this Order shall be deemed to be modified and amended in accordance with such amendatory Order, and the respective rights, duties, and obligations of the County and the Holder of the Notes shall thereafter be determined, exercised, and enforced, subject in all respects to such amendment.

(f) Any consent given by the Holder of the Note pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of such consent and shall be conclusive and binding upon all future Holder of the Note during such period. Such consent may be revoked at any time after six months from the date of said consent by the Holder who gave such consent, or by a successor in title, by filing notice with the County.

For the purposes of establishing ownership of the Note, the County shall rely solely upon the registration of the ownership of such Note on the Registration Books kept by the Paying Agent/Registrar.

#### **SECTION 21. FURTHER PROCEDURES.**

(a) The County Judge, County Clerk, any Deputy County Clerk, County Auditor and Chief Administrator of the County and all other officers, employees and agents of the County, and each of them, shall be and they 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 under the corporate seal and on behalf of the County a Paying Agent/Registrar Agreement with a Paying Agent/Registrar, if any, a Signature Identification, No-Litigation and General Certificate, any certificates required by the Purchase Agreement, a Placement Agent Agreement – Municipal Issuers with Hilltop Securities Inc. in connection with the Note, and all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Order, the Note and the sale of the Note. In case any officer whose signature shall appear on the Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

**SECTION 22. GOVERNING LAW.** This Order shall be construed and enforced in accordance with the laws of the State and the United States of America.

**SECTION 23. SEVERABILITY.** If any provision of this Order or the application thereof to any circumstance shall be held to be invalid, the remainder of this Order and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Order would have been enacted without such invalid provision.

**SECTION 24. CONTINUED PERFECTION OF SECURITY INTEREST.** Chapter 1208, Texas Government Code, applies to the issuance of the Note and the pledge of the ad valorem taxes granted by the County under Section 6 of this Order, and such pledge is therefore valid, effective, and perfected. If State law is amended at any time while the Note remains outstanding and unpaid such that the pledge of the taxes granted by the County under Section 6 of

this Order is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Holder of the Note the perfection of the security interest in said pledge, the County agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, Texas Business and Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

**SECTION 25. APPROPRIATION.** To pay the debt service coming due on the Note prior to receipt of the taxes, if any, levied to pay such debt service, there is hereby appropriated from current funds on hand, which are hereby certified to be on hand and available for such purpose, an amount sufficient to pay such debt service, and such amount shall be used for no other purpose.

**SECTION 26. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE NOTE.**

(a) Covenants. The County covenants to take any action necessary to assure, or refrain from any action that would adversely affect, the treatment of the Note as an obligation described in section 103 of the Internal Revenue Code of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the County covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Note (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 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the County, 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 10 percent of the debt service on the Note, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Note or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" that is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount that is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Note (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;

(4) to refrain from taking any action that would otherwise result in the Note being treated as a "private activity bond" within the meaning of section 141(b) of the Code;

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

(6) to refrain from using any portion of the proceeds of the Note, directly or indirectly, to acquire or to replace funds that were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) that produces a materially higher yield over the term of the Note, other than investment property acquired with –

(A) proceeds of the Note invested for a reasonable temporary period of 3 years or less, or, in the case of refunding bonds, for a period of 90 days or less, until such proceeds are needed for the purpose for which the Notes or refunding bonds are issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the rules and regulations of the United States Department of the Treasury (“Treasury Regulations”), and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Note;

(7) to otherwise restrict the use of the proceeds of the Note or amounts treated as proceeds of the Note, as may be necessary, so that the Note does not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

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

(9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Note) an amount that is at least equal to 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 60 days after the Notes have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and

(10) to assure that the proceeds of the Note will be used solely for new money projects.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (a)(9), a "Rebate Fund" is hereby established by the County 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 Holder of the Note. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Use of Proceeds. For purposes of the foregoing covenants (a)(1) and (a)(2), the County understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Note. It is the understanding of the County 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 that modify or expand provisions of the Code, as applicable to the Note, the County will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Note under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated that impose additional requirements applicable to the Note, the County agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Note under section 103 of the Code. In furtherance of such intention, the County hereby authorizes and directs the County Judge, County Clerk, County Auditor, and Chief Administrator of the County to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the County, that may be permitted by the Code as are consistent with the purpose for the issuance of the Note.

(d) Allocation of, and Limitation on, Expenditures for the Project. The County covenants to account for the expenditure of sale proceeds and investment earnings to be used for the construction and acquisition of the Project on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Project is completed. The foregoing notwithstanding, the County shall not expend proceeds of the sale of the Note or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Note, or (2) the date the Note is retired, unless the County obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the status, for federal income tax purposes, of the Note or the interest thereon. For purposes hereof, the County shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Disposition of Project. The County covenants that the Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the County of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Note. For purpose of the foregoing, the County may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Note. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the County shall not be obligated to comply with this covenant if it obtains a legal opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

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