

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: El Paso Water Utilities Public Service Board

AGENDA DATE: Introduction and Public Hearing- August 3, 2021

CONTACT PERSON/PHONE: Art Duran, El Paso Water Utilities Chief Financial Officer
(915) 594-5549

DISTRICT(S) AFFECTED: All Districts

SUBJECT: APPROVE the following Ordinance

An Ordinance amending the Ordinance authorizing the issuance of the “City of El Paso, Texas Water and Sewer Commercial Paper Notes, Series A”; Approving and authorizing the execution of an Amendment to an existing Credit Agreement and other related Agreements with respect to such notes; and resolving other matters incident and related thereto. **(All Districts)** [Arturo Duran (915) 594-5549] [Public Hearing Date: August 3, 2021]

BACKGROUND / DISCUSSION:

EPWater is requesting the City Council of the City of El Paso to authorize the issuance of up to \$80 million of “City of El Paso Water and Sewer Commercial Paper Notes, Series A” by Ordinance dated August 3, 2021, and approve the execution of an amendment to an existing Credit Agreement with Bank of America, N.A. and related Agreements.

EPWater finds that it is in the best interest of the ratepayers to pursue this financing.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes, on July 28, 2015, City Council approved Ordinance No. 18395 which authorized the execution of a Credit Agreement with Bank of America, N.A. and related agreements with respect to the City of El Paso Water and Sewer commercial paper notes Series A and amending the original ordinance authorizing the issuance of commercial paper notes.

AMOUNT AND SOURCE OF FUNDING:

City of El Paso, Texas Water and Sewer Commercial Paper Notes, Series A

BOARD / COMMISSION ACTION:

The El Paso Water Utilities Public Service Board approved a Resolution on July 14, 2021 authorizing the amendment to the Credit Agreement with Bank of America, N.A. and related Agreements and requesting the El Paso City Council to authorize the amendment of the Credit Agreement and related Agreements and the increase of the Commitment to allow for the issuance of up to \$80 million of Notes.

AFTER EXECUTION OF ALL DOCUMENTS, PLEASE CONTACT ART DURAN TO PICK UP THE DOCUMENTS AT (915) 594-5549. THANK YOU.

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE ORDINANCE AUTHORIZING THE ISSUANCE OF CITY OF EL PASO, TEXAS, WATER AND SEWER COMMERCIAL PAPER NOTES, SERIES A; APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO AN EXISTING CREDIT AGREEMENT AND OTHER RELATED AGREEMENTS WITH RESPECT TO SUCH NOTES; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

WHEREAS, on October 14, 1997, the City Council of the City of El Paso, Texas (the "City"), duly adopted Ordinance No. 13349, as amended by Ordinance No. 017069 adopted on February 3, 2009 and Ordinance No. 18395 adopted on July 28, 2015 (collectively, the "Authorizing Ordinance") authorizing the issuance of "City of El Paso, Texas, Water and Sewer System Commercial Paper Notes, Series A" (the "Notes"); and

WHEREAS, the Notes are a useful tool to allow for cost-effective, short-term financing of capital infrastructure for the City's combined waterworks and sewer system (the "System"); and

WHEREAS, the El Paso Water Utilities Public Service Board (the "PSB") which is charged with the complete management and control of the System, among other responsibilities, has determined that the on-going capital needs of the System require additional access to short-term financing through an increase in the maximum amount of Notes which can be issued through the commercial paper program; and

WHEREAS, such an increase in the commercial paper program requires an amendment to the Authorizing Ordinance and corresponding changes to agreements related to the Note program, including the credit agreement which supports the offering and remarketing of the Notes; and

WHEREAS, the Authorizing Ordinance requires that a credit agreement be in place to support the offering and remarketing of the Notes and the existing credit agreement supporting the Notes is scheduled to expire; and

WHEREAS, based on a public solicitation of banks which provide credit agreements for programs comparable to the Notes, the PSB has determined that it is in the best interests of the City and the System to extend the existing credit agreement with Bank of America, N.A. (the "Bank"); and

WHEREAS, the PSB has recommended and requested that the City authorize and approve (i) an increase in the Note program, (ii) an amendment and extension of the existing credit agreement with the Bank and (iii) the other agreements and documents, all as described herein; and

WHEREAS, in accordance with the Authorizing Ordinance, the City hereby finds and determines that certain changes to the Authorizing Ordinance, as set forth herein, are necessary and desirable and do not materially adversely affect the interests of the Holders of the Notes; and

WHEREAS, the City Council hereby finds and determines that it is in the best interests of the City to increase the Note program and enter into an amendment to the existing credit agreement and the other agreements and documents, all as described herein, and authorize the other action set forth below;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Authorizing Ordinance.

Section 2. Amending Provisions. (a) The following definition is added to Section 2.01 of the Authorizing Ordinance:

“Authorizing Ordinance” shall mean, collectively, Ordinance No. 13349 which was duly adopted on October 14, 1997 by the City Council of the City authorizing the issuance of “City of El Paso, Texas, Water and Sewer System Commercial Paper Notes, Series A,” as amended by Ordinance No. 017069 adopted on February 3, 2009, Ordinance No. 18395 adopted on July 28, 2015 and Ordinance No. _____ adopted on August 3, 2021.

(b) Section 3.01 of Ordinance No. 13349, and Section 3 of Ordinance 18395, of the Authorizing Ordinance are hereby amended by replacing such sections with the following:

Section 3. Authorization of the Notes and Pledge.

(a) Pursuant to authority conferred by and in accordance with the provisions of the Constitution and laws of the State of Texas, particularly the Act, Commercial Paper Notes shall be and are hereby authorized to be issued in an aggregate principal amount not to exceed **EIGHTY MILLION DOLLARS (\$80,000,000)** at any one time outstanding for the purpose of financing Project Costs of Eligible Projects and to refinance, renew or refund Notes, including interest thereon, all in accordance with and subject to the terms, conditions, and limitations contained herein and in the Authorizing Ordinance; and a Loan Note shall be and is hereby authorized to be issued in the initial aggregate principal amount of up to **EIGHTY MILLION DOLLARS (\$80,000,000)** at any one time outstanding for the purpose of evidencing the obligation to pay principal and interest on the Agreement and the Commercial Paper Notes; all in accordance with and subject to the terms, conditions and limitations contained herein and in the Authorizing Ordinance. The authority to issue Commercial Paper Notes from time to time under the provisions of the Authorizing Ordinance shall exist until the Maximum Maturity Date, regardless of whether prior to the Maximum Maturity Date there are at any time no Commercial Paper Notes outstanding.

(b) The Notes and the Loan Note are special obligations of the City payable from and secured solely by the funds pledged therefor pursuant to the Authorizing Ordinance. The

City agrees to make payments into the Note Payment Fund at such times and in such amounts as are necessary to provide for the full payment of the principal of and the interest on the Notes and the Loan Note when due.

(c) Section 5.01 of Ordinance No. 13349 of the Authorizing Ordinance is hereby amended by replacing “\$50,000,000” with “\$80,000,000.”

Section 3. Credit Agreement Amendment. (a) The Second Amendment to Revolving Credit Agreement (the “Credit Agreement Amendment”), substantially in the form attached hereto as Exhibit A, is hereby approved, and shall be entered into with the Bank. The form of the Loan Note substantially in the form contained in the Credit Agreement Amendment is approved with the interest rate payable thereon to be determined as set forth therein. Each Authorized Representative is hereby authorized to act on behalf of the City to approve all final changes to, and execute and deliver, the Credit Agreement Amendment and the Loan Note, and the City Clerk is hereby authorized to attest thereto and affix the City’s seal thereon (as required by such agreements). Each Authorized Representative is hereby further authorized to enter into any supplemental agreements, amendments, extensions or modifications with the Bank on behalf of the City or with any successor thereto or substitute thereof in order to implement and continue the functions of the Bank with respect to the Notes.

(b) The Credit Agreement Amendment shall not be effective until (i) it is executed by both parties, (ii) approved by the Attorney General of the State of Texas pursuant to Chapter 1371 of the Texas Government Code, (iii) a copy of the Credit Agreement Amendment is delivered to the Issuing and Paying Agent and the Dealer, and (iv) the conditions precedent to the effectiveness of the Commitment as set forth in Section 2 of the Credit Agreement Amendment have been satisfied or waived.

Section 4. Fee Letter Amendment. The Second Amendment to Fee Letter (the “Fee Letter Amendment”), substantially in the form attached hereto as Exhibit B, is hereby approved, and shall be entered into with the Bank. Each Authorized Representative is hereby authorized to act on behalf of the City to approve all final changes to, and execute and deliver, the Fee Letter Amendment.

Section 5. Dealer. Merrill Lynch Pierce, Fenner & Smith Incorporated (the “Dealer”) is hereby confirmed to act as the commercial paper dealer for the Notes. To the extent necessary or desirable to reflect the increase in the authorized amount of the Notes and other changes to the Note program authorized by this Ordinance, an amendment to the existing commercial paper dealer agreement is hereby approved in a form approved by an Authorized Representative, such approval to be evidenced by the Authorized Representative’s execution thereof. Each Authorized Representative is hereby authorized to sign any such amendment on behalf of the City and to enter into any supplemental agreements with the Dealer on behalf of the City or with any successor thereto or substitute thereof in order to implement the functions of the Dealer or remarketing agent with respect to the Notes.

Section 6. Issuing and Paying Agent. The Bank of New York Mellon Trust Company, N.A. is hereby confirmed as Issuing and Paying Agent/Registrar (“IPA”) for the Notes. To the extent necessary or desirable to reflect the increase in the authorized amount of

the Notes and other changes to the Note program authorized by this Ordinance, an amendment to the existing issuing and paying agency agreement with the IPA is hereby approved in a form approved by an Authorized Representative, such approval to be evidenced by the Authorized Representative's execution thereof. Each Authorized Representative is hereby authorized to sign any such amendment on behalf of the City and to enter into any supplemental agreements with the IPA on behalf of the City or with any successor thereto or substitute thereof in order to implement the functions of the IPA with respect to the Notes.

Section 7. Offering Memorandum. Each Authorized Representative is hereby authorized to act on behalf of the City to approve the form of the Offering Memorandum associated with the Notes, or any amendment, restatement or supplement thereto, as reasonably requested by the Dealer in connection with this Ordinance or the Credit Agreement Amendment, and is further authorized to cooperate with the Dealer on behalf of the City in periodically updating and approving the Offering Memorandum.

Section 8. Commitment Limits Notes. No Commercial Paper Notes will be issued if, after giving effect to the issuance thereof and, if applicable, the immediate application of the proceeds thereof to retire other outstanding Commercial Paper Notes, the aggregate principal amount of all then outstanding Notes plus the aggregate principal amount of all then outstanding Loans under the Credit Agreement Amendment exceeds the amount of the then current Commitment under the Credit Agreement Amendment and/or any other Alternate Credit Facility.

Section 9. Authorizing Ordinance Affirmed; Public Security Authorization. Nothing in this Ordinance affects or modifies any of the provisions of the Authorizing Ordinance, except as expressly provided herein. The Authorizing Ordinance, as amended by this Ordinance, will continue in full force and effect and is ratified and affirmed by the City. The forms of Note and Certificate of Authentication set forth in Exhibit A to Ordinance No. 18395 of the Authorizing Ordinance and the form of Mater Note set forth in Exhibit F to Ordinance No. 18395 of the Authorizing Ordinance are hereby ratified and confirmed. This Ordinance constitutes a "public security authorization" within the meaning of Section 1201.028 of the Texas Government Code.

Section 10. Public Meeting. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by the Texas Government Code, Chapter 551, as amended.

Section 11. Further Procedures. Each Authorized Representative, the City Clerk, the Alternate City Clerk, the City Manager of the City, and all other officers, employees and agents of the City and/or the System, 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 seal of the City and on behalf of the City all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the Credit Agreement Amendment. In addition, prior to the approval of the Credit Agreement Amendment by the Texas Attorney General, each Authorized Representative and the City's bond counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and

approved by this Ordinance in order to cure any technical ambiguity, formal defect, or omission in this Ordinance or such other document, as requested by the Attorney General or his representative to obtain the approval of the Credit Agreement Amendment by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of this Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 12. Effective Date. This Ordinance shall be in full force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page left blank intentionally]

PASSED AND ADOPTED, this 3rd day of August, 2021.

CITY OF EL PASO, TEXAS

Oscar Leeser, Mayor


ATTEST:

Laura D. Prine, City Clerk


(City Seal)

APPROVED AS TO FORM:

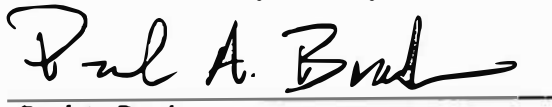
APPROVED AS TO CONTENT:



Juan S. Gonzalez
Senior Assistant City Attorney



Arturo Duran
Chief Financial Officer
El Paso Water Utilities



Paul A. Braden
Bond Counsel

EXHIBIT A

CREDIT AGREEMENT AMENDMENT

(See Attached)

SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT

This SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT (this "*Amendment*") is dated August [], 2021 (the "*Amendment Date*"), between CITY OF EL PASO, TEXAS (the "*City*") and BANK OF AMERICA, N.A., a national banking association (the "*Lender*"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the City and the Lender have previously entered into that certain Revolving Credit Agreement dated as of August 1, 2015, as amended to date (as may be further amended, supplemented, modified or restated from time to time the "*Agreement*");

WHEREAS, pursuant to Section 7.06 of the Agreement, the Agreement may be amended by a written amendment thereto executed by the City and the Lender; and

WHEREAS, the City and the Lender have agreed to make certain amendments to the Agreement subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

I. AMENDMENTS.

Upon the satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement shall be amended as follows:

1.01. The third recital of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

Subject to the terms and conditions of this Agreement, the City has requested that the Lender support the commercial paper program by making available a revolving line of credit in the amount of the Commitment (as hereinafter defined) and the Lender is willing to make available a revolving line of credit subject to the terms and conditions of this Agreement.

1.02. Section 1.01 of the Agreement is hereby amended by amending and restating the definitions of "*Commitment*," "*Dealer Agreement*," "*Final Date*" and "*Loan Note*" in their entireties to read as follows:

"Commitment" shall mean \$40,000,000, as such amount may be reduced pursuant to Section 2.06 hereof or as may be

increased with the Lender's approval pursuant to the terms of Section 2.15 hereof.

"Dealer Agreement" shall mean the Dealer Agreement (one or more), dated as of August 20, 2015, between the City and the Dealer, approved and authorized to be entered into by the Ordinance, as from time to time amended or supplemented in accordance with the terms hereof and thereof.

"Final Date" shall mean the earlier of:

(a) August 21, 2026, or such later date as may be established pursuant to Section 2.10 of this Agreement; and

(b) The date the Commitment is reduced to zero pursuant to Section 2.06 or terminated pursuant to Section 6.01 of this Agreement.

"Loan Note" shall mean the promissory note evidencing Loans made by the Lender to the City, as amended, in a principal amount not to exceed \$80,000,000, in substantially the form of Exhibit C attached hereto, with appropriate completions, and any and all renewals, extensions, or modifications thereof

1.03. Section 1.01 of the Agreement is hereby amended by the addition of the new defined terms *"Increase," "Increase Request Certificate,"* and *"Increase Request Fee"* to be inserted in their appropriate places in the alphabetical sequence and to read as follows:

"Increase" has the meaning set forth in Section 2.15(a) hereof.

"Increase Request Certificate" has the meaning set forth in Section 2.15(d) hereof.

"Increase Request Fee" has the meaning set forth in Section 1.6 of the Fee Letter.

1.04. Article II of the Agreement is hereby amended by the addition of a new Section 2.15 thereto to read as follows:

Section 2.15. Increase in Commitment.

(a) *Request for Increase.* Provided there exists no Default or Event of Default, upon notice to the Lender, the City may from time to time, request an increase in the Commitment by an amount that will not cause the Commitment to exceed \$80,000,000

(an "Increase"); provided that (i) any such request for an Increase shall be in a minimum amount of \$10,000,000, and (ii) the City may make a maximum of two (2) such requests per calendar year; provided further, however, that the City may make additional requests per calendar year so long as it pays the Bank the Increase Request Fee in connection with each such request.

(b) *Lender Election to Increase.* The Lender shall notify the City within thirty (30) days whether or not it agrees to increase the Commitment. If the Lender does not respond within such time period, the Lender shall be deemed to have declined to increase the Commitment.

(c) *Effective Date.* If the Lender agrees to increase the Commitment in accordance with this Section, the Lender and the City shall determine the effective date (the "Commitment Increase Effective Date") of such increase. The increase shall become effective on the Commitment Increase Effective Date when the Lender delivers its consent to such increase by countersigning the applicable Increase Request Certificate (as hereinafter defined).

(d) *Conditions to Effectiveness of Increase.* As a condition precedent to such increase, the City shall deliver to the Lender a certificate of the City dated as of the applicable Commitment Increase Effective Date signed by an Authorized Representative substantially in the form attached hereto as Exhibit I (each an "Increase Request Certificate") (i) certifying and attaching the resolutions adopted by the PSB approving or consenting to such Increase, and (ii) certifying that, before and after giving effect to such Increase, (A) the representations and warranties contained in Article IV and the other Related Documents are true and correct, on and as of the Commitment Increase Effective Date, and except that for purposes of this Section, the representations and warranties contained in Section 4.08 shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 5.01, and (B) no Default or Event of Default exists. The City shall deliver or cause to be delivered any other customary documents (including, without limitation, legal opinions) as reasonably requested by the Lender in connection with any Increase.

1.05. Article V of the Agreement is hereby amended by adding thereto a new Section 5.35 to appear in the appropriate numerical sequence and to read as follows:

Section 5.35. Maintenance of Ratings; CUSIP and Loan Note Rating.

(a) The City shall at all times (i) maintain, or cause to be maintained, a short-term credit rating on the Commercial Paper Notes by any one of Fitch, Moody's or S&P and (ii) maintain, or cause to be maintained, long-term credit ratings on unenhanced Senior Lien Bonds from any two of Moody's, Fitch or S&P.

(b) Upon the request of the Lender, the City shall immediately use its best efforts to cause (i) a CUSIP number to be obtained from Standard & Poor's CUSIP Service for the Loan Note and (ii) the Loan Note (and its related CUSIP Number) to be assigned a long term rating of at least "Baa3" or "BBB-," respectively, from one of Moody's or Fitch.

1.06. Section 7.12 of the Agreement is hereby amended by adding thereto a new clause (c) to appear in the appropriate alphabetical sequence and to read as follows:

(c) *Assignments to Federal Reserve.* Notwithstanding anything herein to the contrary set forth in this Section 7.12, the Lender may at any time assign, pledge or grant a security interest in all or any portion of its rights, interests and obligations owing to it under the Commercial Paper Notes, this Agreement and/or the Related Documents to secure obligations of the Lender or an Affiliate of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided*, that any payment in respect of such assigned obligations made by the City to the Lender in accordance with the terms of this Agreement shall satisfy the obligations of the City hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Lender from its obligations hereunder. Any assignment under this clause (c) shall not require the consent of the City.

1.07. Article VII of the Agreement is hereby amended by adding thereto a new Section 7.20 to appear in the appropriate numerical sequence and to read as follows:

Section 7.20. Electronic Execution of Assignments and Certain Other Documents. This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "*Communication*"), including Communications required to be in writing, may, if agreed by the Lender, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The City agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any

Communication shall be valid and binding on the City to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Lender. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Lender of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("*Electronic Copy*"), which shall be deemed created in the ordinary course of the Lender's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Lender is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Lender pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Lender has agreed to accept such Electronic Signature, the Lender shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Lender any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, "*Electronic Record*" and "*Electronic Signature*" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

1.08. Article VII of the Agreement is hereby amended by adding thereto a new Section 7.21 to appear in the appropriate numerical sequence and to read as follows:

Section 7.21. Israel Boycott. The Lender hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas

Government Code, and to the extent such Section does not contravene or otherwise prohibit activities permitted under applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Lender understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Lender and exists to make a profit.

1.09. Article VII of the Agreement is hereby amended by adding thereto a new Section 7.22 to appear in the appropriate numerical sequence and to read as follows:

Section 7.22. Foreign Terrorist Organizations. The Lender represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or 2270.0201 of the Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/jfo-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Lender and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Lender understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Lender and exists to make a profit.

1.10. Article VII of the Agreement is hereby amended by the addition of a new Section 7.23 thereto to read as follows:

Section 7.23. US QFC Stay Rules.

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a

proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"*Default Right*" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"*Insolvency Proceeding*" means a receivership, insolvency, liquidation, resolution, or similar proceeding.

"*U.S. Special Resolution Regime*" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

1.11. The Agreement is hereby amended by adding thereto a new Exhibit I to appear in the appropriate sequence and in the form set forth in Exhibit B attached hereto.

1.12. The Agreement is hereby amended by replacing Exhibit C to the Agreement with Exhibit C attached hereto.

2. CONDITIONS PRECEDENT.

This Amendment shall be effective as of the Amendment Date subject to the satisfaction of or waiver by the Lender of all of the following conditions precedent:

2.01. Delivery by the City and the Lender of an executed counterpart of this Amendment and the Second Amendment to Fee Letter dated the date hereof (the "*Fee Letter Amendment*").

2.02. Delivery by the City to the Lender of:

(a) an authorizing resolution and other required approvals authorizing this Amendment, the Fee Letter Amendment and the transactions contemplated hereby; and

(b) an incumbency certificate of the officers authorized to execute this Amendment and the Fee Letter Amendment.

2.03. Delivery by the City to the Lender of a Loan Note in the form set forth in Exhibit A attached hereto.

2.04. Payment by the City to the Lender of (i) an amendment fee of \$5,000 and (ii) the reasonable fees and expenses of counsel to the Lender as provided in Section 4 hereof.

2.05. Receipt of approval of the Attorney General of Texas relating to this Amendment.

2.06. All other legal matters pertaining to the execution and delivery of this Amendment shall be reasonably satisfactory to the Lender and its counsel.

3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

3.01. The City hereby represents and warrants that the following statements shall be true and correct as of the date hereof:

(a) the representations and warranties of the City contained in Article IV of the Agreement and in each of the other Related Documents are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date); and

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

3.02. In addition to the representations given in Article IV of the Agreement, the City hereby represents and warrants as follows:

(a) The execution, delivery and performance by the City of this Amendment, the Fee Letter Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the City.

(b) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Amendment, the Fee Letter Amendment or the Agreement, as amended hereby.

(c) This Amendment, the Fee Letter Amendment and the Agreement, as amended hereby, constitute legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of the bankruptcy, reorganization, insolvency, liquidation or similar situation of the City and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

4. FEES.

The City shall pay, promptly upon receipt of invoice, the reasonable fees and expenses of counsel to the Lender (such fees not to exceed \$30,000 plus reasonable expenses) in connection with the preparation of this Amendment and the Fee Letter Amendment and the transactions contemplated hereby. The reasonable fees and expenses of counsel to the Lender shall be paid

directly to the Lender's special counsel, Chapman and Cutler LLP, in accordance with instructions provided by Chapman and Cutler LLP.

5. MISCELLANEOUS.

Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITH RESPECT TO THE OBLIGATIONS OF THE LENDER UNDER THIS AMENDMENT, AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITH RESPECT TO THE OBLIGATIONS OF THE CITY UNDER THIS AMENDMENT.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile transmission or by e-mail with a pdf copy or other replicating image attached will be effective as delivery of a manually executed counterpart of this Amendment, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the Amendment Date.

CITY OF EL PASO, TEXAS

By: _____

Name: John E. Balliew
Title: President/CEO, El Paso Water
Utilities

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____

Daniel Ortiz
PSB General Counsel

By: _____

Arturo Duran, Chief Financial Officer,
El Paso Water Utilities

APPROVED AS TO FORM:

By: _____

Paul Braden, Bond Counsel

BANK OF AMERICA, N.A.

By: _____

Name: Michael A. Feist

Title: Senior Vice President

EXHIBIT C

FORM OF LOAN NOTE

**City of El Paso, Texas Water and Sewer System
Revolving Credit Agreement**

\$80,000,000

El Paso, Texas

[August __, 2021]

For value received, the CITY OF EL PASO, TEXAS (the "City"), a home-rule city of the State of Texas, organized and existing under and by virtue of the laws of the State of Texas, promises to pay, solely from the funds hereafter referred to, to the order of BANK OF AMERICA, N.A. (the "Lender"), at the address provided in the Agreement (hereinafter defined), the aggregate unpaid principal amount of all Loans hereunder and under the Agreement, not to exceed EIGHTY MILLION DOLLARS (\$80,000,000) in principal amount at any one time outstanding, made by the Lender to the City hereunder, in lawful money of the United States of America, in federal or other immediately available funds, and to pay interest at the rates set forth in the Agreement on the actual unpaid principal amount hereof for each day outstanding from the date hereof until this Loan Note is paid in full, in like money and funds at such office. Interest shall be payable on the dates set forth in the Agreement. Principal on this Loan Note shall be payable in accordance with the Agreement.

This Loan Note is subject to prepayment, and amounts prepaid prior to the last day of the Revolving Credit Period may be reborrowed, all pursuant to the terms and under the conditions of the Revolving Credit Agreement, dated as of August 1, 2015, as amended, between the City and the Lender (the "Agreement," the terms of which are hereby incorporated by reference in this Loan Note). All terms used herein and not defined shall have the same meaning as in the Agreement. Reference is made to the Agreement for provisions as to the prepayment hereof and for reborrowing. Reference is also made to the Agreement for provisions providing for additional interest and other amounts to be payable under certain circumstances. If the Holder enforces this Loan Note upon default, the City shall reimburse the Holder for reasonable costs and expenses incurred by the Holder in collection, including attorneys' fees and expenses as set out in Section 7.05 of the Agreement. This Loan Note shall be construed under and governed by laws of the State of Texas but Chapter 346, Texas, Finance Code, as amended, shall not apply.

This Loan Note, including the interest hereon, is payable solely from and secured by a lien upon the pledge of certain revenues and certain other available funds and money of the City, all as set forth in Section 2.09 of the Agreement and Section 3.09 of the Ordinance (as defined in the Agreement). This Loan Note does not constitute a general obligation or indebtedness of the City within the meaning of any constitutional, charter, or statutory limitations or provisions (and the Holder hereof shall never have the right to require or compel the levy of ad valorem taxes for the payment of the principal of and interest on this Loan Note). Further reference is made to the Agreement and the Ordinance for the provisions relating to the security of this Loan Note and the duties and obligations of the City.

This Loan Note is issued in substitution and replacement for, and evidences all of the indebtedness previously evidenced by, that certain Loan Note dated August 24, 2015, in the principal amount of \$40,000,000, made by the undersigned in favor of the Lender.

Made and executed at El Paso, Texas, as of the date and year first above written.

CITY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

ATTEST:
By: _____
Name: _____
Title: _____

(CITY SEAL)

EXHIBIT B

EXHIBIT I

FORM OF INCREASE REQUEST CERTIFICATE

Dated _____, 20__

To: **BANK OF AMERICA, N.A.**, under the Revolving Credit Agreement, dated as of August 1, 2015 between Bank of America, N.A., as the Lender and the City of El Paso, Texas (the "*City*") (as extended, renewed, amended, restated, supplemented or otherwise modified from time to time, the "*Agreement*")

Ladies and Gentlemen:

The City, acting herein by the undersigned Authorized Representative, hereby refers to the Agreement and has requested that the Lender consent to an increase in the Commitment (the "*Increase*"), in accordance with Section 2.15 of the Agreement. Capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Agreement.

After giving effect to such Increase, the Commitment shall be [\$_____].¹

THIS INCREASE REQUEST CERTIFICATE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITH RESPECT TO THE OBLIGATIONS OF THE LENDER UNDER THE AGREEMENT, AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITH RESPECT TO THE OBLIGATIONS OF THE CITY UNDER THE AGREEMENT.

The Increase shall be effective on the date hereof when the executed consent of the Lender is received and otherwise in accordance with Section 2.15 of the Agreement. It shall be a condition to the effectiveness of the Increase that, if applicable, the Increase Request Fee referred to in Section 2.15 of the Agreement shall have been paid.

The City, acting herein by the undersigned Authorized Representative, hereby (i) certifies and attaches hereto the resolutions adopted by the PSB approving or consenting to such Increase, and (ii) certifies that, before and after giving effect to such Increase, (A) the representations and warranties contained in Article IV of the Agreement and the other Related Documents are true and correct on and as of (the Commitment Increase Effective Date) and except that for purposes of this paragraph, the representations and warranties contained in Section 4.08 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 5.01 of the Agreement, and (B) no Default or Event of Default exists.

¹ In no event shall the Commitment exceed \$80,000,000.

[SIGNATURE PAGES TO FOLLOW]

Please indicate your consent to such Increase by signing the enclosed copy of this letter in the space provided below.

Very truly yours,

CITY OF EL PASO, TEXAS,

By: _____
Authorized Representative

The Lender hereby consents on the date first written above to the above-requested Increase.

BANK OF AMERICA, N.A., as Lender

By _____
Name; _____
Title: _____

EXHIBIT B
FEE LETTER AMENDMENT
(See Attached)

SECOND AMENDMENT TO FEE LETTER

This SECOND AMENDMENT TO FEE LETTER (this "*Amendment*") dated August [], 2021 (the "*Amendment Date*"), between the CITY OF EL PASO, TEXAS (the "*City*") and BANK OF AMERICA, N.A. (the "*Lender*"), relating to \$40,000,000 in aggregate principal amount outstanding at any time of the City of El Paso, Texas Water and Sewer Commercial Paper Notes, Series A (the "*Commercial Paper Notes*"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the City and the Lender have previously entered into that certain Fee Letter dated August 24, 2015, as amended to date (as may be further amended, supplemented, modified or restated from time to time, the "*Fee Letter*"), in connection with the Revolving Credit Agreement dated as of August 1, 2015, as amended to date (as may be further amended, supplemented, modified or restated from time to time, the "*Agreement*"), supporting the Commercial Paper Notes;

WHEREAS, the parties hereto wish to amend the Fee Letter as set forth herein;

WHEREAS, pursuant to Section 2.2 of the Fee Letter, the Fee Letter may be amended by an instrument in writing and signed by the Lender and the City;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENT.

Upon satisfaction of the conditions precedent set forth in Section 2 hereof, the Fee Letter shall be amended as follows:

1.01. Section 1.1 of the Fee Letter is hereby amended and restated in its entirety to read as follows:

Section 1.1. Commitment Fees. The City hereby agrees to pay to the Lender quarterly in arrears on the first Business Day of each January, April, July and October occurring thereafter to the Final Date, and on the Final Date, (each a "*Fee Payment Date*"), a non-refundable commitment fee in an amount equal to the rate per annum associated with the Rating (as defined below), as specified below for each day from and including the Closing Date (the "*Commitment Fee Rate*"), in each case, on the Commitment (without regard to any temporary reductions of the Commitment) (the "*Commitment Fees*") during each related period.

(i) For the period commencing on July 1, 2021, to but not including August 23, 2021, the Commitment Fee Rate for such period shall be determined in accordance with the pricing matrix set forth below:

PRICING LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1	Aa2 or above	AA or above	AA or above	0.34%
Level 2	Aa3	AA-	AA-	0.54%
Level 3	A1	A+	A+	0.74%
Level 4	A2	A	A	0.94%
Level 5	A3	A-	A-	1.24%
Level 6	Baa1	BBB+	BBB+	1.54%
Level 7	Baa2	BBB	BBB	2.04%
Level 8	Baa3 or Below	BBB- or Below	BBB- or below	4.00%

(ii) For the period commencing on August 23, 2021, and at all times thereafter, the Commitment Fee Rate for such period shall be determined in accordance with the pricing matrix set forth below:

PRICING LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1	Aa1 or above	AA+ or above	AA+ or above	0.39%
Level 2	Aa2	AA	AA	0.49%
Level 3	Aa3	AA-	AA-	0.59%
Level 4	A1	A+	A+	0.69%
Level 5	A2	A	A	0.89%
Level 6	A3	A-	A-	1.09%
Level 7	Baa1	BBB+	BBB+	1.39%
Level 8	Baa2	BBB	BBB	1.69%
Level 9	Baa3 or Below	BBB- or Below	BBB- or below	2.19%

The following paragraph shall be applicable to both clause (i) (including the pricing matrix) and clause (ii) (including the pricing matrix) above. The term "Rating" as used above shall mean the lowest long-term unenhanced debt ratings assigned by Moody's, Fitch or S&P (each, a "Rating Agency") to any of the City's Senior Lien Bonds. Any change in the Commitment Fee Rate resulting from a change in the Rating shall be and become effective as of and on the date of the announcement of the change in the Rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in

the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of the City's Senior Lien Bonds in connection with the adoption of a "global" rating scale, each of the ratings from the agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. In the event that any rating is suspended or withdrawn by any Rating Agency, the Commitment Fee Rate shall immediately increase by one and one-half percent (1.50%) from the Commitment Fee Rate otherwise in effect. Upon the occurrence and during the continuance of an Event of Default, the Commitment Fee Rate shall immediately increase by one and one-half of one percent (1.50%) from the Commitment Fee Rate otherwise in effect. The Commitment Fees shall be calculated on the basis of a year of 360 days and actual days elapsed and shall be payable as set forth above, together with interest on the Commitment Fees from the date payment is due until payment in full at the Default Rate. On the Final Date, all fees outstanding shall be paid to the Lender.

1.02. Section 1.4 of the Fee Letter is hereby amended and restated in its entirety to read as follows:

Section 1.4. Termination Fees. If the Commitment is terminated in its entirety prior to August 21, 2025, the City shall pay a termination fee (the "Termination Fee") in an amount equal to the product of (x) the Commitment Fee Rate in effect on the date of termination, (y) the Commitment on the Closing Date and (z) a fraction, the numerator of which is equal to the number of days from and including the date of termination to and including August 21, 2025, and the denominator of which is 360, *provided, however,* that no such Termination Fee shall be payable if (i) any two Rating Agencies shall lower the short-term unenhanced rating of the Lender below "P-1" (or its equivalent) by Moody's, "F1" (or its equivalent) by Fitch, or "A-1" (or its equivalent) by S&P or (ii) such termination occurs solely as a result of the Commercial Paper Notes being refinanced in whole with long-term debt of the City. The Termination Fee, all accrued Commitment Fees, all Loans, all accrued interest thereon and all other amounts owing to the Lender hereunder or under the Agreement shall be payable on the effective date of such termination.

1.03. Section 1.5 of the Fee Letter is hereby amended and restated in its entirety to read as follows:

Section 1.5. Reduction Fees. Notwithstanding the foregoing and anything set forth herein or in the Agreement to the contrary, the City agrees not to permanently reduce the Commitment below \$40,000,000 prior to August 21, 2025, without the payment by the City to the Lender of a reduction fee (the "*Reduction Fee*") in connection with each and every permanent reduction of the Commitment below \$40,000,000 as set forth in the Agreement in an amount equal to the product of (A) the Commitment Fee Rate in effect on the date of such reduction, (B) the difference between the Commitment prior to such reduction and the Commitment after such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including August 21, 2025, and the denominator of which is 360, *provided, however,* that no such Reduction Fee shall be payable if any two Rating Agencies shall lower the short-term unenhanced rating of the Lender below "*P-1*" (or its equivalent) by Moody's, "*F1*" (or its equivalent) by Fitch, or "*A-1*" (or its equivalent) by S&P or such termination occurs solely as a result of the Commercial Paper Notes being refinanced in whole with long-term debt of the City.

1.04. The Fee Letter is hereby amended by adding thereto a new Section 1.6 to appear in the appropriate numerical sequence and to read as follows:

Section 1.6. Increase Request Fees. Pursuant to Section 2.15 of the Agreement, the City will pay to the Lender an increase request fee (the "*Increase Request Fee*") of \$1,500 in connection with each additional request for an increase in the Commitment made during a calendar year, following the City's second increase request during such calendar year.

2. **CONDITIONS PRECEDENT.**

This Amendment shall be deemed effective on the Amendment Date subject to the satisfaction or waiver of the conditions precedent set forth in the Second Amendment to Revolving Credit Agreement dated the date hereof between the City and the Lender.

3. **MISCELLANEOUS.**

Except as specifically amended herein, the Fee Letter shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Fee Letter or any communication issued or made subsequent to or with respect to the Fee Letter, it being hereby agreed that any reference to the Fee Letter shall be sufficient to refer to the Fee Letter, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein

shall not in any way be affected or impaired hereby. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Fee Letter. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; *PROVIDED*, THAT THE OBLIGATIONS OF THE CITY UNDER THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, will be effective as delivery of a manually executed counterpart of this Amendment, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the Amendment Date.

CITY OF EL PASO, TEXAS

APPROVED AS TO CONTENT:

By: _____
Name: John E. Balliew
Title: President/CEO El Paso Water Utilities

By: _____
Name: Arturo Duran
Title: Chief Financial Officer, El Paso
Water Utilities

BANK OF AMERICA, N.A.

By: _____
Name: Michael A. Feist
Title: Senior Vice President

RESOLUTION

A RESOLUTION APPROVING AND AUTHORIZING A SECOND AMENDMENT TO AN EXISTING CREDIT AGREEMENT WITH BANK OF AMERICA, N.A. RELATING TO THE CITY OF EL PASO, TEXAS, WATER AND SEWER COMMERCIAL PAPER NOTES, SERIES A, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

WHEREAS, the City Council of the City of El Paso, Texas (the "City"), duly adopted Ordinance No. 13349 on October 14, 1997, Ordinance No. 017069 on February 3, 2009 and Ordinance No. 18395 on July 28, 2015 (collectively, the "Authorizing Ordinance") authorizing the issuance of "City of El Paso, Texas, Water and Sewer System Commercial Paper Notes, Series A" (the "Notes"); and

WHEREAS, the Notes are a useful tool to allow for cost-effective, short-term financing of capital infrastructure for the water and sewer system of the City (the "System") and the City wishes to continue the program; and

WHEREAS, the Authorizing Ordinance requires that a credit agreement be in place to support the offering and remarketing of the Notes and the existing credit agreement supporting the Notes is scheduled to expire; and

WHEREAS, the City and Bank of America, N.A. (the "Bank") have previously entered into a Revolving Credit Agreement dated as of August 1, 2015 relating to the Notes (the "Original Credit Agreement"); and

WHEREAS, on August 14, 2018, the City and the Bank signed the First Amendment to the Revolving Credit Agreement (the "First Amendment" and, together with the Original Credit Agreement, the "Credit Agreement") to make changes to the Original Credit Agreement; and

WHEREAS, in accordance with Section 7 of Ordinance No. 18395 of the Authorizing Ordinance, the City authorized certain designated officers of the El Paso Water Utilities to enter into any supplemental agreements, amendments, extensions or modifications with the Bank on behalf of the City in order to implement and continue the functions of the Bank with respect to the Notes; and

WHEREAS, based on a public solicitation of banks which provide credit agreements for programs comparable to the Notes, the Bank has agreed to extend the Credit Agreement for five additional years with an option to increase the Commitment (as defined in the Credit Agreement), from time to time, in a maximum aggregate amount not to exceed \$80,000,000, and the staff of the El Paso Water Utilities recommends that the current Credit Agreement be extended on such terms; and

WHEREAS, the El Paso Water Utilities Public Service Board (the "PSB") hereby finds and determines that it is in the best interests of the City and of the System to enter into an extension and amendment to the Credit Agreement and the other agreements and documents described herein and authorize the other action set forth below;

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE CITY OF EL PASO, TEXAS:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Authorizing Ordinance.

Section 2. City Approval. That the PSB hereby adopts this Resolution requesting the City Council of the City (the "City Council") to authorize the amendment of the Credit Agreement, and such other agreements and documents described herein, to extend the Credit Agreement and increase the Commitment to allow for the issuance of up to \$80,000,000 of Notes.

Section 3. Amendment to Credit Agreement. (a) The Second Amendment to the Revolving Credit Agreement, substantially in the form attached hereto as Exhibit A (the "Amendment"), is hereby approved, and shall be entered into with the Bank. Each Authorized Representative is hereby authorized to act on behalf of the City to approve all final changes to, and execute and deliver, the Amendment.

(b) A copy of the fully executed Amendment shall be provided to the Dealer (defined below) and the Issuing and Paying Agent/Registrar for the Notes.

Section 4. Amendment to Fee Letter. The Second Amendment to Fee Letter, substantially in the form attached hereto as Exhibit B (the "Fee Amendment") is hereby approved, and shall be entered into with the Bank. Each Authorized Representative is hereby authorized to act on behalf of the City to approve all final changes to, and execute and deliver, the Fee Amendment.

Section 5. Additional Amendments. Each Authorized Representative is authorized to negotiate any necessary amendments, modifications, supplements or restatements of the Dealer Agreement, the Amended and Restated Issuing and Paying Agency Agreement and any other necessary documents (collectively, the "Additional Amendments") so that the Amendment, along with all such Additional Amendments, can be forwarded to the City Council for approval and authorization. The final form of each Additional Amendment shall be attached to the authorizing ordinance finally adopted by City Council to approve the Amendment.

Section 6. Public Meeting. It is officially found, determined and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

Section 7. Further Procedures. Each Authorized Representative and all other officers, employees and agents of the System, 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 seal of the PSB or the City and on behalf of the PSB or the City all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution, the Amendment, the Fee Amendment and any Additional Amendment. In the event that any officer of the PSB or the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such

signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 8. Effective Date. This Resolution shall be in full force and effect from and after its passage on the date shown below and it is so ordained.

[Remainder of page left blank intentionally]

PASSED AND APPROVED, this July 14, 2021.

EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

Kristina D. Mora
CHAIR

ATTEST:

[Signature]
SECRETARY/TREASURER

APPROVED AS TO FORM:

[Signature]
for Daniel Ortiz
General Counsel

EXHIBIT A
AMENDMENT TO CREDIT AGREEMENT
(See Attached)

SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT

This SECOND AMENDMENT TO REVOLVING CREDIT AGREEMENT (this "*Amendment*") is dated August [], 2021 (the "*Amendment Date*"), between CITY OF EL PASO, TEXAS (the "*City*") and BANK OF AMERICA, N.A., a national banking association (the "*Lender*"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the City and the Lender have previously entered into that certain Revolving Credit Agreement dated as of August 1, 2015, as amended to date (as may be further amended, supplemented, modified or restated from time to time the "*Agreement*");

WHEREAS, pursuant to Section 7.06 of the Agreement, the Agreement may be amended by a written amendment thereto executed by the City and the Lender; and

WHEREAS, the City and the Lender have agreed to make certain amendments to the Agreement subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENTS.

Upon the satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement shall be amended as follows:

1.01. The third recital of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

Subject to the terms and conditions of this Agreement, the City has requested that the Lender support the commercial paper program by making available a revolving line of credit in the amount of the Commitment (as hereinafter defined) and the Lender is willing to make available a revolving line of credit subject to the terms and conditions of this Agreement.

1.02. Section 1.01 of the Agreement is hereby amended by amending and restating the definitions of "*Commitment*," "*Dealer Agreement*," "*Final Date*" and "*Loan Note*" in their entireties to read as follows:

"Commitment" shall mean \$40,000,000, as such amount may be reduced pursuant to Section 2.06 hereof or as may be

increased with the Lender's approval pursuant to the terms of Section 2.15 hereof.

"Dealer Agreement" shall mean the Dealer Agreement (one or more), dated as of August 20, 2015, between the City and the Dealer, approved and authorized to be entered into by the Ordinance, as from time to time amended or supplemented in accordance with the terms hereof and thereof.

"Final Date" shall mean the earlier of:

(a) August 21, 2026, or such later date as may be established pursuant to Section 2.10 of this Agreement; and

(b) The date the Commitment is reduced to zero pursuant to Section 2.06 or terminated pursuant to Section 6.01 of this Agreement.

"Loan Note" shall mean the promissory note evidencing Loans made by the Lender to the City, as amended, in a principal amount not to exceed \$80,000,000, in substantially the form of Exhibit C attached hereto, with appropriate completions, and any and all renewals, extensions, or modifications thereof

1.03. Section 1.01 of the Agreement is hereby amended by the addition of the new defined terms *"Increase," "Increase Request Certificate,"* and *"Increase Request Fee"* to be inserted in their appropriate places in the alphabetical sequence and to read as follows:

"Increase" has the meaning set forth in Section 2.15(a) hereof.

"Increase Request Certificate" has the meaning set forth in Section 2.15(d) hereof.

"Increase Request Fee" has the meaning set forth in Section 1.6 of the Fee Letter.

1.04. Article II of the Agreement is hereby amended by the addition of a new Section 2.15 thereto to read as follows:

Section 2.15. Increase in Commitment.

(a) *Request for Increase.* Provided there exists no Default or Event of Default, upon notice to the Lender, the City may from time to time, request an increase in the Commitment by an amount that will not cause the Commitment to exceed \$80,000,000

(an "Increase"); provided that (i) any such request for an Increase shall be in a minimum amount of \$10,000,000, and (ii) the City may make a maximum of two (2) such requests per calendar year; provided further, however, that the City may make additional requests per calendar year so long as it pays the Bank the Increase Request Fee in connection with each such request.

(b) *Lender Election to Increase.* The Lender shall notify the City within thirty (30) days whether or not it agrees to increase the Commitment. If the Lender does not respond within such time period, the Lender shall be deemed to have declined to increase the Commitment.

(c) *Effective Date.* If the Lender agrees to increase the Commitment in accordance with this Section, the Lender and the City shall determine the effective date (the "Commitment Increase Effective Date") of such increase. The increase shall become effective on the Commitment Increase Effective Date when the Lender delivers its consent to such increase by countersigning the applicable Increase Request Certificate (as hereinafter defined).

(d) *Conditions to Effectiveness of Increase.* As a condition precedent to such increase, the City shall deliver to the Lender a certificate of the City dated as of the applicable Commitment Increase Effective Date signed by an Authorized Representative substantially in the form attached hereto as Exhibit I (each an "Increase Request Certificate") (i) certifying and attaching the resolutions adopted by the PSB approving or consenting to such Increase, and (ii) certifying that, before and after giving effect to such Increase, (A) the representations and warranties contained in Article IV and the other Related Documents are true and correct, on and as of the Commitment Increase Effective Date, and except that for purposes of this Section, the representations and warranties contained in Section 4.08 shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 5.01, and (B) no Default or Event of Default exists. The City shall deliver or cause to be delivered any other customary documents (including, without limitation, legal opinions) as reasonably requested by the Lender in connection with any Increase.

1.05. Article V of the Agreement is hereby amended by adding thereto a new Section 5.35 to appear in the appropriate numerical sequence and to read as follows:

Section 5.35. Maintenance of Ratings; CUSIP and Loan Note Rating.

(a) The City shall at all times (i) maintain, or cause to be maintained, a short-term credit rating on the Commercial Paper Notes by any one of Fitch, Moody's or S&P and (ii) maintain, or cause to be maintained, long-term credit ratings on unenhanced Senior Lien Bonds from any two of Moody's, Fitch or S&P.

(b) Upon the request of the Lender, the City shall immediately use its best efforts to cause (i) a CUSIP number to be obtained from Standard & Poor's CUSIP Service for the Loan Note and (ii) the Loan Note (and its related CUSIP Number) to be assigned a long term rating of at least "Baa3" or "BBB-," respectively, from one of Moody's or Fitch.

1.06. Section 7.12 of the Agreement is hereby amended by adding thereto a new clause (c) to appear in the appropriate alphabetical sequence and to read as follows:

(c) *Assignments to Federal Reserve.* Notwithstanding anything herein to the contrary set forth in this Section 7.12, the Lender may at any time assign, pledge or grant a security interest in all or any portion of its rights, interests and obligations owing to it under the Commercial Paper Notes, this Agreement and/or the Related Documents to secure obligations of the Lender or an Affiliate of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided*, that any payment in respect of such assigned obligations made by the City to the Lender in accordance with the terms of this Agreement shall satisfy the obligations of the City hereunder in respect of such assigned obligation to the extent of such payment. No such assignment shall release the Lender from its obligations hereunder. Any assignment under this clause (c) shall not require the consent of the City.

1.07. Article VII of the Agreement is hereby amended by adding thereto a new Section 7.20 to appear in the appropriate numerical sequence and to read as follows:

Section 7.20. Electronic Execution of Assignments and Certain Other Documents. This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "Communication"), including Communications required to be in writing, may, if agreed by the Lender, be in the form of an Electronic Record and may be executed using Electronic Signatures, including, without limitation, facsimile and/or .pdf. The City agrees that any Electronic Signature (including, without limitation, facsimile or .pdf) on or associated with any

Communication shall be valid and binding on the City to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of the City enforceable against the City in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered to the Lender. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Lender of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Lender may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("*Electronic Copy*"), which shall be deemed created in the ordinary course of the Lender's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Lender is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Lender pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Lender has agreed to accept such Electronic Signature, the Lender shall be entitled to rely on any such Electronic Signature without further verification and (b) upon the request of the Lender any Electronic Signature shall be promptly followed by a manually executed, original counterpart. For purposes hereof, "*Electronic Record*" and "*Electronic Signature*" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

1.08. Article VII of the Agreement is hereby amended by adding thereto a new Section 7.21 to appear in the appropriate numerical sequence and to read as follows:

Section 7.21. Israel Boycott. The Lender hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas

Government Code, and to the extent such Section does not contravene or otherwise prohibit activities permitted under applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Lender understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Lender and exists to make a profit.

1.09. Article VII of the Agreement is hereby amended by adding thereto a new Section 7.22 to appear in the appropriate numerical sequence and to read as follows:

Section 7.22. Foreign Terrorist Organizations. The Lender represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or 2270.0201 of the Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

https://comptroller.texas.gov/purchasing/docs/iran_list.pdf, or

https://comptroller.texas.gov/purchasing/docs/jto_list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Lender and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Lender understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Lender and exists to make a profit.

1.10. Article VII of the Agreement is hereby amended by the addition of a new Section 7.23 thereto to read as follows:

Section 7.23. US QFC Stay Rules.

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a

proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

- (a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"*Default Right*" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"*Insolvency Proceeding*" means a receivership, insolvency, liquidation, resolution, or similar proceeding.

"*U.S. Special Resolution Regime*" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

1.11. The Agreement is hereby amended by adding thereto a new Exhibit I to appear in the appropriate sequence and in the form set forth in Exhibit B attached hereto.

1.12. The Agreement is hereby amended by replacing Exhibit C to the Agreement with Exhibit C attached hereto.

2. CONDITIONS PRECEDENT.

This Amendment shall be effective as of the Amendment Date subject to the satisfaction of or waiver by the Lender of all of the following conditions precedent:

2.01. Delivery by the City and the Lender of an executed counterpart of this Amendment and the Second Amendment to Fee Letter dated the date hereof (the "*Fee Letter Amendment*").

2.02. Delivery by the City to the Lender of:

(a) an authorizing resolution and other required approvals authorizing this Amendment, the Fee Letter Amendment and the transactions contemplated hereby; and

(b) an incumbency certificate of the officers authorized to execute this Amendment and the Fee Letter Amendment.

2.03. Delivery by the City to the Lender of a Loan Note in the form set forth in Exhibit A attached hereto.

2.04. Payment by the City to the Lender of (i) an amendment fee of \$5,000 and (ii) the reasonable fees and expenses of counsel to the Lender as provided in Section 4 hereof.

2.05. Receipt of approval of the Attorney General of Texas relating to this Amendment.

2.06. All other legal matters pertaining to the execution and delivery of this Amendment shall be reasonably satisfactory to the Lender and its counsel.

3. REPRESENTATIONS AND WARRANTIES OF THE CITY.

3.01. The City hereby represents and warrants that the following statements shall be true and correct as of the date hereof:

(a) the representations and warranties of the City contained in Article IV of the Agreement and in each of the other Related Documents are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date); and

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

3.02. In addition to the representations given in Article IV of the Agreement, the City hereby represents and warrants as follows:

(a) The execution, delivery and performance by the City of this Amendment, the Fee Letter Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the City.

(b) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the City of this Amendment, the Fee Letter Amendment or the Agreement, as amended hereby.

(c) This Amendment, the Fee Letter Amendment and the Agreement, as amended hereby, constitute legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, as the same may be applied in the event of the bankruptcy, reorganization, insolvency, liquidation or similar situation of the City and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

4. FEES.

The City shall pay, promptly upon receipt of invoice, the reasonable fees and expenses of counsel to the Lender (such fees not to exceed \$30,000 plus reasonable expenses) in connection with the preparation of this Amendment and the Fee Letter Amendment and the transactions contemplated hereby. The reasonable fees and expenses of counsel to the Lender shall be paid

directly to the Lender's special counsel, Chapman and Cutler LLP, in accordance with instructions provided by Chapman and Cutler LLP.

5. MISCELLANEOUS.

Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to, and shall mean and be a reference to, the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITH RESPECT TO THE OBLIGATIONS OF THE LENDER UNDER THIS AMENDMENT, AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITH RESPECT TO THE OBLIGATIONS OF THE CITY UNDER THIS AMENDMENT.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile transmission or by e-mail with a pdf copy or other replicating image attached will be effective as delivery of a manually executed counterpart of this Amendment, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the Amendment Date.

CITY OF EL PASO, TEXAS

By: _____

Name: John E. Balliew
Title: President/CEO, El Paso Water
Utilities

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____

Daniel Ortiz
PSB General Counsel

By: _____

Arturo Duran, Chief Financial Officer,
El Paso Water Utilities

APPROVED AS TO FORM:

By: _____

Paul Braden, Bond Counsel

BANK OF AMERICA, N.A.

By: _____

Name: Michael A. Feist

Title: Senior Vice President

EXHIBIT C

FORM OF LOAN NOTE

**City of El Paso, Texas Water and Sewer System
Revolving Credit Agreement**

\$80,000,000

El Paso, Texas

[August __, 2021]

For value received, the CITY OF EL PASO, TEXAS (the "City"), a home-rule city of the State of Texas, organized and existing under and by virtue of the laws of the State of Texas, promises to pay, solely from the funds hereafter referred to, to the order of BANK OF AMERICA, N.A. (the "Lender"), at the address provided in the Agreement (hereinafter defined), the aggregate unpaid principal amount of all Loans hereunder and under the Agreement, not to exceed EIGHTY MILLION DOLLARS (\$80,000,000) in principal amount at any one time outstanding, made by the Lender to the City hereunder, in lawful money of the United States of America, in federal or other immediately available funds, and to pay interest at the rates set forth in the Agreement on the actual unpaid principal amount hereof for each day outstanding from the date hereof until this Loan Note is paid in full, in like money and funds at such office. Interest shall be payable on the dates set forth in the Agreement. Principal on this Loan Note shall be payable in accordance with the Agreement.

This Loan Note is subject to prepayment, and amounts prepaid prior to the last day of the Revolving Credit Period may be reborrowed, all pursuant to the terms and under the conditions of the Revolving Credit Agreement, dated as of August 1, 2015, as amended, between the City and the Lender (the "Agreement," the terms of which are hereby incorporated by reference in this Loan Note). All terms used herein and not defined shall have the same meaning as in the Agreement. Reference is made to the Agreement for provisions as to the prepayment hereof and for reborrowing. Reference is also made to the Agreement for provisions providing for additional interest and other amounts to be payable under certain circumstances. If the Holder enforces this Loan Note upon default, the City shall reimburse the Holder for reasonable costs and expenses incurred by the Holder in collection, including attorneys' fees and expenses as set out in Section 7.05 of the Agreement. This Loan Note shall be construed under and governed by laws of the State of Texas but Chapter 346, Texas, Finance Code, as amended, shall not apply.

This Loan Note, including the interest hereon, is payable solely from and secured by a lien upon the pledge of certain revenues and certain other available funds and money of the City, all as set forth in Section 2.09 of the Agreement and Section 3.09 of the Ordinance (as defined in the Agreement). This Loan Note does not constitute a general obligation or indebtedness of the City within the meaning of any constitutional, charter, or statutory limitations or provisions (and the Holder hereof shall never have the right to require or compel the levy of ad valorem taxes for the payment of the principal of and interest on this Loan Note). Further reference is made to the Agreement and the Ordinance for the provisions relating to the security of this Loan Note and the duties and obligations of the City.

This Loan Note is issued in substitution and replacement for, and evidences all of the indebtedness previously evidenced by, that certain Loan Note dated August 24, 2015, in the principal amount of \$40,000,000, made by the undersigned in favor of the Lender.

Made and executed at El Paso, Texas, as of the date and year first above written.

CITY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

ATTEST:
By: _____
Name: _____
Title: _____

(CITY SEAL)

EXHIBIT B

EXHIBIT I

FORM OF INCREASE REQUEST CERTIFICATE

Dated _____, 20__

To: **BANK OF AMERICA, N.A.**, under the Revolving Credit Agreement, dated as of August 1, 2015 between Bank of America, N.A., as the Lender and the City of El Paso, Texas (the "*City*") (as extended, renewed, amended, restated, supplemented or otherwise modified from time to time, the "*Agreement*")

Ladies and Gentlemen:

The City, acting herein by the undersigned Authorized Representative, hereby refers to the Agreement and has requested that the Lender consent to an increase in the Commitment (the "*Increase*"), in accordance with Section 2.15 of the Agreement. Capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Agreement.

After giving effect to such Increase, the Commitment shall be [\$_____].¹

THIS INCREASE REQUEST CERTIFICATE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITH RESPECT TO THE OBLIGATIONS OF THE LENDER UNDER THE AGREEMENT, AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITH RESPECT TO THE OBLIGATIONS OF THE CITY UNDER THE AGREEMENT.

The Increase shall be effective on the date hereof when the executed consent of the Lender is received and otherwise in accordance with Section 2.15 of the Agreement. It shall be a condition to the effectiveness of the Increase that, if applicable, the Increase Request Fee referred to in Section 2.15 of the Agreement shall have been paid.

The City, acting herein by the undersigned Authorized Representative, hereby (i) certifies and attaches hereto the resolutions adopted by the PSB approving or consenting to such Increase, and (ii) certifies that, before and after giving effect to such Increase, (A) the representations and warranties contained in Article IV of the Agreement and the other Related Documents are true and correct on and as of (the Commitment Increase Effective Date) and except that for purposes of this paragraph, the representations and warranties contained in Section 4.08 of the Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 5.01 of the Agreement, and (B) no Default or Event of Default exists.

¹ In no event shall the Commitment exceed \$80,000,000.

[SIGNATURE PAGES TO FOLLOW]

Please indicate your consent to such Increase by signing the enclosed copy of this letter in the space provided below.

Very truly yours,

CITY OF EL PASO, TEXAS,

By: _____
Authorized Representative

The Lender hereby consents on the date first written above to the above-requested Increase.

BANK OF AMERICA, N.A., as Lender

By _____
Name; _____
Title: _____

EXHIBIT B
AMENDMENT TO FEE LETTER
(See Attached)

SECOND AMENDMENT TO FEE LETTER

This SECOND AMENDMENT TO FEE LETTER (this "*Amendment*") dated August [], 2021 (the "*Amendment Date*"), between the CITY OF EL PASO, TEXAS (the "*City*") and BANK OF AMERICA, N.A. (the "*Lender*"), relating to \$40,000,000 in aggregate principal amount outstanding at any time of the City of El Paso, Texas Water and Sewer Commercial Paper Notes, Series A (the "*Commercial Paper Notes*"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the hereinafter defined Agreement.

WITNESSETH

WHEREAS, the City and the Lender have previously entered into that certain Fee Letter dated August 24, 2015, as amended to date (as may be further amended, supplemented, modified or restated from time to time, the "*Fee Letter*"), in connection with the Revolving Credit Agreement dated as of August 1, 2015, as amended to date (as may be further amended, supplemented, modified or restated from time to time, the "*Agreement*"), supporting the Commercial Paper Notes;

WHEREAS, the parties hereto wish to amend the Fee Letter as set forth herein;

WHEREAS, pursuant to Section 2.2 of the Fee Letter, the Fee Letter may be amended by an instrument in writing and signed by the Lender and the City;

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENT.

Upon satisfaction of the conditions precedent set forth in Section 2 hereof, the Fee Letter shall be amended as follows:

1.01. Section 1.1 of the Fee Letter is hereby amended and restated in its entirety to read as follows:

Section 1.1. Commitment Fees. The City hereby agrees to pay to the Lender quarterly in arrears on the first Business Day of each January, April, July and October occurring thereafter to the Final Date, and on the Final Date, (each a "*Fee Payment Date*"), a non-refundable commitment fee in an amount equal to the rate per annum associated with the Rating (as defined below), as specified below for each day from and including the Closing Date (the "*Commitment Fee Rate*"), in each case, on the Commitment (without regard to any temporary reductions of the Commitment) (the "*Commitment Fees*") during each related period.

(i) For the period commencing on July 1, 2021, to but not including August 23, 2021, the Commitment Fee Rate for such period shall be determined in accordance with the pricing matrix set forth below:

PRICING LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1	Aa2 or above	AA or above	AA or above	0.34%
Level 2	Aa3	AA-	AA-	0.54%
Level 3	A1	A+	A+	0.74%
Level 4	A2	A	A	0.94%
Level 5	A3	A-	A-	1.24%
Level 6	Baa1	BBB+	BBB+	1.54%
Level 7	Baa2	BBB	BBB	2.04%
Level 8	Baa3 or Below	BBB- or Below	BBB- or below	4.00%

(ii) For the period commencing on August 23, 2021, and at all times thereafter, the Commitment Fee Rate for such period shall be determined in accordance with the pricing matrix set forth below:

PRICING LEVEL	MOODY'S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1	Aa1 or above	AA+ or above	AA+ or above	0.39%
Level 2	Aa2	AA	AA	0.49%
Level 3	Aa3	AA-	AA-	0.59%
Level 4	A1	A+	A+	0.69%
Level 5	A2	A	A	0.89%
Level 6	A3	A-	A-	1.09%
Level 7	Baa1	BBB+	BBB+	1.39%
Level 8	Baa2	BBB	BBB	1.69%
Level 9	Baa3 or Below	BBB- or Below	BBB- or below	2.19%

The following paragraph shall be applicable to both clause (i) (including the pricing matrix) and clause (ii) (including the pricing matrix) above. The term "Rating" as used above shall mean the lowest long-term unenhanced debt ratings assigned by Moody's, Fitch or S&P (each, a "Rating Agency") to any of the City's Senior Lien Bonds. Any change in the Commitment Fee Rate resulting from a change in the Rating shall be and become effective as of and on the date of the announcement of the change in the Rating. References to ratings above are references to rating categories as presently determined by the Rating Agencies and in

the event of adoption of any new or changed rating system by any such Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of the City's Senior Lien Bonds in connection with the adoption of a "global" rating scale, each of the ratings from the agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. In the event that any rating is suspended or withdrawn by any Rating Agency, the Commitment Fee Rate shall immediately increase by one and one-half percent (1.50%) from the Commitment Fee Rate otherwise in effect. Upon the occurrence and during the continuance of an Event of Default, the Commitment Fee Rate shall immediately increase by one and one-half of one percent (1.50%) from the Commitment Fee Rate otherwise in effect. The Commitment Fees shall be calculated on the basis of a year of 360 days and actual days elapsed and shall be payable as set forth above, together with interest on the Commitment Fees from the date payment is due until payment in full at the Default Rate. On the Final Date, all fees outstanding shall be paid to the Lender.

1.02. Section 1.4 of the Fee Letter is hereby amended and restated in its entirety to read as follows:

Section 1.4. Termination Fees. If the Commitment is terminated in its entirety prior to August 21, 2025, the City shall pay a termination fee (the "Termination Fee") in an amount equal to the product of (x) the Commitment Fee Rate in effect on the date of termination, (y) the Commitment on the Closing Date and (z) a fraction, the numerator of which is equal to the number of days from and including the date of termination to and including August 21, 2025, and the denominator of which is 360, *provided, however,* that no such Termination Fee shall be payable if (i) any two Rating Agencies shall lower the short-term unenhanced rating of the Lender below "P-1" (or its equivalent) by Moody's, "F1" (or its equivalent) by Fitch, or "A-1" (or its equivalent) by S&P or (ii) such termination occurs solely as a result of the Commercial Paper Notes being refinanced in whole with long-term debt of the City. The Termination Fee, all accrued Commitment Fees, all Loans, all accrued interest thereon and all other amounts owing to the Lender hereunder or under the Agreement shall be payable on the effective date of such termination.

1.03. Section 1.5 of the Fee Letter is hereby amended and restated in its entirety to read as follows:

Section 1.5. Reduction Fees. Notwithstanding the foregoing and anything set forth herein or in the Agreement to the contrary, the City agrees not to permanently reduce the Commitment below \$40,000,000 prior to August 21, 2025, without the payment by the City to the Lender of a reduction fee (the "*Reduction Fee*") in connection with each and every permanent reduction of the Commitment below \$40,000,000 as set forth in the Agreement in an amount equal to the product of (A) the Commitment Fee Rate in effect on the date of such reduction, (B) the difference between the Commitment prior to such reduction and the Commitment after such reduction, and (C) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to and including August 21, 2025, and the denominator of which is 360, *provided, however,* that no such Reduction Fee shall be payable if any two Rating Agencies shall lower the short-term unenhanced rating of the Lender below "*P-1*" (or its equivalent) by Moody's, "*F1*" (or its equivalent) by Fitch, or "*A-1*" (or its equivalent) by S&P or such termination occurs solely as a result of the Commercial Paper Notes being refinanced in whole with long-term debt of the City.

1.04. The Fee Letter is hereby amended by adding thereto a new Section 1.6 to appear in the appropriate numerical sequence and to read as follows:

Section 1.6. Increase Request Fees. Pursuant to Section 2.15 of the Agreement, the City will pay to the Lender an increase request fee (the "*Increase Request Fee*") of \$1,500 in connection with each additional request for an increase in the Commitment made during a calendar year, following the City's second increase request during such calendar year.

2. **CONDITIONS PRECEDENT.**

This Amendment shall be deemed effective on the Amendment Date subject to the satisfaction or waiver of the conditions precedent set forth in the Second Amendment to Revolving Credit Agreement dated the date hereof between the City and the Lender.

3. **MISCELLANEOUS.**

Except as specifically amended herein, the Fee Letter shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Fee Letter or any communication issued or made subsequent to or with respect to the Fee Letter, it being hereby agreed that any reference to the Fee Letter shall be sufficient to refer to the Fee Letter, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein

shall not in any way be affected or impaired hereby. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Fee Letter. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK; PROVIDED, THAT THE OBLIGATIONS OF THE CITY UNDER THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO CONFLICT OF LAW PRINCIPLES.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, will be effective as delivery of a manually executed counterpart of this Amendment, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the Amendment Date.

CITY OF EL PASO, TEXAS

APPROVED AS TO CONTENT:

By: _____
Name: John E. Balliew
Title: President/CEO El Paso Water Utilities

By: _____
Name: Arturo Duran
Title: Chief Financial Officer, El Paso
Water Utilities

BANK OF AMERICA, N.A.

By: _____
Name: Michael A. Feist
Title: Senior Vice President