ORDINANCE NO. **019486**

ESTABLISHING THE

CITY OF EL PASO, TEXAS
MUNICIPAL DRAINAGE UTILITY SYSTEM
EXTENDABLE COMMERCIAL PAPER PROGRAM
AND AUTHORIZING
SYSTEM REVENUE EXTENDABLE COMMERCIAL PAPER NOTES, SERIES A

Adopted: May 9, 2023

TABLE OF CONTENTS

ARTICLE I
DEFINITIONS

Section 1.01 Definitions 2
Section 1.02 Findings 9
Section 1.03 Table of Contents, Titles and Headings 9
Section 1.04 Interpretation 9

ARTICLE II
AUTHORIZATION OF EXTENDABLE COMMERCIAL PAPER NOTES

Section 2.01 Authorization 9
Section 2.02 ECP Notes. 10
Section 2.03 Form of ECP Notes. 13
Section 2.04 Execution and Authentication. 13
Section 2.05 Issuing and Paying Agent. 14
Section 2.06 Book-Entry-Only System 15
Section 2.07 Negotiability, Registration, and Exchange. 17
Section 2.08 Mandatory Exchange Upon Extended Maturity 18
Section 2.09 ECP Notes Mutilated, Lost, Destroyed, or Stolen 18
Section 2.10 Cancellation 19
Section 2.11 Fiscal and Other Agents 19
Section 2.12 Dealer Agreements 19
Section 2.13 Credit Agreement 20

ARTICLE III
ESTABLISHMENT OF ECP PROGRAM AND SECURITY THEREFOR

Section 3.01 Establishment of ECP Program; Termination of Prior Program 20
Section 3.02 Security; Subordinate Lien; and Pledge 20
Section 3.03 Covenant to Refinance. 21

ARTICLE IV
ISSUANCE AND SALE OF ECP NOTES; CREATION OF FUNDS; PAYMENT

Section 4.01 Issuance and Sale of ECP Notes. 21
Section 4.02 Conditions to Delivery Pursuant to Issuance Request. 22
Section 4.03 No Redemption Prior to Original Maturity Date 23

Section 4.04 Redemption following Original Maturity Date 23
Section 4.05 Creation of Payment Fund 24
Section 4.06 Creation of Proceeds Fund; Proceeds of Sale of ECP Notes. 24
Section 4.07 Deposits Into Payment Fund. 24
Section 4.08 Defeasance of ECP Notes 25

ARTICLE V
COVENANTS OF THE CITY

Section 5.01 Limitation on Issuance 25
Section 5.02 Covenants to Maintain Tax-Exempt Status on ECP Notes. 25
Section 5.03 Reimbursement 28
Section 5.04 Disposition of Projects 28
Section 5.05 Opinion of Bond Counsel 28
Section 5.06 Performance 29
Section 5.07 Legal Authority 29
Section 5.08 Operation of System 29
Section 5.09 Further Encumbrance 29
Section 5.10 No Sale or Encumbrance of System 29
Section 5.11 Insurance 30
Section 5.12 Rate Covenant 30
Section 5.13 Governmental Agencies 30
Section 5.14 Title 30
Section 5.15 Nonimpairment of Lien 30
Section 5.16 No Competing Systems 31
Section 5.17 Books and Records 31
Section 5.18 Audits 31

ARTICLE VI
AMENDMENTS

Section 6.01 Limitations 31
Section 6.02 Amendments Without Consent. 31
Section 6.03 Amendments With Consent. 32
Section 6.04 Notice of Proposed Amendments 33
Section 6.05 Receipt of Consents. 33
Section 6.06 Effect of Amendments 34

Section 6.07 Additional Amendments 34

ARTICLE VII
MISCELLANEOUS

Section 7.01 Ordinance to Constitute a Contract; Equal Security 34
Section 7.02 Individuals Not Liable 35
Section 7.03 Further Procedures 35
Section 7.04 Severability of Invalid Provisions 35
Section 7.05 Payment and Performance on Business Days 36
Section 7.06 Limitation of Benefits With Respect to the Ordinance 36
Section 7.07 Approval of Attorney General 36
Section 7.08 Approval of Offering Memorandum 36
Section 7.09 Notice to Rating Agencies 36

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default 37
Section 8.02 Remedies for Default. 38

EXHIBIT A – FORM OF ECP NOTES A-1
EXHIBIT B – FORM OF MASTER ECP NOTE B-1
EXHIBIT C – FORM OF EXTENSION REQUEST C-1
EXHIBIT D – FORM OF ISSUING AND PAYING AGENT AGREEMENT D-1
EXHIBIT E – FORM OF DEALER AGREEMENT E-1

ORDINANCE 019486

AN ORDINANCE of the City of El Paso, Texas, establishing a municipal drainage utility system extendable commercial paper program and authorizing the issuance of program obligations in an aggregate principal amount not to exceed $60,000,000 outstanding at any one time, prescribing the terms, features and characteristics of such obligations; making certain covenants and agreements in connection therewith; providing for the payment of the obligations; resolving other matters related thereto, including approval of a dealer agreement and issuing and paying agent agreement; and providing an effective date.

WHEREAS, the City of El Paso, Texas (the "City") is a "home-rule municipality," acting as such under the Constitution and laws of the State of Texas, that adopted its charter under Section 5, Article XI of the Texas Constitution; and

WHEREAS, in accordance with the Constitution and the laws of the State of Texas, specifically Chapter 552 of the Texas Local Government Code, as amended (the "MDUS Act"), the City held public hearings on the creation of a municipal drainage utility system and adopted Ordinance No. 016668 on June 19, 2007 establishing and declaring the creation of the City's Municipal Drainage Utility System (the "System") within the municipal boundaries and unincorporated extraterritorial jurisdiction of the City; and

WHEREAS, the City Council of the City previously established the City of El Paso, Texas Municipal Drainage Utility System Revolving Note Private Placement Program (the "Prior Program") and entered into a note purchase agreement in connection with such program; and

WHEREAS, the note purchase agreement associated with the revolving note private placement program expires on June 19, 2023, and a new financing program is needed to provide interim financing for additions, improvements and extensions to the System; and

WHEREAS, the City Council of the City hereby determines to establish, pursuant to the authority of Texas Government Code, Chapters 1371 and 1502, as amended (collectively, the "Act"), an extendable commercial paper program to be known as the "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program" (the "Program") and to authorize the issuance of extendable commercial paper notes under such Program (as further defined herein, the "ECP Notes") to provide interim financing for additions, improvements and extensions to the System and to refund obligations issued in connection with the Program; and

WHEREAS, at the request of the City, the ECP Notes shall be offered for sale by the Dealer (as defined herein) pursuant to the terms of a dealer agreement (as amended, supplemented, restated or otherwise modified from time to time, the "Dealer Agreement") then in effect between the City and the Dealer; and

WHEREAS, the ECP Notes constitute obligations payable from net revenues of the System, as permitted by the Act; and

WHEREAS, it is hereby found and determined that the meeting at which this ordinance was passed was open to the public, and public notice of the time, place and purpose of such meeting was given, all as required by Texas Government Code, Chapter 551, as amended;

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

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. Unless otherwise defined in this Ordinance and unless the context shall indicate a contrary meaning or intent, the terms below defined, for all purposes of this ordinance or any ordinance amendatory or supplemental hereto, shall be construed, are used and are intended to have the following meanings, to-wit:

"Accountant" means an independent certified public accountant or accountants or a firm of independent certified public accountants, in either case, with demonstrated expertise and competence in public accountancy.

"Act" means, collectively, Chapter 1371 and Chapter 1502 of the Texas Government Code, as amended.

"Additional Bonds" means the additional revenue bonds, notes or similar obligations (other than the ECP Notes) permitted to be issued on a parity with the Previously Issued Bonds in accordance with the ordinances authorizing such Previously Issued Bonds; and which may be refunding bonds issued pursuant to and in accordance with the provisions of Texas Government Code, Chapter 1207, as amended.

"Amended Ordinance" means any ordinance amending or amending and restating this Ordinance entered into as provided in Article VI of this Ordinance.

"Authorized Amount" means $60,000,000.

"Authorized Representative" means the President/Chief Executive Officer of EPWater, any Vice President of EPWater, or the Chief Financial Officer of EPWater, each acting in such capacity severally and not jointly.

"Beneficial Owner" means the Person in whose name an ECP Note is recorded as beneficial owner of such ECP Note by the Depository, Participant, or Indirect Participant, as the case maybe.

"Board" or "Board of Trustees" means that certain board of trustees known as the "Public Service Board" heretofore established for the purpose of managing the System and other water utilities of the City, as represented by the various persons appointed from time to time, and any successors thereto.

"Bond Counsel" means Norton Rose Fulbright US LLP or such other attorney or firm of attorneys which are nationally recognized as having expertise in the practice of tax-exempt municipal finance law, as approved by the City.

"Bonds Similarly Secured" means, collectively, the Previously Issued Bonds and Additional Bonds.

"Business Day" means any day other than a Saturday, Sunday or legal holiday or other day on which banking institutions in the city where the Designated Payment/Transfer Office of the Issuing and Paying Agent is located in the State of Texas are generally authorized or obligated by law or executive order to close.

"Chapter 1207" means Chapter 1207 of the Texas Government Code, as amended.

"Chapter 1371" means Chapter 1371 of the Texas Government Code, as amended.

"Chapter 1502" means Chapter 1502 of the Texas Government Code, as amended.

"City" means the City of El Paso, Texas.

"City Council" means the governing body of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor statute thereto.

"Costs of Issuance" means all reasonable costs incurred by the City in connection with the issuance of ECP Notes, including, but not limited to: (a) counsel fees related to the issuance of ECP Notes; (b) financial advisor fees incurred in connection with the issuance of ECP Notes; (c) rating agency fees; (d) the initial fees and expenses of the Issuing and Paying Agent; (e) accountant fees related to the issuance of ECP Notes; (f) printing and publication costs; and (g) any other fee or cost incurred in connection with the issuance of ECP Notes that constitutes an "issuance cost" within the meaning of the Code.

"CUSIP" has the meaning assigned to such term in Section 2.03(a).

"Dealer" means such firm or firms that are acting as a dealer for the City as appointed by the Authorized Representative pursuant to Section 2.12 hereof and any successor thereto.

"Dealer Agreement" means each dealer agreement executed and delivered by an Authorized Representative and a Dealer pursuant to Section 2.12 hereof and in the form described in **Exhibit E** hereto, as each such agreement may be amended from time to time pursuant to the terms thereof.

"Depository" means the securities depository for the ECP Notes appointed as such pursuant to Section 2.06 hereof, and its successors and assigns.

"DTC" means The Depository Trust Company of New York, New York, or any successor securities depository.

"ECP Notes" means the extendable commercial paper notes authorized in accordance with the terms of this Ordinance with an initial maturity not to exceed 90 days and a final maturity, if extended as described herein, of not more than 270 days from the Issue Date, and having the terms and characteristics specified in Section 2.02 and in the form described in **Exhibit A** hereto.

"Eligible Investments" means any or all of the authorized investments described in the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, and the Board's then most recent Investment Policy, in which the Board may purchase, sell and invest System funds and funds under the control of the Board; and provided further that Eligible Investments shall specifically include, with respect to the investment of proceeds of any ECP Notes, guaranteed investment contracts fully collateralized by direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"EMMA" means the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board.

"EPWater" means the El Paso Water Utilities, a component unit of the City and any successors thereto.

"Event of Default" has the meaning assigned to such term in Section 8.01.

"Extended Maturity Date" means, for each ECP Note, a Business Day (which shall be specified in the confirmation sent to the Holder of the ECP Note) that is the Extended Maturity Days from its Issue Date.

"Extended Maturity Days" means 270 days or any other lesser number of days specified in the confirmation sent to the Holder of an ECP Note.

"Extended Rate" means, for each ECP Note, the rate of interest per annum established under Section 2.02(e) for each weekly period from and after the Original Maturity Date.

"Extension Request" means the instructions provided to the Issuing and Paying Agent and the Dealer by an Authorized Representative to extend the Original Maturity Date of an ECP Note to an Extended Maturity Date, in substantially the form set forth in Exhibit C to this Ordinance.

"Fiscal Year" means the twelve month financial accounting period used by the Board in connection with the operation of the System which may be any twelve consecutive month period established by the Board.

"Fitch" means Fitch Investors Service or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities ratings services, such other nationally recognized securities rating agency as may be designated in writing by the City Council.

"Government Obligations" means (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured

by the agency or instrumentality and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent and (iv) any other then authorized securities or obligations that may be used to defease obligations such as the ECP Notes under the then applicable laws of the State of Texas.

"Gross Revenues" means all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding restricted gifts, grants in aid of construction and any amounts received from drainage charges specifically provided by ordinance for contribution to the funding of future drainage system construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established for the payment and security of the Bonds Similarly Secured and other obligations payable solely from and secured only by a lien on and pledge of the Net Revenues of the System, and excluding those amounts subject to payment to the United States of America as rebate pursuant to section 148 of the Code and any federal subsidies received pursuant to section 6431 of the Code.

"Holder" means the Registered Owner or any Person who is in possession of any ECP Note issued to bearer or in blank.

"Indirect Participant" means a broker-dealer, bank, or other financial institution for which the Depository holds ECP Notes as a securities depository through a Participant.

"Issuance Request" means a request made by the City, acting through an Authorized Representative, to the Issuing and Paying Agent for the delivery of an ECP Note or ECP Notes.

"Issue Date" means, for each ECP Note, the date on which the ECP Note is initially issued and delivered to the Beneficial Owner.

"Issuing and Paying Agent" means such entity or entities acting as such which are appointed by the Authorized Representative pursuant to Section 2.05 hereof and have executed and delivered an Issuing and Paying Agent Agreement as approved and executed by an Authorized Representative. When there is a co-Issuing and Paying Agent, either may perform the functions and duties of the Issuing and Paying Agent hereunder and under the Issuing and Paying Agent Agreement.

"Issuing and Paying Agent Agreement" means any issuing and paying agent agreement authorized to be entered into by Section 2.05 hereof and in the form described in **Exhibit D** hereto, and any and all modifications, alterations, amendments and supplements thereto, or any other Issuing and Paying Agent Agreement entered into by the City and the Issuing and Paying Agent with respect to the ECP Notes.

"Master ECP Note" has the meaning assigned to such term in Section 2.06(b).

"Maximum Interest Rate" means the lesser of: (A) nine percent (9%) per annum and (B) the Maximum Lawful Rate.

"Maximum Lawful Rate" means the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the City in the exercise of its borrowing powers (currently prescribed by Chapter 1204, as amended, Texas Government Code, or any successor provision).

"Maximum Original Maturity Days" means the number of days specified in an Issuance Request but not greater than 90 days.

"MDUS Act" means Chapter 552 of the Texas Local Government Code, as amended.

"Moody's" means Moody's Investors Service, Inc. or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the City.

"Net Revenues" means Gross Revenues of the System, with respect to any period, after deducting the System's Operating and Maintenance Expenses during such period.

"Nominee" means the nominee of the Depository as determined from time to time in accordance with this Ordinance for any one or more the ECP Notes.

"Operating and Maintenance Expenses" means all current expenses of operating and maintaining the System not paid from the proceeds of any debt, including all salaries, labor, materials and administrative costs, allocable under generally accepted accounting principles, to the System. Depreciation charges and other costs and disbursements which may be capitalized under generally accepted accounting principles shall not be considered Operating and Maintenance Expenses.

"Original Maturity Date" means, for each ECP Note, a Business Day not less than 1 day and not greater than the Maximum Original Maturity Days from the Issue Date, and specified as such in the confirmation sent to the Holder of the ECP Note.

"Original Rate" means, for each ECP Note, the rate of interest per annum borne by such ECP Note to the Original Maturity Date as specified in the applicable Issuance Request.

"Outstanding," when used with respect to ECP Notes, shall mean all ECP Notes which have been authenticated and delivered under this Ordinance, except: (a) ECP Notes cancelled or purchased by the Issuing and Paying Agent for cancellation or delivered to or acquired by the Issuing and Paying Agent for cancellation and, in all cases, with the intent to extinguish the debt represented thereby (including ECP Notes surrendered pursuant to Section 2.08 hereof); (b) ECP Notes in lieu of which other ECP Notes have been authenticated; (c) ECP Notes that have become due (at maturity or on redemption or otherwise) and for the payment of which sufficient moneys, including interest accrued to the due date, are held by the Issuing and Paying Agent; (d) ECP Notes which, under the terms of this Ordinance, are deemed to be no longer Outstanding; and (e) for purposes of any consent or other action to be taken by the holders of a specified percentage of ECP

Notes under this Ordinance, ECP Notes held by or for the account of the City or by any person controlling, controlled by or under common control with the City.

"Outstanding," when used with reference to Bonds Similarly Secured, shall mean all such bonds or other obligations theretofore delivered except: (i) any such obligations canceled by or on behalf of the City at or before such date; (ii) any such obligations defeased pursuant to the defeasance provisions of the ordinances authorizing the Bonds Similarly Secured, or otherwise defeased as permitted by applicable law; and (iii) any such obligations in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinance authorizing the issuance of such obligations.

"Participant" means a broker-dealer, bank, or other financial institution for which the Depository holds ECP Notes as a securities depository.

"Payment Fund" means that fund created pursuant to Section 4.05 hereof.

"Person" means an individual, a corporation (including a limited liability company), a partnership (including a limited partnership), an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Prevailing Rating" means, at the time of determination and with respect to a Rating Agency, the rating assigned to the ECP Notes by the Rating Agency or any comparable future designation by the Rating Agency.

"Previously Issued Bonds" means the outstanding bonds of the following issues: (1) City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A, (2) City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2015, (3) City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2016, (4) City of El Paso, Texas, Municipal Drainage Utility System Revenue Improvement and Refunding Bonds, Series 2017, (5) City of El Paso, Texas, Municipal Drainage Utility System Revenue Refunding Bonds, Taxable Series 2021, (6) City of El Paso, Texas, Municipal Drainage Utility System Revenue Refunding Bonds, Series 2021A, (7) City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2022, and (8) City of El Paso, Texas, Municipal Drainage Utility System Revenue Refunding Bonds, Series 2022A.

"Proceeds" means proceeds of the sale of the ECP Notes or any moneys, securities or other obligations that may be deemed to be proceeds of the ECP Notes within the meaning of the Code.

"Proceeds Fund" means the fund by that name established pursuant to Section 4.06.

"Prior Program" has the meaning set forth in the recitals hereto.

"Program" means the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program established pursuant to the provisions of this Ordinance.

"Program Expiration Date" means April 1, 2053.

"Project" means the acquisition, construction, improvement and equipment of the System, including capital assets and facilities incident and related to the operation, maintenance and administration thereof.

"Project Costs" means all costs and expenses incurred in relation to Projects, including without limitation design, planning, engineering and legal costs, acquisition costs of land, interests in land, rights-of-way and easements, construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of a Project, financing costs (including interest on obligations during the constitutionally permitted time period, and payments on credit agreements during and after construction, and Costs of Issuance). A Project Cost incurred before the issuance of ECP Notes issued to finance the related Project may be reimbursed from proceeds from the sale of ECP Notes, and such reimbursement shall be a "Project Cost."

"Rating Agency" means, any of the following: (i) Moody's, (ii) Standard & Poor's, (iii) Fitch or (iv) any other nationally recognized credit rating agency specified in an Amended Ordinance that maintains a rating on the ECP Notes at the request of the City.

"Refunding Bonds" means Additional Bonds issued to refund, retire or defease ECP Notes.

"Registered Owner" means the person or entity in whose name any ECP Note is registered in the Registration Books.

"Registration Books" means the books or records relating to the registration, payment, and transfer or exchange of the ECP Notes maintained by the Issuing and Paying Agent pursuant to Section 2.06 hereof.

"Registrar" means each person or entity, if any, designated by the City herein or in an Amended Ordinance to keep a register of ECP Notes and of the transfer and exchange of the ECP Notes, and its successors and assigns, and any other person or entity which may at any time be substituted for it pursuant hereto. Initially, the Registrar shall be the Issuing and Paying Agent.

"SIFMA" means the Securities Industry and Financial Markets Association.

"SIFMA Index" means (i) the seven-day high grade market index of tax-exempt variable rate demand obligations, as most recently calculated by Bloomberg and published or made available by SIFMA or any Person acting in cooperation with or under the sponsorship of SIFMA or (ii) if such index is not published, such other publicly available rate as the City (in consultation with the Dealers) shall deem most nearly equivalent thereto. Such index may be expressed as a percentage of (more or less than, or equal to, 100%) and/or a fixed spread to another index, and in no event shall the interest rate calculated on the basis of the SIFMA Index exceed the Maximum Interest Rate.

"Standard & Poor's" means S&P Global Ratings, a division of S&P Global Inc. or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the City.

"State" means the State of Texas.

"Subordinate Lien Obligations" means each series of bonds, notes and other debt obligations payable from and secured by a lien on and pledge of the Net Revenues of the System, junior and subordinate in rank and dignity to the lien and pledge securing the payment of the Bonds Similarly Secured.

"System" or "Municipal Drainage Utility System" shall mean all land, easements and interest in land, together with all structures, equipment and facilities used in draining benefitted property (within the meaning of the MDUS Act), including, but not limited to, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses (but excluding City parks, roads, streets and bridges in existence on June 19, 2007) and excluding the property or entities exempted from the MDUS Act pursuant to Section 552.053 of the MDUS Act.

"Tax Certificate" means a certificate, as amended from time to time, executed and delivered on behalf of the City by an Authorized Representative on the date upon which the ECP Notes are initially issued and delivered, or any functionally equivalent certificate subsequently executed and delivered on behalf of the City by an Authorized Representative with respect to the requirements of Section 148 (or any successor section) of the Code relating to the ECP Notes.

Section 1.02 Findings. The declarations, determinations and findings declared, made and found in the preamble to this Ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

Section 1.03 Table of Contents, Titles and Headings. The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.**Interpretation**. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein to sustain the validity of this Ordinance.

ARTICLE II

AUTHORIZATION OF EXTENDABLE COMMERCIAL PAPER NOTES

Section 2.01 Authorization. (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, ECP Notes are hereby authorized to be issued in an aggregate principal amount not to exceed SIXTY

MILLION DOLLARS ($60,000,000) at any one time Outstanding for the purpose of financing Projects and paying Project Costs and to refinance, renew, or refund Outstanding ECP Notes, all in accordance with and subject to the terms, conditions, and limitations contained herein; provided that the maximum aggregate principal amount of ECP Notes that may be issued under this Ordinance shall be reduced by the aggregate principal amount of all then-Outstanding ECP Notes. For purposes of this Section 2.01, any portion of Outstanding ECP Notes to be paid from money on deposit with the Issuing and Paying Agent and from the available proceeds of Refunding Bonds or other obligations of the City issued on the day of calculation shall not be considered Outstanding. The authority to issue ECP Notes from time to time under the provisions of this Ordinance shall exist until the Program Expiration Date, regardless of whether at any time prior to the Program Expiration Date there are any ECP Notes Outstanding.

(b) In connection with the refinancing or refunding of Outstanding ECP Notes through the issuance of ECP Notes, such ECP Notes shall qualify as "obligations," as such term is defined in Chapter 1371 at the time any such refinancing or refunding occurs. The Outstanding ECP Notes to be refunded shall be selected by an Authorized Representative.

Section 2.02 ECP Notes.

(a) Maturity Dates; Denominations. Under and pursuant to the authority granted hereby and subject to the limitations contained herein, ECP Notes to be designated "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Note, Series A (Tax-Exempt)" are hereby authorized to be issued, sold and delivered from time to time in such principal amounts as determined by an Authorized Representative in denominations of $100,000 or in integral multiples of $1,000 in excess thereof, numbered in ascending consecutive numerical order in the order of their issuance or in such manner as the Issuing and Paying Agent may deem appropriate, and shall mature and become due and payable on such dates as an Authorized Representative shall determine at the time of sale; provided that (a) the Original Maturity Date for each ECP Note shall be not less than 1 day nor greater than the Maximum Original Maturity Days from its Issue Date and (b) the Extended Maturity Date for each ECP Note shall be the number of Extended Maturity Days from its Issue Date. Outstanding ECP Notes may bear different Issue Dates, Original Maturity Dates, Extended Maturity Dates and interest rates. ECP Notes shall be sold at a price of par.

(b) Dated Date; Interest Calculation; Sale Price. ECP Notes herein authorized (i) shall be dated as of their Issue Date and shall bear interest payable at maturity at a fixed annual rate (calculated on the basis of a year consisting of 365/366 days and actual number of days elapsed), which shall not in any event exceed the Maximum Interest Rate, (ii) shall mature on its Original Maturity Date, unless the City exercises its option in accordance with this Ordinance to extend the maturity date, in which case the ECP Note shall mature on its Extended Maturity Date, and (iii) shall be sold by the Dealer pursuant to a Dealer Agreement. ECP Notes may be payable to bearer, may be issued in registered form, without coupons, or may be issued in book-entry-only form pursuant to Section 2.06 as determined by an Authorized Representative. ECP Notes issued hereunder may contain terms and provisions for the redemption or prepayment thereof prior to maturity, subject to any applicable limitations contained herein (including Section 4.03), as provided herein or otherwise as shall be determined by an Authorized Representative.

(c) Payment. The City's obligation to pay the principal of and interest on each and every ECP Note when due is a limited obligation of the City payable solely from Proceeds of the sale of ECP Notes, Net Revenues as described in Section 3.02 or Refunding Bonds and any funds held and available for such purpose. The Registered Owners shall never have the right to demand payment of the ECP Notes out of any funds raised or to be raised by the levy of taxes by the City, or from any source other than specified in this Ordinance. The City will make all payments of principal and interest directly to the Issuing and Paying Agent in immediately available funds on or prior to 2:00 p.m., New York, New York time, on the date any payment is due on any ECP Note. The principal of and the interest on the ECP Notes shall be paid in federal funds or other immediately available funds in currency of the United States of America that is legal tender for the payment of public and private debts.

The principal of and the interest on the ECP Notes shall be payable at the principal office of the Issuing and Paying Agent on or before the close of business on any Original Maturity Date or Extended Maturity Date, as the case may be, upon which such ECP Notes have become due and payable, provided that such ECP Notes are presented and surrendered on a timely basis. Upon presentation of such an ECP Note to the Issuing and Paying Agent no later than 1:15 p.m. (New York, New York time) on a Business Day, payment for such ECP Note shall be made by the Issuing and Paying Agent in immediately available funds on such Business Day. If an ECP Note is presented for payment after 1:15 p.m. (New York, New York time) on a Business Day, payment therefor may be made by the Issuing and Paying Agent on the next succeeding Business Day without the accrual of additional interest thereon.

Notwithstanding the provisions of the previous paragraph, in the event the ECP Notes are issued as a Master ECP Note or Master ECP Notes in book entry form, they shall be payable at the Original Maturity Date or Extended Maturity Date, as the case may be, without physical presentation or surrender in accordance with the procedures of the Depository.

With the consent of the Issuing and Paying Agent, the City may modify the provisions contained in this Section 2.02(c) regarding payment dates and times if deemed appropriate to conform to DTC's rules and procedures or otherwise, and such modified provisions will be set forth in the Issuing and Paying Agent Agreement.

(d) Interest Rate; Interest Payment Dates. Subject to the limitations contained herein, each ECP Note shall bear no interest or shall bear interest at the Original Rate from its Issue Date to its Original Maturity Date and shall be payable on the Original Maturity Date. Principal shall be payable on the Original Maturity Date, unless the City exercises its option to extend the Original Maturity Date to the Extended Maturity Date. The stated interest rate, Original Maturity Date, Extended Maturity Date and other terms of the ECP Notes, as long as not inconsistent with the terms of this Ordinance, shall be as set forth in the Issuance Request required by Section 4.01 hereof directing the issuance of ECP Notes. If the City exercises its option in accordance with this Ordinance to extend the maturity date of an ECP Note, accrued interest at the Original Rate from the Issue Date to the Original Maturity Date shall be paid on the Original Maturity Date, and thereafter the ECP Note shall bear interest from its Original Maturity Date at the Extended Rate, and no additional interest shall accrue on any accrued but unpaid interest from the Issue Date to the Original Maturity Date.

(e) Extended Rate. The Extended Rate shall be the rate of interest per annum determined by the following formula; provided that such Extended Rate shall not exceed the Maximum Interest Rate:

The greater of (SIFMA Index + *E)* or *F*

The Extended Rate applicable to an ECP Note will be determined weekly by the Issuing and Paying Agent based on the Prevailing Ratings and other information available as of 10:30 a.m., New York, New York time, on the Original Maturity Date of the ECP Note and each Thursday thereafter and will apply from that date through the following Wednesday or, if earlier, the applicable Extended Maturity Date. As used in the formula, the *E* and *F* variables shall be the fixed percentage rates, expressed in basis points and yields, respectively, determined based on the Prevailing Ratings of the Rating Agencies then rating the ECP Notes, as follows:

	Prevailing Rating			
Fitch	**Moody's**	**S&P**	***E* Variable**	***F* Variable**
F-1+	P-1	A-1+	250 bps	7.00%
F-1	-	A-1	350 bps	7.50%
F-2	P-2	A-2	550 bps	8.00%
Lower than F-2 (or rating withdrawn for credit reasons)	Lower than P-2 (or rating withdrawn for credit reasons)	Lower than A-2 (or rating withdrawn for credit reasons)	Maximum Interest Rate	Maximum Interest Rate

If the individual Prevailing Ratings indicate different *E* or *F* variables as a result of split ratings assigned to the City, the *E* or *F* variable shall be the arithmetic average of those indicated by the Prevailing Ratings. If another credit rating agency becomes a Rating Agency, the Issuing and Paying Agent shall, upon written direction of the Authorized Representative, following consultation with the Authorized Representative and each Dealer, determine how the agency's rating categories shall be treated for the purpose of indicating an *E* or *F* variable.

(f) Payment of Interest While Bearing Interest at Extended Rate. If the City exercises its option to extend the Original Maturity Date to the Extended Maturity Date, interest at the Extended Rate shall be payable on the Extended Maturity Date or upon prior redemption. Such interest will be calculated at the Extended Rate from and including the Original Maturity Date to but excluding the Extended Maturity Date or date of prior redemption.

(g) Notice of Extension. The Authorized Representative shall deliver to the Issuing and Paying Agent and the Dealer an Extension Request by no later than 10:00 a.m. New York, New York time on the Original Maturity Date if the option to extend the Original Maturity Date of an ECP Note to an Extended Maturity Date is exercised. The Issuing and Paying Agent shall correspondingly notify (i) DTC by no later than 12:00 p.m. New York, New York time on the Original Maturity Date and (ii) each Rating Agency then maintaining a rating on the ECP Notes by the close of business in New York, New York on the Original Maturity Date, that the maturity of such ECP Note is being extended to the Extended Maturity Date. Even if the requisite notices are not given, if payment of the principal of and interest on an ECP Note does not occur on the

Original Maturity Date, the maturity of the ECP Note shall be extended automatically to the Extended Maturity Date in accordance with Section 2.08 hereof. With the consent of the Issuing and Paying Agent, the City may modify the notification provisions contained in this Section 2.02(g) if deemed appropriate to conform to DTC's rules and procedures or otherwise, and such modified provisions will be set forth in the Issuing and Paying Agent Agreement.

(h) Receipt of Extension Request. Upon receipt of an Extension Request, the Issuing and Paying Agent shall, by 3:00 p.m. on such day the Extension Request is received, complete each ECP Note as to amount, Note Date and Extended Maturity Date specified therein, and deliver each such ECP Note to or upon the order of the Dealer, as requested; provided, however, that no such ECP Notes shall be delivered by the Issuing and Paying Agent if such delivery would cause the sum of the aggregate principal amount of ECP Notes Outstanding to exceed the Authorized Amount. If an Extension Request is received after 11:30 a.m. on a given day, the Issuing and Paying Agent shall not be obligated to deliver the requested ECP Notes until the next succeeding Business Day.

(i) No Default. In no event shall an extension of the Original Maturity Date constitute a default or a breach of any covenant under this Ordinance or the Issuing and Paying Agent Agreement.

Section 2.03 Form of ECP Notes.

(a) If not issued in book-entry-only form, the ECP Notes and the Certificate of Authentication to appear on each of the ECP Notes shall be substantially in the form set forth in **Exhibit A** hereto with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) ("CUSIP" numbers) and such legends and endorsements thereon as may, consistently herewith, be approved by an Authorized Representative.

(b) If the ECP Notes are issued in book-entry-only form pursuant to Section 2.06 hereof, they shall be issued in the form of a Master ECP Note (a "Master ECP Note") in substantially the form attached as **Exhibit B** hereto, or such other forms as are required by DTC, to which there shall be attached the form of ECP Note set forth in **Exhibit A** hereto and it is hereby declared that the provisions of **Exhibit A** hereto are incorporated into and shall be a part of the Master ECP Note. It is further provided that this Ordinance, and the form of ECP Note set forth in **Exhibit A** hereto, shall constitute the "underlying records" referred to in the Master ECP Note. In addition, whenever the beneficial ownership of the ECP Notes is determined by a book-entry at DTC, the Issuing and Paying Agent may, without further approval from the City or an Authorized Representative, place such letters, numbers, marks of identification, legends and endorsements on the ECP Notes and Master ECP Note as are necessary to satisfy the requirements of DTC.

Section 2.04 Execution and Authentication.

(a) The ECP Notes shall be executed on behalf of the City by the Mayor or Mayor Pro Tem and attested by the City Clerk or Alternate City Clerk, if required, under its seal reproduced

or impressed thereon. The signature of such officers on the ECP Notes may be manual or facsimile. Notwithstanding the other provisions of this Section, each Master ECP Note shall be executed on behalf of the City by the manual signature of the Mayor and attested by the City Clerk. ECP Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City on the date of passage of this Ordinance shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of the initial sale and delivery of the ECP Notes authorized to be issued hereunder and with respect to ECP Notes delivered in subsequent sales, exchanges, and transfers, all as authorized and provided in the Public Security Procedures Act (Texas Government Code, Chapter 1201, as amended).

(b) Other than pursuant to Section 2.03(b) hereof, no ECP Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such ECP Note a certificate of authentication substantially in the form provided in **Exhibit A** hereto, executed by the Issuing and Paying Agent by manual signature, and such certificate upon any ECP Note shall be conclusive evidence, and the only evidence, that such ECP Note has been duly certified or registered and delivered.

(c) The Issuing and Paying Agent shall be the authenticating agent and Registrar for the ECP Notes.

Section 2.05 Issuing and Paying Agent.

(a) Issuing and Paying Agent. The City hereby appoints Zions Bancorporation, National Association as the Issuing and Paying Agent, and Registrar, and agrees that, at or prior to the time of issuance of the initial ECP Notes, the Authorized Representative will execute and deliver on behalf of the City, the Issuing and Paying Agent Agreement in substantially the form attached hereto as **Exhibit D**, with such changes, additions, or amendments thereto as the Authorized Representative determines to be necessary and proper to carry out the purpose and intent of the City Council in authorizing this Ordinance. The City will at all times, prior to the Program Expiration Date, maintain in effect an Issuing and Paying Agent Agreement, pursuant to which the Issuing and Paying Agent will agree to hold funds and fulfill the duties and obligations of the Issuing and Paying Agent, as provided for in this Ordinance. An Authorized Representative is hereby authorized to enter into any supplemental agreements with the Issuing and Paying Agent or any additional agreements with any successor Issuing and Paying Agent as may be necessary and proper to carry out the purpose and intent of the City.

The Issuing and Paying Agent and the City may treat the Registered Owner of each ECP Note as the sole and exclusive owner thereof for the purposes of payment of the principal of or interest on such ECP Note, giving any notice permitted or required to be given to Holders hereunder, registering the transfer of ECP Notes, obtaining any consent or other action to be taken by Holders, and for all other purposes whatsoever, and neither the Issuing and Paying Agent nor the City shall be affected by any notice to the contrary.

(b) Resignation and Removal. The Issuing and Paying Agent may at any time resign and be discharged of the duties and obligations created by this Ordinance by giving at least 60 days' written notice to the Dealer and the City. The Issuing and Paying Agent may be removed,

at any time by an instrument signed by an Authorized Representative and filed with the Issuing and Paying Agent and each Dealer. No such resignation or removal shall become effective, however, until a successor Issuing and Paying Agent has been selected and assumed the duties of the Issuing and Paying Agent hereunder.

In the event of the resignation or removal of the Issuing and Paying Agent, the Issuing and Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor. The Issuing and Paying Agent shall make any representations and warranties to the City as may be reasonably requested by the City in connection with any such assignment.

Should a change in the Issuing and Paying Agent for the ECP Notes occur, the City agrees to promptly cause a written notice thereof to be sent to each Dealer, Registered Owner, if any, of the ECP Notes then Outstanding by United States mail, first class, postage prepaid and to be provided to EMMA. Such notice shall give the address of the successor Issuing and Paying Agent. A successor Issuing and Paying Agent may be appointed without the consent of the Holders.

(c) Books and Records. The Issuing and Paying Agent shall at all times keep or cause to be kept proper records in which accurate entries shall be made of all transactions made by it relating to the Proceeds of the ECP Notes and any funds and accounts established and maintained by the Issuing and Paying Agent pursuant to this Ordinance and any Amended Ordinance. Such records shall be available for inspection by the City on each Business Day upon regular notice during reasonable business hours, and by any Registered Owner or its agent or representative duly authorized in writing at reasonable hours and under regular circumstances.

The Issuing and Paying Agent shall provide to the Authorized Representative upon request and each month a report or statement of the amounts deposited in each fund and account held by it, and the amount disbursed from such funds and accounts, the earnings thereon, the ending balance in each of such funds and accounts, the investments in each such fund and account, and the yield on each investment calculated in accordance with the directions of an Authorized Representative. Such report or statement shall also include or be accompanied by such information regarding the issuance of ECP Notes during the subject month as the City shall request.

The Issuing and Paying Agent shall maintain such books, records and accounts as may be necessary to evidence the obligations of the City resulting from the ECP Notes, the principal amounts owing thereunder, the maturity schedule therefor, the respective rates of interest thereon, and the principal and interest paid from time to time thereunder.

Section 2.06 Book-Entry-Only System.

(a) Unless an Authorized Representative or its designee determines that the ECP Notes shall be issued in registered form other than in book entry form, the ECP Notes shall initially be issued in book entry form as further provided in this Section. An Authorized Representative, acting for and on behalf of the City, is hereby authorized to approve, execute, and deliver a Letter of Representations to DTC and to enter into such other agreements and execute such instruments as are necessary to implement such book-entry-only system, such approval to be conclusively evidenced by the execution thereof by such Authorized Representative.

(b) Under the initial Book Entry System with DTC, (i) no physical ECP Note certificates will be delivered to DTC and (ii) the City will execute and deliver to the Issuing and Paying Agent, as custodian for the Depository, a Master ECP Note in substantially the form set forth in **Exhibit B** hereto, or such other forms as are required by the Depository. Except as provided herein, the ownership of the ECP Notes shall be registered in the name of the Nominee of the Depository. Ownership of beneficial interests in the ECP Notes shall be shown by book entry on the system maintained and operated by the Depository and Participants, and transfers of ownership of beneficial interests shall be made only by the Depository and the Participants by book entry, and the City and the Issuing and Paying Agent shall have no responsibility therefor. The Depository will be required to maintain records of the positions of the Participants in the ECP Notes, and the Participants and persons acting through the Participants will be required to maintain records of the purchasers of beneficial interests in the ECP Notes. Except as provided in this Section, the ECP Notes shall not be transferable or exchangeable, except for transfer to another securities depository or to another nominee of a securities depository.

(c) With respect to ECP Notes registered in the name of the Depository or its Nominee, neither the City nor the Issuing and Paying Agent shall have any responsibility or obligation to any Participant or to any person on whose behalf a Participant holds an interest in the ECP Notes. Without limiting the immediately preceding sentence, neither the City nor the Issuing and Paying Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of the Depository or any Participant with respect to any ownership interest in the ECP Notes, (ii) the delivery to any Participant or any other person, other than a registered owner of the ECP Notes, as shown on the Registration Books, of any notice with respect to the ECP Notes, including any notice of redemption, (iii) the payment to any Participant or any other person, other than a Registered Owner of the ECP Notes, as shown in the Registration Books, of any amount with respect to principal of and premium, if any, or interest on the ECP Notes or (iv) for any other purpose.

(d) Whenever, during the term of the ECP Notes, the beneficial ownership thereof is determined by a book entry at the Depository, the requirements in this Ordinance of holding, registering, delivering, exchanging, or transferring the ECP Notes shall be deemed modified to require the appropriate person or entity to meet the requirements of the Depository as to holding, registering, delivering, exchanging, or transferring the book entry to produce the same effect.

(e) The Depository may determine to discontinue providing its services with respect to the ECP Notes at any time by giving reasonable written notice to an Authorized Representative and the Issuing and Paying Agent, and by discharging its responsibilities with respect thereto under applicable law. An Authorized Representative, exercising the sole discretion of the City and without the consent of any other person, may terminate, upon provision of notice to the Depository and the Issuing and Paying Agent, the services of the Depository with respect to the ECP Notes if the Authorized Representative determines, on behalf of the City, that the continuation of the system of book-entry-only transfers through the Depository (or a successor securities depository) is not in the best interests of the owners of the ECP Notes or is burdensome to the City. Upon the termination of the services of the Depository with respect to the ECP Notes, after which no substitute Depository willing to undertake the functions of the Depository hereunder can be found or which, in the opinion of the City, is willing and able to undertake such functions upon reasonable and customary terms, the ECP Notes shall no longer be restricted to being registered in the

registration books kept by the Registrar in the name of the Nominee of the Depository. In such event, the City shall issue and the Issuing and Paying Agent shall transfer and exchange physical ECP Note certificates in the form set forth in **Exhibit A** hereto as requested by the Depository or Participants of like principal amount and maturity, in denominations of $100,000 and integral multiples of $1,000 in excess thereof, to the identified Holder in replacement of such Holder's beneficial interests in an ECP Note.

(f) Notwithstanding any provision hereof to the contrary, as long as the ECP Notes are registered in the name of the Nominee, all payments with respect to principal of and interest on the ECP Notes and all notices with respect to the ECP Notes shall be made and given, respectively, as provided in the Depository's letter of representations for the ECP Notes or as otherwise instructed by the Depository.

(g) The initial Depository with respect to the ECP Notes shall be DTC. The initial Nominee with respect to the ECP Notes shall be CEDE & CO., as nominee of DTC.

Section 2.07 Negotiability, Registration, and Exchange.

(a) The ECP Notes shall be, and shall have all of the qualities and incidents of a negotiable instrument under the laws of the State, and each successive Holder, in accepting any of the obligations, shall be conclusively deemed to have agreed that such obligations shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State.

(b) Registration Books relating to the registration, payment, and transfer or exchange of the ECP Notes shall at all times be kept and maintained at the office of the Issuing and Paying Agent, and the Issuing and Paying Agent shall obtain, record, and maintain in the Registration Books the name, and to the extent provided by or on behalf of the Holder, the address of each Holder of the ECP Notes, except for any ECP Notes registered to bearer. A copy of the Registration Books shall be provided to and held by the City or Authorized Representative upon request.

(c) Notwithstanding Section 2.06, any ECP Note may, in accordance with its terms and the terms hereof, be transferred or exchanged for ECP Notes of like tenor and character and of other authorized denominations upon the Registration Books by the Holder in person or by his duly authorized agent, upon surrender of such ECP Note to the Issuing and Paying Agent for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Issuing and Paying Agent. Upon surrender for transfer of any ECP Note at the designated office of the Issuing and Paying Agent, the Issuing and Paying Agent shall register and deliver, in the name of the designated transferee or transferees, one or more new ECP Notes executed on behalf of, and furnished by, the City of like tenor and character and of authorized denominations and having the same maturity, bearing interest at the same rate and of a like aggregate principal amount as the ECP Note or ECP Notes surrendered for transfer.

(d) ECP Notes may be exchanged for other ECP Notes of like tenor and character and of authorized denominations and having the same maturity, bearing the same rate of interest and of like aggregate principal amount as the ECP Notes surrendered for exchange, upon surrender of

the ECP Notes to be exchanged at the designated office of the Issuing and Paying Agent. Whenever any ECP Notes are so surrendered for exchange, the Issuing and Paying Agent shall register and deliver new ECP Notes of like tenor and character as the ECP Notes exchanged, executed on behalf of and furnished by, the City to the Holder requesting the exchange.

(e) The City and the Issuing and Paying Agent may charge the Holder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer. The Issuing and Paying Agent or the City may also require payment from the Holder of a sum sufficient to cover any tax, fee, or other governmental charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new ECP Note shall be delivered.

(f) The City and the Issuing and Paying Agent shall not be required to transfer or exchange any ECP Note selected, called, or being called for redemption in whole or in part.

(g) New ECP Notes delivered upon any transfer or exchange shall be valid special obligations of the City, evidencing the same debt as the ECP Notes surrendered, shall be secured by this Ordinance and shall be entitled to all of the security and benefits hereof to the same extent as the ECP Notes surrendered.

(h) The City reserves the right to change the above registration and transferability provisions of the ECP Notes at any time on or prior to the delivery thereof in order to comply with applicable laws and regulations of the United States in effect at the time of issuance thereof. In addition, to the extent that the provisions of this Section conflict with or are inconsistent with the provisions of the form of ECP Notes set forth in **Exhibit A** hereto, such other provisions shall control.

Section 2.08 Mandatory Exchange Upon Extended Maturity. Notwithstanding Section 2.06, by acceptance of an ECP Note, the Holder agrees that, should the principal of such Holder's ECP Note not be paid on the Original Maturity Date, the Holder shall surrender such ECP Note to the Issuing and Paying Agent in exchange for a new ECP Note of like tenor and character as the ECP Note surrendered but having the Extended Maturity Date instead of the Original Maturity Date and bearing interest at the Extended Rate in accordance with Section 2.02 hereof.

Section 2.09 ECP Notes Mutilated, Lost, Destroyed, or Stolen. If any ECP Note shall become mutilated, the City, at the expense of the Holder of such ECP Note, shall execute and the Issuing and Paying Agent shall authenticate and deliver a new ECP Note of like tenor and number in exchange and substitution for the ECP Note so mutilated, but only upon surrender to the Issuing and Paying Agent of the ECP Note so mutilated. If any ECP Note shall be lost, destroyed, or stolen, evidence of such loss, destruction, or theft may be submitted to the City and the Issuing and Paying Agent. If such evidence is satisfactory to the City and the Issuing and Paying Agent and indemnity satisfactory to them shall be given, the City, at the expense of the Holder, shall execute and the Issuing and Paying Agent shall authenticate and deliver a new ECP Note of like tenor in lieu of and in substitution for the ECP Note so lost, destroyed, or stolen. In the event any such ECP Note shall have matured, the Issuing and Paying Agent instead of issuing a duplicate ECP Note may pay the same without surrender thereof after making such requirement as it deems

fit for its protection, including a lost instrument bond. Neither the City nor the Issuing and Paying Agent shall be required to treat both the original ECP Note and any duplicate ECP Note as being Outstanding for the purpose of determining the principal amount of ECP Notes which may be issued hereunder, but both the original and the duplicate ECP Note shall be treated as one and the same. The City and the Issuing and Paying Agent may charge the Holder of such ECP Note with their reasonable fees and expenses for such service.

Section 2.10 Cancellation. All ECP Notes which at maturity are surrendered to the Issuing and Paying Agent for the collection of the principal and interest thereof or are surrendered for transfer or exchange pursuant to the provisions hereof shall, upon payment or issuance of new ECP Notes, be cancelled by the Issuing and Paying Agent and forthwith transmitted to the City, and thereafter the City shall have custody of such cancelled ECP Notes.

Section 2.11 Fiscal and Other Agents. In furtherance of the purposes of this Ordinance, the City may from time to time appoint and provide for the payment of such additional fiscal, paying, or other agents or trustees as it may deem necessary or appropriate in connection with the ECP Notes.

Section 2.12 Dealer Agreements. Morgan Stanley & Co. LLC is hereby appointed and designated as the initial Dealer, and the Authorized Representative is hereby authorized to enter into a Dealer Agreement with such firm in substantially the form attached hereto as **Exhibit E**, with such changes, additions, or amendments thereto as the Authorized Representative determines to be necessary and proper to carry out the purpose and intent of the City Council in authorizing this Ordinance. The Authorized Representative is hereby authorized to appoint one or more additional firms to act as Dealer, and agrees that the City will enter into a Dealer Agreement with each Dealer. The City covenants that at all times while any ECP Notes shall be outstanding, it will maintain in effect one or more Dealer Agreements, pursuant to which the Dealer will agree to fulfill the duties and obligations of the Dealer as set forth in this Ordinance and its Dealer Agreement.

The Authorized Representative is further authorized and directed from time to time to review the performance of each Dealer and of the Program authorized hereby and to periodically solicit and review the qualifications of each Dealer and of any additional investment banking firms interested in serving as Dealer. Based upon such review, the number of Dealers selected, which Dealers are selected and the amount of ECP Notes which each Dealer is allocated to attempt to sell may be changed and additional or different Dealers may be selected and new Dealer Agreements entered into based upon a determination that such changes are expected to result in the lowest overall cost of the Program authorized hereby after taking into account not only the fees to be paid to the Dealers but the expectations as to the performance of each Dealer in providing broad distribution of the ECP Notes and creating competitive pricing without adversely affecting investor liquidity.

Each Authorized Representative is hereby authorized and directed to approve, execute, and deliver to the Dealers any instrument evidencing such changes, additions, or amendments to the Dealer Agreements as may be necessary and proper to carry out the purpose and intent of the City in authorizing this Ordinance. An Authorized Representative is hereby authorized to enter into any supplemental agreements with the Dealer or with any successor Dealer.

Section 2.13 Credit Agreement. The City reserves the right to enter into a credit agreement (as that term is defined by Chapter 1371 or other applicable State law) to provide liquidity for a part or all of the ECP Notes to be Outstanding under this Ordinance and any Amended Ordinance; provided that any credit agreement shall be entered into and reviewed by the appropriate State agencies or offices as required by State law.

ARTICLE III

ESTABLISHMENT OF ECP PROGRAM AND SECURITY THEREFOR

Section 3.01 Establishment of ECP Program; Termination of Prior Program. This Ordinance is intended to establish a master plan for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment and redemption, and security of the ECP Notes. Following the Closing Date and repayment in full of any outstanding notes issued under the Prior Program, the Prior Program shall terminate and the Ordinance establishing the Prior Program shall be of no further force or effect.

Section 3.02 Security; Subordinate Lien; and Pledge.

(a) The ECP Notes are special obligations of the City, and the payment of the principal of and interest on the ECP Notes are and shall be secured by and payable only from a lien on and pledge of (i) the Net Revenues, and the Net Revenues are further pledged to the establishment and maintenance of the Payment Fund; provided that the pledge of Net Revenues securing the ECP Notes is expressly made subordinate and inferior to the lien on and pledge of Net Revenues securing Bonds Similarly Secured, and the ECP Notes shall constitute Subordinate Lien Obligations, as provided in the ordinances authorizing the Bonds Similarly Secured, (ii) the Proceeds from the sale of ECP Notes to refinance maturing ECP Notes *(i.e.,* "roll") and the proceeds of Refunding Bonds to be issued by the City, and (iii) all amounts in the funds and accounts created or maintained pursuant to this Ordinance and the Issuing and Paying Agent Agreement, and such amounts constitute funds held for that purpose, subject only to the provisions of this Ordinance and the Issuing and Paying Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein and therein. The pledge herein made shall be irrevocable until all of the ECP Notes have been paid and retired. The granting of this pledge by the City does not limit in any manner the rights of the City to issue any additional debt or incur any other obligations. The ECP Notes are not secured by or payable from any funds raised or to be raised by the levy of taxes by the City nor a mortgage or deed of trust on any properties, whether real, personal, or mixed, constituting the System or otherwise, nor from any source other than as specified in this Ordinance.

(b) The City shall not issue ECP Notes on a parity with the Bonds Similarly Secured.

(c) The City covenants to pay the principal of, premium, if any, and the interest on the ECP Notes when due, whether by reason of maturity or redemption.

(d) Chapter 1208 of the Texas Government Code, applies to the issuance of the ECP Notes and the pledge of the Net Revenues granted by the City herein, and such pledge is, therefore,

valid, effective, and perfected. If State law is amended at any time while the ECP Notes are outstanding and unpaid such that the pledge of the Net Revenues granted by the City is to be subject to the filing requirements of Chapter 9, as amended, Texas Business & Commerce Code, then in order to preserve to the Registered Owners of the ECP Notes the perfection of the security interest in this pledge, the City agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, as amended, Texas Business & Commerce Code and enable a filing to perfect the security interest in this pledge to occur.

Section 3.03 Covenant to Refinance.The City covenants that it will undertake its best efforts to issue and deliver Refunding Bonds at the times and in the amounts necessary to refinance the ECP Notes that are maturing on the applicable Extended Maturity Date and apply the proceeds of such Refunding Bonds to retire such maturing ECP Notes. Notwithstanding the foregoing, the Authorized Representative shall not deliver an Issuance Request for ECP Notes that could not be refinanced on or before the Program Expiration Date.

(b) The City intends to refinance the ECP Notes with Refunding Bonds issued under Chapter 1207 and/or Chapter 1371, and, therefore (in accordance with Section 1371.057(c) of Chapter 1371), the City will treat the ECP Notes as having the intended term and payment schedule of such Refunding Bonds, as determined by the Authorized Representative.

ARTICLE IV

ISSUANCE AND SALE OF ECP NOTES; CREATION OF FUNDS; PAYMENT

Section 4.01 Issuance and Sale of ECP Notes.All ECP Notes shall be sold in the manner determined by the Authorized Representative to be most economically advantageous to the City. Prior to the issuance of the first ECP Notes pursuant to this Ordinance, ECP Notes shall be executed on behalf of the City and delivered to the Issuing and Paying Agent, which shall hold such ECP Notes unauthenticated in safekeeping for the City.

(b) The terms of the ECP Notes shall be established and they shall be delivered by the Issuing and Paying Agent in accordance with telephonic, facsimile, computer, or written instructions of an Authorized Representative and in the manner specified below and in the Issuing and Paying Agent Agreement. Any Issuance Request made by telephone pursuant to this Section may be recorded by the Issuing and Paying Agent and shall be confirmed promptly in writing by an Authorized Representative; provided, however, that any conflict between any recorded oral Issuance Request and the written confirmation thereof, shall not affect the validity of any recorded oral Issuance Request received by the Issuing and Paying Agent as provided herein. If the Issuing and Paying Agent does not record an oral Issuance Request, and a conflict exists between such oral Issuance Request and the written confirmation thereof, the terms of the written confirmation shall control. Any such instructions from an Authorized Representative relating to the issuance of ECP Notes for the purpose of refinancing, renewing or refunding ECP Notes may be in the form of standing instructions to the effect that the Issuing and Paying Agent may rely on instructions it receives from a Dealer for the issuance and sale of such ECP Notes unless otherwise notified in writing by an Authorized Representative.

(c) Any Issuance Request shall specify (i) the aggregate principal amount of ECP Notes then to be issued, and, subject to Section 2.02(a), the respective denominations in which they are to be issued, (ii) the Original Rate with respect to each ECP Note, (iii) the Issue Date, the Original Maturity Date, and the Extended Maturity Date of each ECP Note, (iv) the formula or method of calculating interest and the basis upon which it is to be computed, (v) the purchase price, and (vi) any other terms and conditions which are hereby authorized and permitted to be fixed by any Authorized Representative at the time of sale of the ECP Notes. No later than 1:00 p.m. (New York, New York time) on each Business Day on which the City proposes to issue ECP Notes, the applicable Dealer shall report to the City each transaction made with or arranged by it or shall notify the City and the Issuing and Paying Agent of the difference, if any, between the amount of maturing ECP Notes and the amount of ECP Notes which the Dealer has arranged to sell or has agreed to purchase. The City may deliver an Issuance Request for the issuance of ECP Notes on multiple roll-over dates in the future, but shall have the right to rescind such notice with respect to ECP Notes to be issued, no later than 8:30 a.m. (New York, New York time) on any date ECP Notes are to be issued.

(d) Upon receipt of such Issuance Request (which may be transmitted by mail, facsimile or other electronic communications method, or by telephone, promptly confirmed in writing by 12:00 p.m. New York, New York time), the Issuing and Paying Agent shall, by 1:45 p.m. (New York, New York time) on such day, complete each ECP Note as to amount, Issue Date, Original Maturity Date, Extended Maturity Date and Original Rate specified in such Issuance Request, and deliver each such ECP Note to or upon the order of the applicable Dealer upon receipt of payment therefor; provided, however, that no such ECP Notes shall be delivered by the Issuing and Paying Agent if such delivery would cause the sum of the aggregate principal amount of ECP Notes Outstanding to exceed the Authorized Amount. If an Issuance Request is received after 12:00 p.m. (New York, New York time) on a given day, the Issuing and Paying Agent shall not be obligated to deliver the requested ECP Notes until the next succeeding Business Day.

(e) At least one Business Day prior to any date on which the City intends to issue ECP Notes, the City shall provide notice of such intent to the Issuing and Paying Agent and the Dealer. In connection with each issuance and sale of ECP Notes for the purpose of refinancing, renewing or refunding ECP Notes, an Authorized Representative is hereby authorized to provide standing instructions to any Dealer of its preferred ranges for the interest rates and maturity dates for any such sale of ECP Notes; provided that, no such ECP Note shall (i) bear interest at a rate that exceeds the Maximum Interest Rate, (ii) have a denomination of less than $100,000 or (iii) have a term in excess of 270 calendar days, whether extended or not; and provided further that, the interest rates shall be the minimum interest rates which, in the opinion of such Dealer under then-existing market conditions, would result in the sale of such ECP Notes at a price equal to the principal amount thereof.

Section 4.02 Conditions to Delivery Pursuant to Issuance Request.

(a) No ECP Notes shall be delivered by the Issuing and Paying Agent if (i) it shall have received notice from an Authorized Representative directing the Issuing and Paying Agent to cease authenticating and delivering ECP Notes until such time as such direction is withdrawn by similar notice, (ii) it shall have actual knowledge that an Event of Default shall have occurred and be continuing, and will not be cured by the issuance of the applicable ECP Notes, (iii) it shall have

received notice from Bond Counsel that its opinion regarding the exclusion of interest on the ECP Notes of such issue from gross income for federal income tax purposes of the holders thereof is being withdrawn or (iv) the maturity date of such ECP Notes would extend beyond the Program Expiration Date.

(b) In addition to the Issuance Request described above in Section 4.01, and as a further condition to the issuance of any ECP Notes, the Authorized Representative shall certify to or instruct, for and on behalf of the City, the Issuing and Paying Agent that, as of the date of delivery of such ECP Notes, (i) all action on the part of the City necessary for the valid issuance of the ECP Notes then to be issued has been taken; (ii) all provisions of State and federal law necessary for the valid issuance of such ECP Notes have been complied with; (iii) such ECP Notes will be valid and enforceable special obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, sovereign or governmental immunity of political subdivisions and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable or general principles of equity which permit the exercise of judicial discretion; (iv) after the issuance of such ECP Notes and the application of the Proceeds thereof, the sum of the aggregate principal amount of ECP Notes Outstanding will not exceed the Authorized Amount; (v) to the City's knowledge there has been no change in the facts, estimates, circumstances and representations of the City set forth or made (as the case may be) in the Tax Certificate applicable to such ECP Notes; (vi) the Extended Maturity Date of such ECP Notes set forth in the Issuance Request does not extend beyond the Program Expiration Date; (vii) the City has not been notified by Bond Counsel that its opinion with respect to the validity of the ECP Notes and the tax treatment of the interest thereon has been revised or withdrawn or, if any such revision or withdrawal has occurred, the revised opinion or a substitute opinion acceptable to the Dealer has been delivered; (viii) to the actual knowledge of the City, no Event of Default has occurred and is then continuing; (ix) the Proceeds of the sale shall be deposited into the Proceeds Fund or into the Payment Fund pursuant to Sections 4.06 and 4.07 hereof in the amounts specified by the Authorized Representative; and (x) all of the conditions precedent to the issuance of such ECP Notes set forth in this Section of this Ordinance have been satisfied. **The delivery of any Issuance Request to the Issuing and Paying Agent by an Authorized Representative in the manner provided in this Section shall constitute the certification and representation of the City as of the date of such Issuance Request as to the matters set forth in this paragraph.**

Section 4.03 No Redemption Prior to Original Maturity Date. The ECP Notes shall not be subject to redemption prior to their Original Maturity Date.

Section 4.04 Redemption following Original Maturity Date. In the event the City exercises its option to extend the maturity of an ECP Note to the Extended Maturity Date (or an ECP Note is automatically extended to the Extended Maturity Date), any ECP Note issued in exchange therefor may be redeemed on any date after its Original Maturity Date, at the option of the City at a redemption price equal to par (100%), plus accrued and unpaid interest to the redemption date. To exercise its redemption option, the City shall provide not less than 5 nor more than 25 calendar days' notice to the Issuing and Paying Agent. The Issuing and Paying Agent will notify the Depository or the Registered Owner, if not issued in book entry form, of the ECP Notes to be redeemed within one Business Day of receipt of such notice.

Section 4.05 Creation of Payment Fund. There is hereby created and established with the Issuing and Paying Agent a separate and special fund to be designated as the "City of El Paso, Texas, Municipal Drainage Utility System ECP Note Series A Interest and Sinking Fund" (the "Payment Fund"). Moneys in the Payment Fund and the accounts therein shall be held separate and apart from all other moneys, funds and accounts held by the Issuing and Paying Agent, and shall be applied to pay the principal of and interest on Outstanding ECP Notes in the amounts, at the times and in the manner set forth herein. The City may direct the Issuing and Paying Agent to establish and maintain a separate account or accounts in the Payment Fund with respect to any or all of the ECP Notes. Amounts remaining in the Payment Fund not then necessary for the purposes for which such funds were originally held in such account may be transferred to the Proceeds Fund (created pursuant to Section 4.06 hereof) upon request of an Authorized Representative.

Pending the expenditure of money in the Payment Fund for authorized purposes, money deposited therein may be invested at the direction of an Authorized Representative in Eligible Investments. Any income received from investments in the Payment Fund shall be retained in the Payment Fund.

Section 4.06 Creation of Proceeds Fund; Proceeds of Sale of ECP Notes.

(a) There is hereby created and established on the books of the City a separate fund hereby designated as the "City of El Paso, Texas, Municipal Drainage Utility System ECP Note Series A Proceeds Fund" (the "Proceeds Fund"). The Proceeds of the initial sale of any ECP Notes that are issued to pay Project Costs and are not issued to redeem or pay the principal of another ECP Note shall be deposited to the credit of the Proceeds Fund, and into any applicable account therein designated by the Authorized Representative, and such Proceeds shall be used to pay Project Costs. Money deposited in the Proceeds Fund shall remain therein until expended from time to time to pay Project Costs and shall not be used for any other purposes whatsoever, except for temporary investment thereof as provided in Section 4.05 of this Ordinance. Proceeds so deposited shall be held separate and apart from all other funds and accounts and shall not be commingled with any other moneys.

(b) The Proceeds of the sale of ECP Notes issued to redeem or pay the principal of another ECP Note shall be deposited directly into the Payment Fund, and into any applicable account therein designated by the Authorized Representative, as directed in writing by an Authorized Representative to refinance or retire the ECP Notes for which such ECP Notes were issued. Proceeds so deposited shall be held separate and apart from all other funds and accounts and shall not be commingled with any other moneys.

Section 4.07 Deposits Into Payment Fund.

(a) At or before 2:00 p.m., New York, New York time, on an interest payment date as provided in Section 2.02(d) or 2.02(f) hereof, on the Original Maturity Date or Extended Maturity Date of each ECP Note or on a redemption date for an ECP Note, the City shall deposit or cause to be deposited into the applicable Payment Fund account, solely from Net Revenues or ECP Note Proceeds or proceeds from the sale of the Refunding Bonds, an amount sufficient, together with other available moneys including the moneys in the Payment Fund account, to pay principal of

and interest due on all ECP Notes maturing or subject to redemption on such interest payment date, Original Maturity Date, Extended Maturity Date, or redemption date, as applicable.

(b) Moneys in the Payment Fund shall be invested and reinvested by the Issuing and Paying Agent in Eligible Investments, as directed in writing by an Authorized Representative.

Section 4.08 Defeasance of ECP Notes. ECP Notes shall not be deemed to have been paid in full unless payment of the principal of and interest on the ECP Notes either (a) shall have been made or caused to be made in accordance with the terms of the ECP Notes and this Ordinance, or (b) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Issuing and Paying Agent in accordance with an escrow agreement or other instrument for such payment (i) lawful money of the United States of America sufficient to make such payment or (ii) Government Obligations that mature as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to provide for such payment.

ARTICLE V

COVENANTS OF THE CITY

Section 5.01 Limitation on Issuance. Unless this Ordinance is amended and modified by the City in accordance with the provisions of Article VI, the City covenants that there will not be issued and Outstanding at any time more than the Authorized Amount of ECP Notes. The City reserves the right to increase such amount by an amendment to this Ordinance duly adopted by the City Council. For purposes of this Section any portion of Outstanding ECP Notes to be paid on the day of calculation from moneys on deposit in the Payment Fund or the Proceeds of ECP Notes or Refunding Bonds or any combination thereof shall not be considered Outstanding.

Section 5.02 Covenants to Maintain Tax-Exempt Status on ECP Notes.

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

"*Closing Date*" means the date on which the ECP Notes are first authenticated and delivered to the initial purchasers against payment therefor.

"Code" means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

"Computation Date" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Gross Proceeds" means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the ECP Notes.

"Investment" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Nonpurpose Investment" means any investment property, as defined in Section 148(b) of the Code, in which Gross Proceeds of the ECP Notes are invested and which is not acquired to carry out the governmental purposes of the ECP Notes.

"Rebate Amount" has the meaning set forth in Section 1.148-1(b) of the Regulations.

"Regulations" means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the ECP Notes. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

"Yield" of

(1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(2) the ECP Notes has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any ECP Note to become includable in the gross income, as defined in Section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any ECP Note, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last stated maturity of ECP Notes:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the ECP Notes and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the ECP Notes or any

property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by Section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the ECP Notes to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by Section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the ECP Notes directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the ECP Notes.

(f) Not Federally Guaranteed. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the ECP Notes to be federally guaranteed within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by Section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in Section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six (6) years after the day on which the last outstanding ECP Note is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the ECP Notes with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in Section 148(f) of the Code and the

Regulations and rulings thereunder. The City shall maintain such Computations with its official transcript of proceedings relating to the issuance of the ECP Notes until six (6) years after the final Computation Date.

(3) The City shall pay to the United States out of the Payment Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the ECP Notes equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the Computations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

(i) Elections. The City hereby directs and authorizes each Authorized Representative or any combination of them, to make elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the ECP Notes, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

Section 5.03 Reimbursement. The City reasonably expects to reimburse capital expenditures made from its own funds with respect to Projects with ECP Note proceeds and this Ordinance shall constitute a declaration of official intent under Treasury Regulations Section 1.150-2. The maximum principal amount of obligations expected to be issued and outstanding for Projects at any time is $60,000,000.

Section 5.04 Disposition of Projects. The City covenants that the property constituting a Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of Bond Counsel substantially to the effect that such sale or other disposition will not adversely affect the tax-exempt status of the ECP Notes.

Section 5.05 Opinion of Bond Counsel. The City shall cause the legal opinion of Bond Counsel as to the validity of the ECP Notes and as to the exclusion of interest on such ECP Notes from gross income of the owners thereof for federal income tax purposes to be furnished to any Holder without cost. In addition, a copy of such opinion may be printed on or accompany each of the ECP Notes issued in physical format. In addition, in connection with the updating of the

Offering Memorandum (as provided in accordance with Section 7.08 hereof) or as required by the Dealer Agreement, there may be provided an updated opinion of Bond Counsel for ECP Notes as determined by Bond Counsel, at the cost of the City or the Dealer as agreed to in the Dealer Agreement.

Section 5.06 Performance. The City will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions authorizing the issuance of the ECP Notes, and in each and every ECP Note; promptly pay or cause to be paid the principal of and interest on every ECP Note, on the dates and in the places and manner prescribed, and will, at the times and in the manner prescribed, deposit or cause to be deposited the amounts required to be deposited into the Payment Fund, and any Registered Owner of ECP Notes may require the City, its City Council, and its officials and employees, to carry out, respect, or enforce the covenants and obligations of this Ordinance, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the City, its City Council, and its officials and employees.

Section 5.07 Legal Authority. The City represents that it is a municipal corporation, a political subdivision of the State and a body politic and corporate, duly created, organized, and existing, under the Constitution and general laws of the State, and is duly authorized under the laws of the State to create and issue the ECP Notes; that all action on its part for the creation and issuance of the ECP Notes has been duly and effectively taken, and that the ECP Notes in the hands of the Registered Owners thereof are and will be valid and enforceable special obligations of the City in accordance with their terms.

Section 5.08 Operation of System. The City and the Board hereby covenant, respectively, that they will maintain and operate the System with all possible efficiency, in good working order and at a reasonable cost while any of the ECP Notes remain Outstanding and faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State.

Section 5.09 Further Encumbrance. While the ECP Notes are Outstanding, the City shall not, except with respect to the issuance of Bonds Similarly Secured, additionally encumber the Net Revenues, unless such encumbrance is made on a parity with, or junior and subordinate in all respects to the liens, pledges, covenants and agreements hereof; but the right of the City to issue obligations subordinate to the ECP Notes for any lawful purpose payable from a lien on the Net Revenues that is subordinate to the ECP Notes is specifically recognized and retained. This Ordinance does not and is not intended to affect, limit, or prohibit the issuance of bonds payable wholly or in part from ad valorem taxes.

Section 5.10 No Sale or Encumbrance of System. The City and the Board hereby covenant, respectively, that they will not in any manner dispose of the System or any substantial part thereof, including any and all extensions and additions that may be made thereto, while any ECP Notes are Outstanding; provided, however, that this covenant shall not be construed to prevent the disposal by the City of property, which in the Board's judgment has become inexpedient to use in connection with the System, when other property of equal value is substituted therefor or when the proceeds of such disposition of such property are placed in the Payment Fund, in addition to all other amounts required to be placed in the Payment Fund in the current fiscal

year, and are used for the retirement of Bonds Similarly Secured in advance of their respective maturities.

Section 5.11 Insurance. The City hereby agrees that it will carry at all times for the benefit of the Holders of the ECP Notes, such insurance on the System that is reasonably obtainable of the kinds and in the amounts which are usually carried by private companies operating similar properties. Such insurance may be provided by means of a self-insurance fund in which event deposits to such fund shall be a maintenance and operating expense of the System.

Section 5.12 Rate Covenant. The City will fix, establish, maintain and collect such rates, charges and fees for the use and availability of the System at all times as are necessary to produce Gross Revenues sufficient (1) to pay all current Operating and Maintenance Expenses, and (2) to produce an additional amount equal to 1.25 times the Average Annual Debt Service (as defined in the ordinances authorizing the Bonds Similarly Secured) requirements of all Outstanding Bonds Similarly Secured for that Fiscal Year, and (3) to make all payments and deposits required to be made into the Payment Fund for the ECP Notes and produce amounts required to pay all other obligations of the System reasonably anticipated to be paid from Net Revenues during the current Fiscal Year.

Section 5.13 Governmental Agencies. The City will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the System, and which have been obtained from any governmental agency; and the City has or will obtain and keep in full force and effect all franchises, permits, authorization and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the System.

Section 5.14 Title. The City has or will obtain lawful title to the lands, buildings, structures and facilities constituting the System, that it warrants that it will defend the title to all the aforesaid lands, buildings, structures and facilities, and every part thereof, for the benefit of the holders and owners of the Bonds Similarly Secured and ECP Notes, against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Net Revenues to the payment of the Bonds Similarly Secured and the ECP Notes, respectively, in the manner prescribed herein, and has lawfully exercised such rights.

Section 5.15 Nonimpairment of Lien. The City will from time to time and before the same become delinquent pay and discharge all taxes, assessments and governmental charges, if any, which shall be lawfully imposed upon it, or the System; it will pay all lawful claims for rents, royalties, labor, materials and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the City.

Section 5.16 No Competing Systems. The City hereby covenants that it will not grant a franchise for the operation of any competing drainage system in the City while any ECP Notes are Outstanding.

Section 5.17 Books and Records. The City will keep proper books of record and account in which full, true and correct entries will be made of all dealings, activities and transactions relating to the System, the Net Revenues, and the funds created pursuant to this Ordinance and the ordinances authorizing the Bonds Similarly Secured, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of a Holder.

Section 5.18 Audits. After the close of each Fiscal Year while any ECP Note is Outstanding, it will cause an audit to be made of the books and accounts relating to the City, including the System and the Net Revenues by an Accountant. Such annual audit reports shall be open to the inspection of the Holders and their agents and representatives at all reasonable times.

ARTICLE VI

AMENDMENTS

Section 6.01 Limitations. This Ordinance shall not be modified or amended in any respect if any ECP Notes are Outstanding except as provided in, and in accordance with and subject to the provisions of, this Article.

Section 6.02 Amendments Without Consent.

(a) This Ordinance and the rights and obligations of the City and of the owners of the Outstanding ECP Notes may be modified or amended at any time without notice to or the consent of any owner of the ECP Notes or any Bonds Similarly Secured, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the City contained in this Ordinance, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the City in this Ordinance and which shall not, in the judgment of the City, materially adversely affect the interests of the owners of the Outstanding ECP Notes;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Ordinance, upon receipt by the City of an opinion of Bond Counsel, that the same is required for such purpose, and will more clearly express the intent of this Ordinance, provided that such supplement or amendment is not materially adverse to the Holders;

(iii) To supplement the security for the Outstanding ECP Notes issued hereunder, provide for credit facilities, or make changes in the provisions thereof, or change the form of the Outstanding ECP Notes or make such other changes in the provisions hereof, including extending the Program Expiration Date, as the City may deem

necessary or desirable and which shall not, in the judgment of the City, materially adversely affect the interests of the owners of the Outstanding ECP Notes;

(iv) To make any changes or amendments requested by any Rating Agency then rating or requested to rate ECP Notes, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the owners of the Outstanding ECP Notes;

(v) To increase the Authorized Amount of ECP Notes which may be Outstanding;

(vi) To accommodate the technical, operational and structural features of ECP Notes which are issued or are proposed to be issued, including, but not limited to, changes required to accommodate other forms of paper, or other forms of indebtedness which the City from time to time deems appropriate to incur;

(vii) To comply with the requirements of the Code as are necessary, in the opinion of Bond Counsel, to preserve the exclusion from gross income for federal income taxation of the interest on ECP Notes, as appropriate; or

(viii) To change the Maximum Interest Rate, the Extended Rate variables *E* and *F,* the Maximum Original Maturity Days or the Extended Maturity Days, with respect to ECP Notes issued on or after the effective date of this Ordinance accompanied by appropriate disclosure of the amendment or supplement; provided however, that the Maximum Original Maturity Days together with the Extended Maturity Days may not exceed 270 days and that any change to the Extended Rate variables *E* and *F* or the Maximum Interest Rate will be made so as to ensure that the ECP Notes will bear the lowest overall interest rate at which a par priced ECP Note may be sold, and provided further that any supplement or amendment described in this paragraph shall not be materially adverse to the Holders of Outstanding ECP Notes.

(b) Before the City shall, pursuant to this Section, execute any Amended Ordinance, other than an Amended Ordinance entered into pursuant to Section 6.02(a)(viii) hereof, there shall have been delivered to the City an opinion of Bond Counsel to the effect that such Amended Ordinance is authorized or permitted by this Ordinance and applicable law, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms, and will not cause interest on any of the ECP Notes to be included in gross income for federal income tax purposes.

Section 6.03 Amendments With Consent.

(a) Except for any amendment pursuant to Section 6.02 and any amendment pursuant to subsection (b) below, subject to the terms and provisions contained in this Section and not otherwise, the Holders of not less than a majority in aggregate principal amount of the ECP Notes then Outstanding shall have the right from time to time, to consent to and approve the adoption by the City of any Amended Ordinance deemed necessary or desirable by the City for the purposes

of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in this Ordinance; provided, however, that, unless approved in writing by the holders of all the ECP Notes then Outstanding, or unless such change affects less than all Outstanding ECP Notes and subsection (b) below is applicable, nothing herein contained shall permit, or be construed as permitting, (i) an extension in the stated maturity (whether the Original Maturity Date or the Extended Maturity Date) of any Outstanding ECP Notes, or a change in the amounts of the principal of or interest on any Outstanding ECP Notes, or (ii) a reduction in the principal amount or redemption price of any Outstanding ECP Notes, or the rate of interest thereon; or (iii) except with respect to additional security which may be provided for a particular ECP Note, a preference or priority of any ECP Note or ECP Notes over any other ECP Note or ECP Notes with respect to the security granted therefor under this Ordinance, or (iv) a reduction in the aggregate principal amount of ECP Notes the consent of the Holders of which is required for any such Amended Ordinance.

(b) If an Amended Ordinance contains provisions which affect the rights and interests of less than all Outstanding ECP Notes and Section 6.02 hereof is not applicable, then this subsection (b) rather than subsection (a) above shall control, and, subject to the terms and provisions contained in this Section and not otherwise, the holders of not less than a majority in aggregate principal amount of the Outstanding ECP Notes which are affected by such changes shall have the right from time to time to consent to any Amended Ordinance deemed necessary or desirable by the City for the purposes of modifying, altering, amending, supplementing or rescinding, in any particular, any of the terms or provisions contained in such Amended Ordinance and affecting only such ECP Notes; provided, however, that, unless approved in writing by the holders of all the affected ECP Notes then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) an extension in the stated maturity (whether the Original Maturity Date or the Extended Maturity Date) of any Outstanding ECP Notes, or a change in the amounts of the principal of or interest thereon, or (ii) a reduction in the principal amount or redemption price of any Outstanding ECP Notes or the rate of interest thereon, or (iii) except with respect to additional security which may be provided for the ECP Notes, a preference or priority of any ECP Note or ECP Notes over any other ECP Note or ECP Notes with respect to the security granted therefor under this Ordinance, or (iv) a reduction in the aggregate principal amount of ECP Notes, the consent of the Holders of which is required for any such Amended Ordinance. Nothing herein contained, however, shall be construed as making necessary the approval by Holders of the adoption of any Amended Ordinance as authorized in Section 6.02 hereof.

Section 6.04 Notice of Proposed Amendments. If at any time the City shall desire to amend this Ordinance pursuant to Section 6.03, the City shall cause notice of the proposed amendment to be given to all affected Registered Owners, each Dealer and EMMA. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Issuing and Paying Agent for inspection by all owners of ECP Notes issued hereunder. A copy of such Notice shall be provided in writing to each Rating Agency maintaining a rating on the ECP Notes.

Section 6.05 Receipt of Consents.

(a) Whenever at any time not less than thirty (30) days, and within one year, from the date of the notice of the proposed amendment is provided by the City in accordance with Section

6.04 the City shall receive an instrument or instruments executed by all of the Holders of at least a majority in Outstanding Principal Amount of the ECP Notes, as appropriate, which instrument or instruments shall refer to the proposed amendment described in such notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the City Council may adopt the Amended Ordinance in substantially the same form. It shall not be required that the Holders approve the final form of such Amended Ordinance but it shall be sufficient if such Holders approve the substance thereof.

(b) Any consent given by any Holder of ECP Notes pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the notice provided, and shall be conclusive and binding upon all future Holders of the same ECP Notes during such period. Such consent may be revoked at any time after six months from the date of the such notice by the Holder who gave such consent, or by a successor in title, by filing notice thereof with the Issuing and Paying Agent and the City, but such revocation shall not be effective if the City has acted upon such proposed amendment prior to the attempted revocation of consent by such Holder or if the Holders of at least a majority in Outstanding principal amount of ECP Notes prior to the attempted revocation consented to and approved the amendment.

(c) If Holders of not less than a majority in Outstanding principal amount of ECP Notes required by this Section shall have consented to and approved the execution and delivery thereof as herein provided, no Holders shall have any right to object to the adoption of such Amended Ordinance, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the City from adopting the same or from taking any action pursuant to the provisions thereof.

Section 6.06 Effect of Amendments. Upon the adoption by the City Council of any ordinance to amend this Ordinance pursuant to the provisions of this Article VI, this Ordinance shall be deemed to be amended in accordance with the Amended Ordinance, and the respective rights, duties, and obligations of the City and all the Holders of then Outstanding ECP Notes and all future ECP Notes shall thereafter be determined, exercised, and enforced under this Ordinance.

Section 6.07 Additional Amendments. Subject to the provisions of Section 6.02 and 6.03 hereof, the City may, from time to time and at any time, adopt an Amended Ordinance which amends the provisions of an earlier Amended Ordinance.

ARTICLE VII

MISCELLANEOUS

Section 7.01 Ordinance to Constitute a Contract; Equal Security. In consideration of the acceptance of the ECP Notes by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the City and the Holders of the ECP Notes and the pledge made in this Ordinance by the City and the covenants and agreements set forth in this Ordinance to be performed by the City shall be for the equal and proportionate benefit, security, and protection of all Holders of the ECP Notes, without preference, priority, or distinction as to security or otherwise of any of the ECP Notes over any of the others

by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Ordinance.

Section 7.02 Individuals Not Liable. All covenants, stipulations, obligations, and agreements of the City contained in this Ordinance shall be deemed to be covenants, stipulations, obligations, and agreements of the City and the City Council to the full extent authorized or permitted by the Constitution and laws of the State of Texas. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council or agent or employee of the City in his or her individual capacity and neither the members of the City Council nor any officer of the City shall be liable personally on the ECP Notes or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.03 Further Procedures. The Mayor, Mayor Pro Tem, the City Clerk, the Alternate City Clerk, the City Manager or Interim City Manager of the City, each Authorized Representative and all other officers, employees and agents of the City, 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, the initial sale and delivery of the ECP Notes and otherwise to effectuate the purposes of this Ordinance, the Dealer Agreement, and the Issuing and Paying Agent Agreement. In addition, prior to the initial delivery of the ECP Notes, the Mayor, Mayor Pro Tem, the City Clerk, the Alternate City Clerk, the City Manager or Interim City Manager of the City, 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: (i) in order to cure any technical ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General or his representative to obtain the approval of proceedings relating to the Program by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the 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.

Additionally, the Mayor, Mayor Pro Tem, the City Clerk, the Alternate City Clerk, the City Manager or Interim City Manager of the City, the Chief Financial Officer of the City and each Authorized Representative may execute, authenticate, certify, or endorse or authorize to be executed, authenticated, certified, or endorsed with such officer's facsimile signature instead of the officer's manual signature any written agreement, including a contract, purchase order or surety bond, and any related document, including an application, certificate, or approval. For purposes of this Ordinance, "facsimile signature" means a reproduction of the manual signature of an authorized officer that is made by any method.

Section 7.04 Severability of Invalid Provisions. If any one or more of the covenants, agreements, or provisions herein contained shall be held contrary to any express provisions of law

or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the ECP Notes issued hereunder.

Section 7.05 Payment and Performance on Business Days. Whenever under the terms of this Ordinance or the ECP Notes, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the ECP Notes, shall occur on a day other than a Business Day, then the performance thereof, including the payment of principal of and interest on the ECP Notes, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment is scheduled.

Section 7.06 Limitation of Benefits With Respect to the Ordinance. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Ordinance or the ECP Notes is intended or should be construed to confer upon or give to any person other than the City, the Holders, the Issuing and Paying Agent, and the Dealer any legal or equitable right, remedy, or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Holders, the Issuing and Paying Agent and the Dealer as herein and in the Issuing and Paying Agent Agreement and the Dealer Agreement provided.

Section 7.07 Approval of Attorney General. No ECP Notes herein authorized to be issued shall be sold or delivered by an Authorized Representative until the Attorney General of the State shall have approved the proceedings relating to the Program, and other agreements and proceedings as may be required in connection therewith, all as is required by the Act.

Section 7.08 Approval of Offering Memorandum. The form of Offering Memorandum to be used by the Dealer in the offering of the ECP Notes submitted to the City Council at the meeting at which this Ordinance is adopted is hereby approved, and an Authorized Representative is authorized to approve any changes to such document the Authorized Representative finds necessary or desirable. An Authorized Representative is hereby authorized to approve the final form of Offering Memorandum, to be used by the Dealer in the offering of the ECP Notes, and the use thereof by the Dealer in connection therewith and to cooperate with the Dealer in periodically updating and approving the Offering Memorandum.

Section 7.09 Notice to Rating Agencies. (a) The Authorized Representative shall provide the Rating Agencies that maintain a rating on the ECP Notes at the request of the City with written notice of the occurrence of the following events: (i) changes in any Dealer, (ii) the appointment of a successor Issuing and Paying Agent, (iii) amendments or supplements to the Ordinance or the Issuing and Paying Agent Agreement, (iv) the defeasance of all Outstanding ECP Notes and (v) the termination of the Program.

(b) Any notice under paragraph (a) shall be sent to the Rating Agencies at the following addresses, as applicable:

Standard & Poor's:	Attention: Muni Structured Finance 55 Water Street, 38th Floor New York, New York 10041 phone: 212-43 8-2000 fax: 212-438-2157 email: pubfinstructured@sandp.com
Moody's:	Attention: Public Finance Department - Rating Desk/CP Moody's Investors Service, Inc. 99 Church Street New York, New York 10007 phone: 212-553-0300 fax: 212-964-5082
Fitch Ratings:	Fitch Ratings - U.S. Public Finance 33 Whitehall Street New York, New York 10004 phone: 212-908-0889

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01 Events of Default. Each of the following events shall constitute and is referred to in this Ordinance as an "Event of Default":

(a) a failure by the City to pay the principal of any ECP Note for five Business Days after the date the same shall have become due and payable on an Extended Maturity Date;

(b) a failure by the City to pay any installment of interest on any ECP Note for five Business Days after the date such interest shall have become due and payable on an Original Maturity Date or an Extended Maturity Date or in accordance with Section 2.02(d) hereof;

(c) a failure by the City to apply the Proceeds of Refunding Bonds to the payment of maturing ECP Notes on the applicable Extended Maturity Date;

(d) a failure by the City to observe and perform any covenant, condition, agreement or provision (other than as specified in paragraphs (a), (b) and (c) of this Section) contained in the ECP Notes or in this Ordinance on the part of the City to be observed or performed, which materially, adversely affects the rights of the Holders, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance and which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the City by a Dealer, the Issuing and Paying Agent or any Holder;

(e) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including, without limitation, proceedings under the United States Bankruptcy Code (as the same may from time to time be hereafter amended), or other proceedings for relief under any federal or State bankruptcy law or similar law for the relief of debtors are instituted by the City; or

(f) the occurrence of any other Event of Default as is provided in an Amended Ordinance.

If any Event of Default has occurred, but is subsequently cured or waived, then such Event of Default shall no longer constitute an Event of Default hereunder.

Section 8.02 Remedies for Default.

(a) Upon the happening of any Event of Default, any Holder or an authorized representative thereof, including, but not limited to, a trustee or trustees therefore, may proceed against the City or the City Council, as appropriate, for the purpose of protecting and enforcing the rights of the Holders under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Holders hereunder or any combination of such remedies. It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Holders of ECP Notes then Outstanding.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the ECP Notes or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the ECP Notes shall not be available as a remedy under this Ordinance.

(c) By accepting the delivery of an ECP Note authorized under this Ordinance, a Holder agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers or employees of the City or the City Council.

[*The remainder of this page intentionally left blank.*]

APPROVED AND ADOPTED this 9th day of May, 2023.

Oscar Leeser
Mayor, City of El Paso, Texas

ATTEST:

Laura D. Prine
City Clerk, City of El Paso, Texas

(SEAL)

APPROVED AS TO FORM:

Karla Nieman
City Attorney
City of El Paso, Texas

APPROVED AS TO CONTENT:

Arturo Duran
Chief Financial Officer
El Paso Water Utilities

APPROVED AS TO FORM:

Paul A. Braden
Bond Counsel

135264749.8

EXHIBIT A

FORM OF ECP NOTES

UNITED STATES OF AMERICA
STATE OF TEXAS
CITY OF EL PASO, TEXAS
MUNICIPAL DRAINAGE UTILITY SYSTEM
EXTENDABLE COMMERCIAL PAPER NOTE
SERIES A (TAX-EXEMPT)

ECP NOTE NUMBER	INTEREST RATE	ISSUE DATE	PRINCIPAL AMOUNT

[ORIGINAL MATURITY DATE:] or
[EXTENDED MATURITY DATE:]

REGISTERED OWNER:

PRINCIPAL AMOUNT:

The City of El Paso, Texas (the "City") being a political subdivision of the State of Texas, hereby promises to pay to the Registered Owner set forth above, or registered assigns, (i) the Principal Amount stated above, with accrued interest thereon at the Interest Rate stated above, on the Original Maturity Date stated above and (ii) if the Original Maturity Date shall have been extended to the Extended Maturity Date, as provided in the Ordinance, to pay: (a) accrued interest at the Interest Rate stated above on the Original Maturity Date, (b) from and after the Original Maturity Date accrued interest on the Principal Amount stated above at the Extended Rate (as described herein) and (c) the Principal Amount stated above on the Extended Maturity Date. The Principal Amount shall be payable at ZIONS BANCORPORATION, NATIONAL ASSOCIATION (the "Issuing and Paying Agent"). Both principal and interest on this ECP Note being payable in immediately available lawful money of the United States of America at the designated corporate office of the Issuing and Paying Agent, or its successor.

This ECP Note is one of a series of notes with the option of the City to extend the Original Maturity Date to the Extended Maturity Date. This ECP Note has been duly authorized and issued in accordance with the provisions of a master ordinance (the "Ordinance") adopted by the City Council of the City for the purpose of financing Project Costs and to refinance, renew, and refund ECP Notes; all in accordance and in strict conformity with the provisions of the Constitution and laws of the State of Texas, including but not limited to, the Act. The provisions of the Ordinance are incorporated herein by reference. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Ordinance.

This ECP Note shall bear interest at the Interest Rate from its Issue Date to its Original Maturity Date (calculated on the basis of a year consisting of 365/366 days and actual number of

days elapsed) and, unless the City exercises its option to extend the Original Maturity Date to the Extended Maturity Date, shall be payable as to principal and interest on its Original Maturity Date.

If the City exercises its option in accordance with the Ordinance to extend the Original Maturity Date of this ECP Note, accrued interest at the Interest Rate stated above shall be paid on the Original Maturity Date, the Principal Amount shall not be paid on its Original Maturity Date and the ECP Note shall bear interest from its Original Maturity Date at the Extended Rate (calculated on the basis of a year consisting of 365/366 days and actual number of days elapsed), and no additional interest shall accrue on the accrued but unpaid interest from the Issue Date to the Original Maturity Date. If the City extends the ECP Note to the Extended Maturity Date, then interest calculated at the Extended Rate from and including the Original Maturity Date to but excluding the Extended Maturity Date shall be payable on the Extended Maturity Date for such ECP Note or date of prior redemption. The Extended Rate shall be the rate of interest per annum determined by the following formula; provided that such Extended Rate shall not exceed the Maximum Interest Rate:

The greater of (SIFMA Index + *E)* or *F*

THE EXTENDED RATE APPLICABLE TO AN ECP NOTE will be determined weekly by the Issuing and Paying Agent based on the Prevailing Ratings and other information available as of 10:30 a.m., New York, New York time, on the Original Maturity Date of this ECP Note and each Thursday thereafter and will apply from that date through the following Wednesday or, if earlier, the applicable Extended Maturity Date. As used in the formula, the *E* and *F* variables shall be the fixed percentage rates, expressed in basis points and yields, respectively, determined based on the Prevailing Ratings of the Rating Agencies then rating the ECP Notes, as follows:

	Prevailing			
Fitch	**Rating Moody's**	**S&P**	***E* Variable**	***F* Variable**
F-1+	P-1	A-1+	250 bps	7.00%
F-1	-	A-1	350 bps	7.50%
F-2	P-2	A-2	550 bps	8.00%
Lower than F-2 (or rating withdrawn for credit reasons)	Lower than P-2 (or rating withdrawn for credit reasons)	Lower than A-2 (or rating withdrawn for credit reasons)	Maximum Interest Rate	Maximum Interest Rate

If the individual Prevailing Ratings indicate different *E* or *F* variables as a result of split ratings assigned to the City, the *E* or *F* variable shall be the arithmetic average of those indicated by the Prevailing Ratings.

By acceptance of this note, in the event principal of this ECP Note is not paid on the Original Maturity Date, the Registered Owner agrees to surrender this ECP Note to the Issuing and Paying Agent in exchange for a new ECP Note having the Extended Maturity Date.

The ECP Notes shall not be subject to redemption prior to their Original Maturity Date. If the City exercises its option to extend the maturity of an ECP Note to the Extended Maturity Date,

this ECP Note may be redeemed on any date after its Original Maturity Date, at the option of the City at a redemption price equal to par (100%), plus accrued and unpaid interest to the redemption date. To exercise its redemption option, the City shall provide not less than 5 nor more than 25 calendar days' notice to the Issuing and Paying Agent and each Dealer. The Issuing and Paying Agent will notify the Depository of the ECP Notes to be redeemed within one Business Day of receipt of such notice.

This ECP Note is a special obligation of the City, and the payment of the principal of and interest on this ECP Note is and shall be secured by and payable only from a lien on and pledge of (i) the Net Revenues, and the Net Revenues are further pledged to the establishment and maintenance of the Payment Fund; provided that the pledge of Net Revenues securing the ECP Notes is expressly made subordinate and inferior to the lien on and pledge of Net Revenues securing Bonds Similarly Secured, and the ECP Notes shall constitute Subordinate Lien Obligations, as provided in the ordinances authorizing the Bonds Similarly Secured, (ii) the Proceeds from the sale of ECP Notes to refinance maturing ECP Notes and the proceeds of Refunding Bonds to be issued by the City, and (iii) all amounts in the funds and accounts created or maintained pursuant to this Ordinance and the Issuing and Paying Agent Agreement, and such amounts constitute funds held for that purpose, subject only to the provisions of the Ordinance and the Issuing and Paying Agent Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein and therein. This ECP Note is not secured by or payable from any funds raised or to be raised by the levy of taxes by the City nor a mortgage or deed of trust on any properties, whether real, personal, or mixed, constituting the System or otherwise, nor from any source other than as specified in the Ordinance.

The City shall not issue ECP Notes on a parity with the Bonds Similarly Secured.

The City covenants to pay the principal of, premium, if any, and the interest on the ECP Notes when due, whether by reason of maturity or redemption.

Reference is hereby made to the Ordinance, copies of which may be obtained upon request to the City, and by acceptance of this ECP Note, the Holder hereof hereby assents to all of the terms and provisions of the Ordinance, including, but not limited to, provisions relating to definitions of terms; the description of and the nature of the security for the ECP Notes and the pledge of Net Revenues; and the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders of the ECP Notes.

It is hereby certified and recited that all acts, conditions, and things required by law and the Ordinance to exist, to have happened, and to have been performed precedent to and in the issuance of this ECP Note, do exist, have happened, and have been performed in regular and in due time, form, and manner as required by law and that the issuance of this ECP Note, together with all other Outstanding ECP Notes, is not in excess of the Authorized Amount permitted to be issued under the Ordinance.

This ECP Note has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This ECP Note may be registered to bearer or to any designated payee. Title to any ECP Note registered to bearer shall pass by delivery. If not registered to bearer, this ECP Note may be transferred only on the books of the Issuing and Paying Agent. Upon surrender hereof at the designated office of the Issuing and Paying Agent, this ECP Note may be exchanged for a like aggregate principal amount of fully registered (which registration may be to bearer) ECP Notes of authorized denominations of like interest rate and maturity, and in the same form as this ECP Note, but only in the manner, and subject to the limitations, and upon payment of the charges provided in the Ordinance and upon surrender and cancellation of this ECP Note.

This ECP Note shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this ECP Note shall have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, the City has caused this ECP Note to be executed in its name by the manual or facsimile signature of the Mayor of the City and countersigned by the manual or facsimile signature of the City Clerk or Alternate City Clerk, and the official seal of the City has been duly impressed or placed in facsimile on this ECP Note.

City Clerk City of El Paso, Texas	Mayor City of El Paso, Texas

(SEAL)

ISSUING AND PAYING AGENT'S
CERTIFICATE OF AUTHENTICATION

This ECP Note is one of the ECP Notes delivered pursuant to the within mentioned Ordinance.

ZIONS BANCORPORATION, NATIONAL ASSOCIATION,
As Issuing and Paying Agent

By: _____
Authorized Signatory

FORM OF ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

_____

(Social Security or other identifying number): _____

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

DATED: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.	NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this ECP Note in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

FORM OF MASTER ECP NOTES

The Depository Trust Company

A subsidiary of The Depository Trust & Clearing Corporation

MUNICIPAL COMMERCIAL PAPER — CP MASTER NOTE

(Tax-Exempt)

_____

[Date of Issuance]

The City of El Paso, Texas (the "City"), for value received, hereby promises to pay to Cede & Co., as nominee of The Depository Trust Company, or to registered assigns: (i) the principal amount, together with unpaid accrued interest thereon, if any, on the maturity date of each obligation identified on the records of the City (the "Underlying Records") as being evidenced by this Master Note, which Underlying Records are maintained by ZIONS BANCORPORATION, NATIONAL ASSOCIATION (the "Issuing and Paying Agent"); (ii) interest on the principal amount of each such obligation that is payable in installments, if any, on the due date of each installment, as specified on the Underlying Records; and (iii) the principal amount of each such obligation that is payable in installments, if any, on the due date of each installment, as specified on the Underlying Records. Interest shall be calculated at the rate and according to the calculation convention specified on the Underlying Records. Payments shall be made solely from the sources stated on the Underlying Records by wire transfer to the registered owner from Paying Agent without the necessity of presentation and surrender of this Master Note.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS MASTER NOTE SET FORTH ON THE REVERSE HEREOF.

This Master Note is a valid and binding obligation of the City.

Not Valid Unless Countersigned for Authentication by the Issuing and Paying Agent.

ZIONS BANCORPORATION, NATIONAL ASSOCIATION	CITY OF EL PASO, TEXAS
By:_____	By:_____
(Authorized Countersignature)	(Authorized Signature)

The provisions of the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Note, Series A (Tax-Exempt), a form of which is attached hereto, are incorporated herein and made a part hereof for all purposes. The aggregate principal amount of ECP Notes at any one time outstanding shall not exceed the amount authorized in Section 2.01 of the Ordinance establishing the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program (the "Ordinance") as such authorized amount may be limited by Section 5.01 of the Ordinance.

At the request of the registered owner, the City shall promptly issue and deliver one or more separate note certificates evidencing each obligation evidenced by this Master Note. As of the date any such note certificate or certificates are issued, the obligations which are evidenced thereby shall no longer be evidenced by this Master Note.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

_____

(Name, Address, and Taxpayer Identification Number of Assignee)

the Master Note and all rights thereunder, hereby irrevocably constituting and appointing _____, attorney, to transfer such Master Note on the books of the City with full power of substitution in the premises.

Date:

Signature(s) Guaranteed:

_____

(Signature)

Notice: The signature on this assignment must correspond with the name as written upon the face of this Master Note, in every particular, without alteration or enlargement or any change whatsoever.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to City or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

EXHIBIT C

FORM OF EXTENSION REQUEST

Date _____

[Name and Address of Issuing and Paying Agent]

[Name and Address of Dealer]

EXTENSION REQUEST

Ladies and Gentlemen:

This certificate is provided pursuant to the requirements of Section 2.02(g) of the Ordinance establishing the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program adopted by the City Council of the City of El Paso, Texas, on May 9, 2023 (the "Ordinance"), with respect to the issuance of the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Note, Series A (Tax-Exempt), for the purpose of requesting the extension of an ECP Note, as provided herein. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Ordinance.

(a) The ECP Note is in the principal amount of $_____, bears interest at the stated rate of _____%, and has a stated Original Maturity Date of, 20_____. The ECP Note has the following CUSIP number(s):

(b) The Extended Maturity Date of the ECP Note is _____, 20__, which is a Business Day.

(c) The certifications made in the Issuance Request delivered in connection with the initial issuance of the ECP Note are confirmed.

(d) The term of the ECP Note, as extended to the Extended Maturity Date, does not exceed 270 days.

CITY OF EL PASO, TEXAS

By _____
Authorized Representative

EXHIBIT D

FORM OF ISSUING AND PAYING AGENT AGREEMENT

ISSUING AND PAYING AGENT AGREEMENT

This Issuing and Paying Agent Agreement (this "Agreement") is entered into as of May 1, 2023, between the City of El Paso, Texas (the "City"), a municipal corporation, a political subdivision of the State and a body politic and corporate, and Zions Bancorporation, National Association (the "Issuing and Paying Agent"), a national banking association organized and existing under the laws of the United States. All capitalized terms used but not otherwise defined herein shall have the meanings specified in the Ordinance (as hereinafter defined).

1. Appointment. In the Ordinance, the City has appointed Zions Bancorporation, National Association as the Issuing and Paying Agent hereunder, and Zions Bancorporation, National Association hereby accepts such appointment as the Issuing and Paying Agent in connection with the issuance and payment of up to $60,000,000 aggregate principal amount of "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Notes, Series A (Tax-Exempt)" (the "ECP Notes") pursuant to the "Ordinance Establishing the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program and Authorizing System Revenue Extendable Commercial Paper Notes, Series A" adopted on April 25, 2023 (as may be amended from time to time, the "Ordinance"), providing for the issuance of the ECP Notes. Such ECP Notes are to be initially issued in book-entry form only and are to be initially evidenced by a Master ECP Note (the "Master ECP Notes") in the form attached to the Ordinance.

The Issuing and Paying Agent agrees to observe and perform its duties and obligations hereunder and under the Ordinance. Without limiting the generality of the foregoing, the Issuing and Paying Agent shall establish and maintain the ECP Notes and all required accounts and subaccounts required by the Ordinance. The Issuing and Paying Agent agrees to provide the City with a monthly report, electronically or otherwise, on the first business day of each month, which report shall set forth such information regarding the authentication and issuance of ECP Notes during the prior month, as the City and the Issuing and Paying Agent shall have agreed upon.

The Issuing and Paying Agent agrees to keep such books and records, including, without limitation, a complete record of all Issuance Requests, as shall be consistent with industry practice and as may reasonably be requested by the City, and to make such books and records available for inspection by the City, such books and records to be available on each business day during reasonable business hours, and, if so requested, to send copies of such books and records to the City, as applicable.

2. Certificate Agreement. The Issuing and Paying Agent acknowledges that (i) it has previously entered into a commercial paper certificate agreement (the "Certificate Agreement") a copy of which is appended hereto as **Exhibit A** with The Depository Trust Company, New York, New York ("DTC"), and (ii) the continuation in effect of the Certificate Agreement is a necessary prerequisite to the Issuing and Paying Agent's providing services related to the issuance and payment of the ECP Notes while the ECP Notes are in book-entry only form and DTC is the Depository.

3. Letter of Representations; Ordinance; Designated Authorized Representatives. Prior to the issuance of any ECP Notes, the City shall deliver to the Issuing and

Paying Agent an executed DTC Letter of Representations (the "Letter of Representations"), a copy of which is attached hereto as **Exhibit B**. The Letter of Representations, when executed by the City, the Issuing and Paying Agent and DTC, shall supplement the provisions of this Agreement, and the City and the Issuing and Paying Agent shall be bound by the provisions of the Letter of Representations, to the extent not inconsistent with the provisions of the Ordinance.

The City has delivered to the Issuing and Paying Agent (a) a certified copy of the Ordinance and (b) a certified original Certificate of Authorized Representatives (the "Certificate of Authorized Representatives") setting forth the Authorized Representatives, containing the name, title and true signature of those officers of the City designated by the City as an Authorized Representative pursuant to the Ordinance, to take action with respect to the ECP Notes, which certificate is attached hereto as **Exhibit C**. The City agrees to provide the Issuing and Paying Agent with a revised Certificate of Authorized Representatives when there are changes in the Authorized Representatives. Until the Issuing and Paying Agent receives any subsequent Certificate of Authorized Representatives, the Issuing and Paying Agent shall be entitled to rely on the last Certificate of Authorized Representatives delivered to it for the purpose of determining the Authorized Representatives.

4. Master ECP Note. Prior to the issuance of any ECP Notes, the City shall deliver to the Issuing and Paying Agent the Master ECP Notes evidencing the ECP Notes. Such Master ECP Notes shall be duly executed and specify the date of issuance, and be registered in the name of Cede & Co., as nominee of DTC, all as provided in the Ordinance.

5. Issuance Requests. Issuance Requests shall be in the form attached hereto as **Exhibit D**. Issuance Requests shall be delivered by an Authorized Representative to each Dealer and the Issuing and Paying Agent. Issuance Requests may be delivered by an Authorized Representative through an electronic instruction and reporting communication service offered by either the Dealer or the Issuing and Paying Agent pursuant to Section 8 hereof, in each case received by the Issuing and Paying Agent at the address specified in Section 15 hereof prior to 12:00 p.m. (New York, New York time) on the day on which such Issuance Request is to be operative.

If the Issuing and Paying Agent, at its option, acts upon an Issuance Request received after 12:00 p.m. (New York, New York time) on the day on which the Issuance Request is to be operative, the City understands and agrees that (a) such Issuance Request shall be acted upon on a best efforts basis, and (b) the Issuing and Paying Agent makes no representation or warranty that the issuance and delivery of any ECP Note pursuant to such Issuance Request shall be completed prior to the close of business on such date.

Any Issuance Request given by telephone shall be confirmed to the Issuing and Paying Agent in writing, either by regular mail (upon receipt), electronic transmission or facsimile, by an Authorized Representative prior to 12:00 p.m. (New York, New York time) in the form of **Exhibit D** hereto on the day on which such Issuance Request is to be operative.

6. Issuance. The Issuing and Paying Agent's duties and responsibilities in connection with the issuance of the ECP Notes shall include:

(a) holding the Master ECP Notes in safekeeping and completing or causing to be completed, each Master ECP Note as to amount, date, maturity date, interest rate and interest amount upon receipt of Issuance Requests in accordance with the Ordinance;

(b) (1) verifying that the aggregate principal amount of ECP Notes described in each Issuance Request, plus the aggregate principal amount of all ECP Notes then outstanding, less the aggregate principal amount of any of the then Outstanding ECP Notes to be retired concurrently with the issuance of the ECP Notes described in the Issuance Request, does not exceed the Authorized Amount, and (2) assigning to each Issuance Request received from the City a CUSIP number;

(c) causing to be delivered "free" an ECP Note on behalf of the City upon receipt of instructions from an Authorized Representative and the Dealer, as to the principal amount, Registered Owner, Issue Date, Original Maturity Date, Extended Maturity Date, Original Rate and Extended Rate by way of data entry transfer to the DTC MMI Same Day Funds Settlement System ("SDFS"), and to receive from SDFS a confirmation receipt that such delivery was effected;

(d) holding the amounts on deposit in the appropriate subaccount of the Payment Fund in trust separate from all other funds, accounts and subaccounts of the Issuing and Paying Agent, and applying such amounts in accordance with the terms hereof and of the Ordinance; and

(e) upon a mandatory exchange of any ECP Note pursuant to Section 2.08 of the Ordinance in connection with an extension of the Original Maturity Date by the City, the Issuing and Paying Agent shall do the following:

(i) cause the original principal amount on the ECP Notes to be zero in the SDFS platform to avoid a maturity principal payment on the Original Maturity Date;

(ii) upon receipt of instructions from the Dealer, at the request of the City, issue and deliver ECP Notes bearing interest at the Extended Rate no later than 5:00 p.m. New York, New York time on the remarketing date for settlement on the Original Maturity Date;

(iii) upon delivery of a Holder's position on the original ECP Notes to the Issuing and Paying Agent as a "free" delivery on the Original Maturity Date, retire such ECP Notes; and

(iv) upon receipt and cancellation of all original ECP Notes to be extended, to deliver new ECP Notes bearing interest at the Extended Rate from the Original Maturity Date to the Extended Maturity Date as a free delivery to the Dealer on the Original Maturity Date.

The Issuing and Paying Agent shall have no duty or responsibility to make any transfer of the proceeds of the sale of the ECP Notes, or to advance any moneys or effect any credit with

respect to such proceeds or transfers unless and until the Issuing and Paying Agent has actually received the proceeds of the sale of the ECP Notes.

7. Payment. By 2:00 p.m., New York, New York time, on the date that any ECP Notes are scheduled to mature, the City shall ensure that there shall have been transferred to the Issuing and Paying Agent for deposit in the Payment Fund immediately available funds at least equal to the amount of ECP Notes maturing on such date. The Issuing and Paying Agent shall provide notice to the City of an insufficiency of funds in the Payment Fund.

The Issuing and Paying Agent's duties and responsibilities in connection with the payment of the ECP Notes shall include:

(a) When any matured ECP Note is presented to the Issuing and Paying Agent for payment by the holder thereof (which may, in the case of book-entry ECP Notes, be DTC or a nominee of DTC), payment shall be made from and charged to the Payment Fund to the extent funds are available in such account;

(b) Each ECP Note presented to the Issuing and Paying Agent for payment at or prior to 1:15 p.m., New York, New York time, on any Business Day at or after the maturity date of such ECP Note shall be paid by the Issuing and Paying Agent on the same day as such presentation (or if presented after 1:15 p.m., New York, New York time on any such Business Day, then on the next succeeding Business Day) to the extent funds are available in the Payment Fund; and

(c) The Issuing and Paying Agent shall keep amounts on deposit in the Payment Fund held in trust separate from all other funds, accounts and subaccounts of the Issuing and Paying Agent, and the Issuing and Paying Agent shall utilize such amounts in accordance with the terms hereof and of the Ordinance.

The Issuing and Paying Agent shall have no obligation to pay amounts due on the ECP Notes at their Original Maturity Date or Extended Maturity Date, as applicable, other than from funds received by the Issuing and Paying Agent from, or for the account of, the City, from the proceeds of ECP Notes or Refunding Bonds.

8. Operating System. Issuance Requests may be delivered by an Authorized Representative through either the Dealer's or the Issuing and Paying Agent's commercial paper electronic instruction and reporting communication service (each a "Communication System" and collectively the "Communication Systems"). Electronic instructions must be transmitted in accordance with the procedures furnished by either the Dealer or the Issuing and Paying Agent, as applicable, to the City in connection with the Communication Systems. These transmissions shall be the equivalent to the giving of a written Issuance Request to the Dealer and the Issuing and Paying Agent. If either Communication System is inoperable at any time, an Authorized Representative may deliver written, telephonic, email or facsimile instructions to the Issuing and Paying Agent, which instructions shall be verified in accordance with any security procedures agreed upon by the parties.

9. Representations of the City.

(a) The City represents to the Issuing and Paying Agent that this Agreement and the ECP Notes have been duly authorized, and that this Agreement, when executed, and the ECP Notes, when issued in accordance with the Issuance Requests and the Ordinance, will be valid and enforceable special obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, sovereign or governmental immunity of political subdivisions and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable or general principles of equity which permit the exercise of judicial discretion.

(b) The City represents to the Issuing and Paying Agent that each ECP Note issued under this Agreement will be exempt from registration under the Securities Act of 1933, as amended.

Each Issuance Request to issue ECP Notes under this Agreement and the Ordinance shall be deemed a representation by the City as of the date thereof that such issuance conforms in all respects to the requirements of the Ordinance and this Agreement, and that the representations herein are true and correct as if made on and as of such date.

10. Additional Information. Upon the reasonable request of the City given at any time and from time to time, the Issuing and Paying Agent agrees promptly to provide the City with information with respect to the ECP Notes, issued and paid hereunder. Such request shall be in written form and shall include the principal amount, date of issue, maturity date, interest rate and amount of interest, as applicable, of each ECP Note which has been issued or paid by the Issuing and Paying Agent, and for which the request is being made.

11. Compensation. The City agrees to pay compensation for the Issuing and Paying Agent's services pursuant to this Agreement in accordance with the Issuing and Paying Agent's fee schedule attached hereto as **Schedule I**, as amended from time to time, and to reimburse the Issuing and Paying Agent for related disbursements (including the reasonable fees and expenses of counsel); provided however, notwithstanding anything herein or in **Schedule I** to the contrary, the aggregate value of this agreement shall be less than the dollar limitation set forth in Section 2271.002(a)(2) and Section 2274.002(a)(2) of the Texas Government Code, as amended. The City shall also reimburse the Issuing and Paying Agent for any fees and charges imposed by the Depository with respect to ECP Notes issued in book-entry form. The obligations of the City under this Section 11 shall survive any termination of this Agreement and the resignation or removal of the Issuing and Paying Agent.

To the extent permitted by Texas law, the City hereby grants to the Issuing and Paying Agent and the Indemnified Parties (hereinafter defined) a right of offset against funds in the Payment Fund, subordinate to any funds held for payment of the Holders of the ECP Notes, with respect to any compensation or reimbursement due any of them hereunder (including any claim for indemnification hereunder). If for any reason the funds in the Payment Fund are insufficient to cover such compensation and reimbursement, the City shall promptly pay, from lawfully available System revenues, such amounts to the Issuing and Paying Agent or any Indemnified

Party upon receipt of an itemized invoice. All disbursements of funds from the Payment Fund shall be subject to the fees and claims of the Issuing and Paying Agent and the Indemnified Parties pursuant to this Section and Section 13 hereof.

12. Liability.

(a) The Issuing and Paying Agent's duties and obligations shall be determined by the express provisions of this Agreement, and the Letter of Representations (including the documents referred to therein), and the Issuing and Paying Agent and the Issuing and Paying Agent's agents shall be responsible for the performance of only such duties and obligations as are specifically set forth herein and therein, and no implied duties or covenants shall be read into any such document against the Issuing and Paying Agent or the Issuing and Paying Agent's agents. The Issuing and Paying Agent has no fiduciary or discretionary duties of any kind. The Issuing and Paying Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement. Neither the Issuing and Paying Agent nor the Issuing and Paying Agent's agents shall be required to ascertain whether any issuance or sale of the ECP Notes (or any amendment or termination of this Agreement) has been duly authorized or is in compliance with any other agreement to which the City is a party (whether or not the Issuing and Paying Agent or any such agent is a party to such other agreement). The Issuing and Paying Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that Issuing and Paying Agent's negligence or willful misconduct was the sole cause of any loss to the City.

(b) The Issuing and Paying Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. The Issuing and Paying Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which the Issuing and Paying Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall the Issuing and Paying Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Issuing and Paying Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. The Issuing and Paying Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, intrusions or attacks, power failures, earthquakes or other disasters.

(c) The Issuing and Paying Agent shall not be obligated to take any legal action or commence any proceeding in connection with this Agreement, the Payment Fund or any account in which the Payment Fund is deposited or to appear in, prosecute or defend any such legal action or proceeding or to take any other action that the Issuing and Paying Agent determines, in its sole judgment, may expose it to liability or expense. The Issuing and Paying Agent may consult legal counsel selected by it concerning this Agreement or of its duties hereunder and shall incur no liability and shall be fully indemnified, to the extent permitted by Texas law, from any liability whatsoever in acting in accordance with

the advice of such counsel. The City, shall promptly pay, upon demand, the necessary and reasonable fees and expenses of any such counsel. The City agrees to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as the Issuing and Paying Agent may reasonably request in connection with its duties hereunder.

(d) The Issuing and Paying Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Payment Fund, without determination by the Issuing and Paying Agent of such court's jurisdiction in the matter. If any portion of the Payment Fund is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Issuing and Paying Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Issuing and Paying Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

(e) If, at any time the Issuing and Paying Agent is unable to determine, to the Issuing and Paying Agent's sole satisfaction, the proper disposition of all or any portion of the Payment Fund or Issuing and Paying Agent's proper actions with respect to its obligations hereunder, then the Issuing and Paying Agent may, in its sole discretion, take either or both of the following actions:

(i) suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Agreement or the Ordinance until such uncertainty shall be resolved to the sole satisfaction of the Issuing and Paying Agent; and

(ii) petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in the State of Texas, in any venue convenient to the Issuing and Paying Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all of the Payment Fund, after deduction and payment to the Issuing and Paying Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the Issuing and Paying Agent in connection with the performance of its duties and the exercise of its rights hereunder.

13. Indemnification. The City agrees, to the extent permitted by Texas law, to indemnify and hold the Issuing and Paying Agent, the Issuing and Paying Agent's employees and any and all of the Issuing and Paying Agent's directors, officers, attorneys, affiliates and agents (collectively, the "Indemnified Parties") harmless from and against any and all losses, liabilities

(including liabilities for penalties), actions, suits, judgments, demands, damages, costs and expenses of any nature (including, without limitation, attorneys' fees and expenses) arising out of or resulting from this Agreement or the transactions or activities contemplated hereby or the exercise of the Issuing and Paying Agent's rights and/or the performance of the Issuing and Paying Agent's duties (or those of the Issuing and Paying Agent's agents and employees) hereunder; provided, however that the City shall not be liable to indemnify or pay the Indemnified Parties with respect to any loss, liability, action, suit, judgment, demand, damage, cost or expense that have been directly caused solely by such Indemnified Party's negligence or willful misconduct as finally determined by a court of competent jurisdiction subject to no further appeal. The City further agrees, to the extent permitted by Texas law, to indemnify the Indemnified Parties for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of the City's indemnification obligations hereunder. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by the City. The foregoing indemnity includes, to the extent permitted by Texas law, but is not limited to, (a) any action taken or omitted to be taken by the Issuing and Paying Agent or any of the Issuing and Paying Agent's officers or employees upon written, telecopy, telephonic or other electronically transmitted instructions (authorized herein) received by the Issuing and Paying Agent from, or believed by the Issuing and Paying Agent in good faith to have been given by, the proper person or persons, (b) the Issuing and Paying Agent's improperly executing or failing to execute any instruction because of unclear instructions, failure of communications media or any other circumstances beyond the Issuing and Paying Agent's control, and (c) the actions or inactions of DTC. The provisions of this Section shall survive (i) the Issuing and Paying Agent's resignation or removal hereunder and (ii) the termination of this Agreement.

14. Termination. Subject to the terms of the Ordinance, either the Issuing and Paying Agent or the City may terminate this Agreement at any time, upon not less than sixty (60) days' prior written notice in the case of the Issuing and Paying Agent, and upon written notice from an Authorized Representative in the case of the City, to the other. No such termination shall affect the rights and obligations of the City and the Issuing and Paying Agent which have accrued under this Agreement prior to termination. No termination can occur prior to a substitute Issuing and Paying Agent being appointed by the City, acting through an Authorized Representative, and assuming its duties under the Ordinance. If no substitute Issuing and Paying Agent has been appointed at the end of the sixty (60)-day period, then the Issuing and Paying Agent may petition a court of competent jurisdiction to make such appointment. The Issuing and Paying agent shall be reimbursed for any and all expenses in connection with any such petition and appointment.

15. Addresses. Issuance Requests hereunder shall be (a) hand delivered, (b) mailed, (c) telephoned, (d) transmitted by facsimile device, or (e) transmitted electronically to the Issuing and Paying Agent at the address, telephone number, electronic mail address or facsimile number specified below, and shall be deemed delivered upon receipt by the Issuing and Paying Agent at the address, telephone number, email address and/or facsimile number specified below.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) upon delivery by hand, (b) by facsimile, or (c) three days after such notice, request, demand or other communication is delivered to a United States

Post Office certified mail or by regular mail to the party and at the address set forth below or at such other address as a party may designate by written notice. All notices, requests, demands and other communications hereunder may be delivered by electronic mail only if such email is immediately followed by mail, telephone or facsimile confirmation.

If to the City:

El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, Texas 79925
Attention: Chief Financial Officer
Telephone: (915) 594-5549
Fax: (915) 594-5604
E-Mail: ADuran@epwater.org

If to the Issuing and Paying Agent:

Zions Bancorporation, National Association
1801 Main Street, Suite 460
Houston, Texas 77002
Attention: Robert Lozano
Telephone: (713) 232-1919
Fax: (844) 527-2686
E-Mail: robert.lozano@amegybank.com

16. Assignment, Modification and Amendment; Issuing and Paying Agent's Successor in Interest. This Agreement may not be assigned by either the City or the Issuing and Paying Agent, and may not be modified, amended or supplemented except by a writing or writings duly executed by an Authorized Representative and the Issuing and Paying Agent. Any corporation or national banking association into which the Issuing and Paying Agent may be merged or converted, or with which it may be consolidated, or any corporation or national banking association resulting from any merger, consolidation or conversion to which the Issuing and Paying Agent shall be a party, or any corporation or national banking association succeeding to the corporate trust business of the Issuing and Paying Agent, shall be the successor of the Issuing and Paying Agent if such successor corporation or national banking association is otherwise eligible, without the execution or filing of any document or the undertaking of any further act on the part of the Issuing and Paying Agent or such successor corporation or national banking association.

17. Complete Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof, and all prior agreements, understandings, representations, statements, promises, inducements, negotiations and undertakings between the parties with respect to such subject matter are superseded hereby. In the event of any inconsistency between the provisions hereof and the Ordinance, the provisions of the Ordinance shall govern.

18. Defined Terms. Any capitalized terms not defined in this Agreement shall have the meaning assigned in the Ordinance.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

20. Section Headings. Section headings in this Agreement are for convenience of reference only, shall not constitute part of this Agreement and shall not be used to construe the meaning or intent of the provisions hereof.

21. Benefit of Agreement. This Agreement is solely for the benefit of the parties hereto, and (except as provided in Section 13) no other person shall acquire or have any right under or by virtue hereof.

22. Dealings. The Issuing and Paying Agent and any stockholder, director, officer or employee of the Issuing and Paying Agent may buy, sell, and deal in any of the securities of the City, any Dealer or any purchaser of the ECP Notes and become financially interested in any transaction in which the City, any Dealer or any such purchaser may be interested, and contract and lend money to the City, any Dealer or any such purchaser and otherwise act as fully and freely as though it were not a depository, issuing or paying agent under this Agreement. Nothing herein shall preclude the Issuing and Paying Agent from acting in any other capacity for the City, any Dealer or any such purchaser or for any other person or entity.

23. Tax Reporting. The Issuing and Paying Agent shall have no responsibility for the tax consequences of this Agreement and the City shall consult with independent counsel concerning any and all tax matters. The City shall provide required documentation and information requested by the Issuing and Paying Agent in connection with the Issuing and Paying Agent's reporting obligations under the Foreign Account Tax Compliance Act and Foreign Investment in Real Property Tax Act or other applicable U.S. law or regulation. If such tax documentation is not so provided, the Issuing and Paying Agent is authorized to withhold taxes as required by applicable U.S. law or regulation.

24. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Issuing and Paying Agent requires documentation to verify its formation and existence as a legal entity. The Issuing and Paying Agent may ask to see financial statements, licenses, and identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The parties acknowledge that a portion of the identifying information set forth herein is being requested by the Issuing and Paying Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Patriot Act"), and each agrees to provide any additional information requested by the Issuing and Paying Agent in connection with the Patriot Act or any other legislation or regulation to which the Issuing and Paying Agent is subject, in a timely manner.

25. Publicity. No party will (a) use any other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols, or brand names, or (b) otherwise refer to or identify

any other party in advertising, publicity releases, or promotional or marketing publications without, in each case, securing the prior written consent of such other party.

26. Optional Security Procedures. In the event funds transfer instructions, address changes or change in contact information are given (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile or otherwise, the Issuing and Paying Agent is authorized to seek confirmation of such instructions by telephone callback to an Authorized Representative, and the Issuing and Paying Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Issuing and Paying Agent and shall be effective only after the Issuing and Paying Agent has a reasonable opportunity to act on such changes. The City agrees that the Issuing and Paying Agent may at its option record any telephone calls made pursuant to this Section. The Issuing and Paying Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the City to identify (a) the beneficiary, (b) the beneficiary's bank, or (c) an intermediary bank.

27. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

28. Miscellaneous.

(a) To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Issuing and Paying Agent hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable Federal or Texas 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 Issuing and Paying Agent understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Issuing and Paying Agent within the meaning of SEC Rule 405, 17 C.F.R. § 230.405§ 230.405 and exists to make a profit.

(b) The Issuing and Paying Agent 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 Section 2270.0201, Texas Government Code, and posted on the following page of such officer's internet website: https://comptroller.texas.gov/purchasing/publications/divestment.php. 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 Issuing and Paying Agent 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 Issuing and Paying Agent understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Issuing and Paying Agent within the meaning of SEC Rule 405, 17 C.F.R. § 230.405§ 230.405 and exists to make a profit.

(c) The Issuing and Paying Agent represents and warrants, for purposes of Section 2252.908 of the Texas Government Code, that the Issuing and Paying Agent is a public traded business entity.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

ZIONS BANCORPORATION, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____
Amegy Bank Division

EXHIBIT A

CERTIFICATE AGREEMENT

EXHIBIT B

DTC LETTER OF REPRESENTATIONS

EXHIBIT C

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

I, the undersigned, in my capacity as General Counsel of the EL PASO WATER UTILITIES of the CITY OF EL PASO, TEXAS (the "City"), and in connection with the Extendable Commercial Paper Program pursuant to which the "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Notes, Series A (Tax-Exempt) ("ECP Notes") are from time to time issued, do certify that each of the persons listed below have been designated in accordance with the City's Ordinance adopted on May 9, 2023 (the "Ordinance") to act severally as an Authorized Representative (as defined in the Ordinance) in connection with the issuance, from time to time, by the City of ECP Notes in accordance with the Ordinance. The specimen signature of each Authorized Representative is set forth beside their respective names.

[Remainder of Page Intentionally Left Blank]

Authorized Representatives
City of El Paso, Texas
El Paso Water Utilities Public Service Board
Extendable Commercial Paper Program

Name	Specimen Signature
John E. Balliew President and Chief Executive Officer El Paso Water	_____
Ana Sanchez Vice President El Paso Water	_____
Arturo Duran Chief Financial Officer El Paso Water	_____

[Remainder of Page Intentionally Left Blank]

_____

General Counsel
El Paso Water

Dated:_____

[Remainder of page intentionally left blank]

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared John E. Balliew, President and Chief Executive Officer of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL] _____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared Ana Sanchez, Vice President, of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL] _____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared Arturo Duran, Chief Financial Officer of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL] _____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared Daniel Ortiz, General Counsel of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL]

_____
Notary Public, State of Texas

EXHIBIT D

FORM OF ISSUANCE REQUEST

[Date]

_____

Re: Issuance Request for issuance and sale of City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Notes, Series A (Tax-Exempt)

You are hereby requested, instructed and authorized to issue, authenticate and deliver the above-referenced ECP Notes in the principal amount(s) scheduled to mature and bearing interest upon receipt of the purchase price therefore from the identified purchaser(s), as shown in the attached Exhibit A hereto which is incorporated herein by reference and made a part of these instructions for all purposes. Terms capitalized but not otherwise defined herein shall have the meanings ascribed to them in the Ordinance Establishing the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program and Authorizing System Revenue Extendable Commercial Paper Notes, Series A adopted on May 9, 2023 (the "Ordinance"). The manner of sale of the ECP Notes is hereby determined to be the most economically advantageous to the City.

Upon receipt of the proceeds of sale of the ECP Notes, net of all expenses and costs of sale and issuance, the undersigned certifies that the same should be deposited and disbursed as follows.

$_____	Deposit to the credit of the Payment Fund, Account No. _____, and apply the deposit for payment and redemption or purchase of Outstanding ECP Notes, the amount of $_____.
$_____	Deposit to the credit of the Proceeds Fund, Account No. _____, for the purpose of financing Project Costs.
$_____	Principal amount of ECP Notes Outstanding after this issuance.

Please forward debit and credit slips for each of the above transactions to the undersigned. The facts, estimates and reasonable expectations that are contained in Exhibit B to this instruction letter are incorporated herein and made a part of these instructions for all purposes. The undersigned, along with others is charged with responsibility for issuing the ECP Notes.

[*Signature page follows*]

CITY OF EL PASO, TEXAS

Name: _____
Title: _____
Acting as an Authorized Representative

Receipt of the Issuance Request and
Exhibits A and B thereto is hereby acknowledged:

ZIONS BANCORPORATION, NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT A TO ISSUANCE REQUEST

SCHEDULE TO INSTRUCTION LETTER*

Re: Issuance Request for issuance and sale of City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Notes, Series A (Tax-Exempt)

Issue Date: _____

CUSIP No.: _____

Dealer(s): _____

Principal Amount: _____

Purchase Price: _____

Original Rate: _____

Original Maturity Date: _____

Extended Maturity Date: _____

Denomination: _____

Issue Date: _____

*Attach Direct Issuance Report

EXHIBIT B TO ISSUANCE REQUEST

INSTRUCTIONS OF AUTHORIZED REPRESENTATIVE

I, the undersigned Authorized Representative, hereby provide the following instructions, representations and certifications to Zions Bancorporation, National Association, as Issuing and Paying Agent for the "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Notes, Series A (Tax-Exempt)" (the "ECP Notes"), in connection with the issuance of ECP Notes on the date indicated below. Capitalized terms used in this certificate which are not defined herein have the meanings ascribed to them in the Ordinance Establishing the City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Program and Authorizing System Revenue Extendable Commercial Paper Notes, Series A adopted on May 9, 2023 (the "Ordinance") authorizing the issuance of the ECP Notes.

1. All action on the part of the City necessary for the valid issuance of the ECP Notes now to be issued has been taken;
2. All provisions of State and federal law necessary for the valid issuance of this issuance of ECP Notes has been complied with;
3. The ECP Notes to be issued will be valid and enforceable special obligations of the City according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, sovereign or governmental immunity of political subdivisions and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable or general principles of equity which permit the exercise of judicial discretion;
4. After the issuance of the ECP Notes and the application of the Proceeds thereof, the sum of the aggregate principal amount of ECP Notes Outstanding will not exceed the Authorized Amount;
5. To the City's knowledge there has been no change in the facts, estimates, circumstances and representations of the City set forth or made (as the case may be) in the Tax Certificate applicable to the ECP Notes;
6. The Extended Maturity Date of the ECP Notes set forth in the Issuance Request does not extend beyond the Program Expiration Date;
7. The City has not been notified by Bond Counsel that its opinion with respect to the validity of the ECP Notes and the tax treatment of the interest thereon has been revised or withdrawn or, if any such revision or withdrawal has occurred, the revised opinion or a substitute opinion acceptable to the Dealer has been delivered;
8. To the actual knowledge of the City, no Event of Default has occurred and is now continuing;
9. $_____ of ECP Note proceeds shall be deposited into the Proceeds Fund;
10. $_____ of ECP Note proceeds shall be deposited into the Payment Fund; and
11. All of the conditions precedent to the issuance of such ECP Notes set forth in the Ordinance have been satisfied.

Executed on _____, 20___.

CITY OF EL PASO, TEXAS

_____

Name: _____

Title: _____

Acting as an Authorized Representative

Date of issuance of ECP Notes
to which these instructions,
representations and certifications
relate: _____, 20___

EXHIBIT E

FORM OF DEALER AGREEMENT

DEALER AGREEMENT

Between

CITY OF EL PASO, TEXAS

and

MORGAN STANLEY & CO. LLC

Dated May 1, 2023

Relating to

City of El Paso, Texas
Municipal Drainage Utility System
Extendable Commercial Paper Program

This Dealer Agreement, dated May 1, 2023 (the "Agreement"), is between the CITY OF EL PASO, TEXAS (the "City") and MORGAN STANLEY & CO. LLC (the "Dealer"). For and in consideration of the mutual covenants made herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Background and Definitions.**

(a) The City Council of the City (the "City Council"), as authorized by State law, vested the complete authority and control of the management and operation of the Municipal Drainage Utility System of the City of El Paso, Texas (the "System") in the El Paso Water Utilities Public Service Board (the "Public Service Board").

(b) The City has authorized the issuance and reissuance from time-to-time of its Extendable Commercial Paper Program to be designated as the "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Note, Series A (Tax-Exempt)" (the "ECP Notes") in the aggregate principal amount not to exceed $60,000,000 outstanding at any time for the System.

(c) The City authorized the issuance of the ECP Notes for the System pursuant to an Ordinance adopted by the City Council on May 9, 2023 (the "Ordinance").

(d) The Ordinance provides for the appointment of commercial paper dealers to perform certain duties, including the offering and sale from time-to-time of the ECP Notes on behalf of the City.

(e) The Dealer has agreed to accept the duties and responsibilities under this Agreement with respect to ECP Notes under the Ordinance and this Agreement.

(f) Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Ordinance or in the Issuing and Paying Agent Agreement between the City and Zions Bancorporation, National Association (the "Issuing and Paying Agent) dated as of May 1, 2023 (the "Issuing and Paying Agent Agreement").

(g) All references to time in this Agreement shall refer to prevailing time in New York, New York.

Section 2. **Appointment of Dealer.**

(a) Subject to the terms and conditions contained herein, the City hereby appoints Morgan Stanley & Co. LLC as a Dealer for the ECP Notes, and Morgan Stanley & Co. LLC hereby accepts such appointment.

(b) The Dealer shall act as non-exclusive Dealer with respect to the ECP Notes. The Dealer acknowledges that the City may enter into agreements with other dealers in connection with the offering and sale of the ECP Notes on behalf of the City as set forth in the Ordinance.

Section 3. **Responsibilities of Dealer.**

(a) Subject to the terms and conditions set forth in this Agreement, the Dealer agrees to perform the duties and responsibilities set forth in this Agreement. It is understood that in undertaking to perform such duties, and in the performance thereof, it is the intention of the parties that the Dealer will act solely as an agent and not as a principal, except as expressly provided in this Agreement. The Dealer shall use its best efforts to solicit and arrange sales of the ECP Notes on behalf of the City at such rates and maturities as may prevail from time to time in the market. The Dealer and the City agree that any ECP Notes which the Dealer may arrange the sale of or which, in the Dealer's sole discretion, it may elect to purchase, will be purchased or sold on the terms and conditions and in the manner provided in the Ordinance, the Issuing and Paying Agent Agreement and this Agreement. Anything herein to the contrary notwithstanding, to the extent of any conflict between the provisions hereof and of the Ordinance or the Issuing and Paying Agent Agreement, the provisions of the Ordinance and the Issuing and Paying Agent Agreement shall be controlling.

(b) Notwithstanding anything to the contrary contained herein, the Dealer:

(i) will suspend its efforts with respect to the offer or sale of the ECP Notes on behalf of the City upon the receipt of notice of the occurrence of an Event of Default under the ECP Notes, the Ordinance, or the Issuing and Paying Agent Agreement; and

(ii) if, in the reasonable judgment of the Dealer, the occurrence of any of the following events makes it impractical or inadvisable to proceed with the solicitation of offers to purchase the ECP Notes, may suspend its efforts with respect to the offer or sale of the ECP Notes on behalf of the City, which suspension may continue only so long as such event continues to exist as to the ECP Notes (the Dealer agrees to give notice of its suspension of efforts promptly after such suspension occurs):

(1) suspension or material limitation in trading in securities generally on the New York Stock Exchange;

(2) a general moratorium on commercial banking or securities settlement or clearance services in New York is declared by either federal or New York State authorities;

(3) a (i) new material outbreak of hostilities involving the United States or escalation of any such hostility that existed prior to the date hereof, or (ii) new material outbreak of international hostilities or escalation of such hostilities that existed prior to the date hereof, that in either case has a negative adverse effect on the market for ECP Notes in the United States;

(4) legislation shall be enacted by the House of Representatives or the Senate of the Congress of the United States (the "Congress"), or a decision by a court of the United States shall be rendered, or a stop order,

ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the offering or sale of obligations of the general character of the ECP Notes, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended as then in effect, or with the purpose or effect of otherwise prohibiting the offering or sale of obligations of the general character of the ECP Notes, as contemplated hereby;

(5) any event shall occur or information shall become known, which makes untrue, incorrect or misleading in any material respect any statement or information contained in any disclosure documents provided to the Dealer by the City in connection with the performance of its duties hereunder, whether provided pursuant to Section 8 hereof or otherwise, or causes such documents to contain an untrue, incorrect or misleading statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading;

(6) any governmental authority shall impose, as to the ECP Notes, or obligations of the general character of the ECP Notes, any material restrictions not now in force, or increase materially those now in force;

(7) any of the representations and warranties of the City made in this Agreement shall not have been true and correct on the date made;

(8) the City fails to observe any of the covenants or agreements made in this Agreement or if the Ordinance or the Issuing and Paying Agent Agreement is no longer in full force and effect;

(9) any of the rating agencies then rating the ECP Notes shall either (i) downgrade the short-term ratings assigned to the ECP Notes, the effect of which, in the Dealer's judgment, makes it impractical to market the ECP Notes or to enforce contracts for the sale of the ECP Notes or (ii) suspend or withdraw the then current ratings assigned to the ECP Notes;

(10) an actual or imminent default or a moratorium in respect of payment of any U.S. Treasury bills, bonds or notes occurs, the effect of which, in the Dealer's judgment, makes it impractical to market the ECP Notes or to enforce contracts for the sale of the ECP Notes; or

(11) trading of any securities of the City shall have been suspended on any exchange or in any over-the-counter market;

(12) any material adverse change in the financial markets generally which is, in the reasonable judgment of the Dealer, so material and adverse as to make it impracticable or inadvisable to proceed with the

offering or sale of the ECP Notes; or

(13) (i) legislation shall have been enacted by the Congress, introduced in the Congress or recommended to the Congress for passage by the President of the United States or the United States Department of the Treasury (the "Treasury Department") or the Internal Revenue Service or any member of the Congress or favorably reported for passage to either House of Congress by any Committee of such House to which such legislation has been referred for consideration or passed by either House of Congress, (ii) a decision shall have been rendered by a court of the United States or the United States Tax Court, or (iii) an order, ruling or communication (including a press release) shall have been issued by the Treasury Department or other agency with competent jurisdiction, in each case with respect to federal taxation upon revenues or other income derived by the City or any similar body, or upon interest received on obligations of the general character of the ECP Notes, that in the judgment of the Dealer materially adversely affects the market for the ECP Notes.

Section 4. **Transactions in ECP Notes**. All transactions in ECP Notes between the Dealer and the City shall be in accordance with the Ordinance, the Issuing and Paying Agent Agreement, this Agreement and with the customs and practices in the commercial paper market regarding settlement and delivery formally adopted in writing from time to time by the New York Clearinghouse, to the extent not inconsistent with the Ordinance. As early as possible, but not later than 2:30 p.m. on the day on which any ECP Note is to be issued, the Dealer shall notify the City of the proposed final maturities, prices and interest rates (which interest rates shall not exceed the Maximum Interest Rate as defined in the Ordinance) and provide the City with any other information as required for delivery of such ECP Notes. Except as described below, the Dealer shall not be obligated to purchase or cause the purchase of any ECP Notes unless and until agreement has been reached in each case on the foregoing points and the Dealer has agreed to such purchase. Not later than 2:30 p.m. on the date of each transaction the Dealer shall either (a) confirm each transaction made with or arranged by it or (b) notify the City and the Issuing and Paying Agent of the difference, if any, between the amount of maturing ECP Notes and the amount of ECP Notes which the Dealer has arranged to sell or has agreed to purchase. Such confirmation or notification shall be given by telephone (or by other telecommunications medium acceptable to the City) and in writing to the City and the Issuing and Paying Agent pursuant to the requirements of Section 14(a) hereof.

If requested by the Issuer, the Dealer will offer for sale ECP Notes, the proceeds of which will be used to repay the principal of maturing ECP Notes, at least one Business Day prior to their Original Maturity Date for settlement on the Original Maturity Date. The Dealer shall notify the City and the Issuing and Paying Agent no later than 1:00 p.m. (New York, New York time) on the day that is one Business Day prior to the date on which any ECP Notes are to be issued and sold hereunder, if it has been unable to arrange for the purchase of the ECP Notes in an amount sufficient to pay the principal of the ECP Notes that mature on the Original Maturity Date.

In connection with a mandatory exchange of any ECP Note pursuant to Section 2.08 of the Ordinance in connection with an extension of the Original Maturity Date, the Dealer shall do the following:

(i) Give instructions to the Issuing and Paying Agent to issue and deliver an ECP Note bearing interest at the Extended Rate no later than 5:00 p.m. New York, New York time on the marketing date for settlement on the Original Maturity Date;

(ii) Inform the Holder of the ECP Note to deliver its position on the original CUSIP number to the Issuing and Paying Agent as a free delivery on the Original Maturity Date;

(iii) Upon receipt of a new ECP Note bearing interest at the Extended Rate from the Original Maturity Date to the Extended Maturity Date by the Dealer from the Issuing and Paying Agent as a free delivery to the Dealer on the Original Maturity Date, deliver such ECP Note as a free delivery to the Holder on the Original Maturity Date; and

(iv) Follow up with Holders on any unpresented position on the original CUSIP until final retirement of that position.

Section 5. **Payment for ECP Notes**. The Dealer shall pay for the ECP Notes sold by the Dealer (or purchased by the Dealer for its own account) in immediately available funds by 2:00 p.m. on the Business Day such ECP Notes are delivered to the Dealer (provided that such ECP Notes are so delivered to the Dealer by 12:30 p.m. on such Business Day). All ECP Notes will be sold at par, and will be evidenced either by (i) a global Master ECP Note immobilized with The Depository Trust Company of New York or (ii) ECP Notes in the form attached to the Ordinance.

Section 6. **Authorized Representative.** ECP Note transactions with the City, pursuant to Section 4 hereof, shall be with any one of the officers or employees of the System who are designated as an Authorized Representative in accordance with the Ordinance as evidenced by a certificate signed by the General Counsel of EPWater (as defined in the Ordinance) or an Authorized Representative. The initial written designation of the Authorized Representatives is appended hereto as Appendix A. By approving this Agreement, the City Council approves the designation of the individuals named in Appendix A to act as Authorized Representatives for all purposes under the Ordinance. The City agrees to provide the Dealer with revised written designations in the form of Appendix A when and as required by changes in the Authorized Representatives. The Dealer may rely upon such designation unless and until otherwise notified in writing by the City.

Section 7. **Resignation and Removal of Dealer.** The Dealer may at any time resign and be discharged of its duties and obligations hereunder upon providing the City and the Issuing and Paying Agent with sixty (60) days' prior written notice or, if earlier, on the date that a replacement Dealer has been appointed by the City if the City in its sole discretion elects to appoint a replacement Dealer. The Dealer may be removed at any time, at the direction of the City upon

seven (7) days' prior written notice to the Dealer and the Issuing and Paying Agent. The Dealer shall assign and deliver this Agreement to its successor if requested by the City.

Section 8. **Furnishing of Disclosure Materials.**

(a) Prior to the first issuance of ECP Notes under the Ordinance, the City agrees to furnish the Dealer with as many copies as the Dealer may reasonably request of the offering memorandum of the City relating to the ECP Notes (the "Offering Memorandum"), and such other information with respect to the City and the ECP Notes as the Dealer shall reasonably request from time to time.

(b) The City agrees, from time to time, to prepare (and the Dealer agrees to cooperate in the City's preparation of) a new Offering Memorandum of the City for the ECP Notes in the event the Dealer determines that the preparation and distribution of such Offering Memorandum is necessary or desirable in connection with offering and sale on behalf of the City of the ECP Notes, and to furnish or to cause to be furnished to the Dealer as many copies of such new Offering Memorandum as the Dealer shall reasonably request.

(c) If, at any time during the term of this Agreement, any event shall occur or facts become known to either party that might affect the correctness or completeness of any statement of a material fact contained in the then current Offering Memorandum, such party shall promptly notify the other in writing of the circumstances and details of such event. The City agrees to promptly furnish to the Dealer a copy of each filing or notice made to anyone (whether in connection with the ECP Notes or not) pursuant to any undertaking or other agreement of the City made under any provision of Rule 15c2-12 promulgated by the United States Securities and Exchange Commission. Such requirement shall be deemed satisfied by the City by the posting of such filings or notices on the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access website.

Section 9. **Indemnification and Contribution.** To the extent permitted by Texas law, the City agrees to indemnify the Dealer and to hold the Dealer harmless against any loss, damage, claim, liability or expense (including reasonable cost of defense) based upon, any allegation that any of the information provided by the City to the Dealer in the Offering Memorandum, including the information described in Section 11(f), below, pursuant to this Agreement includes any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading in light of the circumstances under which they were made.

Section 10. **Fees and Expenses.** For the Dealer's services under this Agreement, the City will pay to the Dealer during each calendar year a fee based on the average daily principal amount of ECP Notes Outstanding, computed according to the following formula:

0.1% times the principal amount of the ECP Notes Outstanding, times the number of days such ECP Notes are Outstanding, divided by 365 or 366 days (as applicable for the calendar year).

Such fee shall be payable quarterly (for quarters ending March 31, June 30, September 30 and December 31, commencing with the calendar quarter that ends after the initial issuance of ECP

Notes) in arrears on the first day of each January, April, July and October. The Dealer shall deliver an invoice to the City for such payments; provided, however, that failure of the Dealer to deliver such an invoice shall not reduce the City's obligation to timely pay the fees due hereunder.

Section 11. **Representations, Warranties, Covenants and Agreements of the City.** The City, by its acceptance hereof, represents, warrants, covenants, and agrees with the Dealer that:

(a) it is a municipality and political subdivision of the State of Texas, created and functioning under the Constitution and laws of the State of Texas;

(b) it has full power and authority to take all actions required or permitted to be taken by the City by or under, and to perform and observe the covenants and agreements on its part contained in, this Agreement and any other instrument or agreement relating thereto to which the City is a party;

(c) it has duly taken, or on or before the Closing Date will take all action necessary to be taken by it prior to such date to authorize (i) the execution, delivery and performance of this Agreement, the Ordinance and any other instrument or agreement to which the City is a party and which has been or will be executed in connection with the transactions contemplated by the foregoing documents; and (ii) the carrying out, giving effect to, consummation and performance of the transactions and obligations contemplated by the foregoing agreements and by the current Offering Memorandum;

(d) it will provide the Dealer at its address set forth below, within 190 days of the end of each fiscal year of the System, a copy of the annual audited financial statements for that fiscal year of the Public Service Board, a component unit of the City, which includes the System;

(e) it will promptly notify the Dealer by electronic means, if possible, and, if not possible, by other communication made in writing, of any material adverse changes that may affect the offering and sale on behalf of the City of the ECP Notes or any fact or circumstance which may constitute, or with the passage of time will constitute, an Event of Default under the ECP Notes, the Ordinance or the Issuing and Paying Agent Agreement;

(f) Offering Memoranda and supplements, amendments and updates to any thereof, furnished by the City and used by the Dealer in the marketing of the ECP Notes (including amendments, supplements and replacements thereof), until such time as they shall have been subsequently amended, updated or replaced, shall not contain any untrue, incorrect or misleading statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading; and

(g) it will provide to the Dealer within two (2) Business Days of the execution of any credit or liquidity facility agreement related to the ECP Notes or amendment thereto including any extension of any such facility, a copy of such executed agreement or amendment.

Section 12. **Term of Agreement. (a)** This Agreement shall become effective on the date hereof and shall continue in full force and effect until the Program Expiration Date, as defined in the Ordinance, subject to the parties' respective rights of suspension, resignation and termination as provided herein.

(b) If at any time after the effective date of this Agreement, the City, the Texas Comptroller of Public Accounts, the Texas Attorney General, or any other officer, department, board, body, commission or agency of the State makes a final determination in accordance with Texas law that the Dealer is in violation of the covenants included in any of Sections 16 through 19 hereof, then the City may terminate this Agreement in accordance with Section 7 hereof without further recourse to the Dealer.

Section 13. **Dealing in ECP Notes by the Dealer; No Obligation to Purchase ECP Notes.** (a) The Dealer, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the ECP Notes, including, without limitation, any ECP Notes offered and sold by the Dealer pursuant to this Agreement, and may join in any action which any Registered Owner may be entitled to take with like effect as if it did not act in any capacity hereunder. The Dealer, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the City and may act as depositary, account party, or agent for any committee or body of owners of the ECP Notes or other obligations of the City as freely as if it did not act in any capacity hereunder.

(b) Nothing in this Agreement shall be deemed to constitute the Dealer an underwriter of the ECP Notes or to obligate the Dealer to purchase any ECP Notes for its own account at any time.

Section 14. **Miscellaneous.** (a) Except as otherwise specifically provided in this Agreement, all notices, demands and formal actions under this Agreement shall be in writing and either (i) hand-delivered, (ii) sent by electronic means, or (iii) mailed by registered or certified mail, return receipt requested, postage prepaid, to:

The Dealer:

Morgan Stanley & Co. LLC
1585 Broadway, 2nd Floor
New York, New York 10036
Attention: Municipal Short Term Products
Telephone: (212) 761-9093
Fax: (212) 507-2103
E-Mail: short-term-notice@morganstanley.com

The City:

City of El Paso, Texas
El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, Texas 79925

Attention: Chief Financial Officer
Telephone: (915) 594-5549
Fax: (915) 594-5604

With a copy to:

City of El Paso, Texas
El Paso Water Utilities
1154 Hawkins Blvd.
El Paso, Texas 79925
Attention: General Counsel
Telephone: (915) 594-5607
Fax: (915) 594-5699

The Issuing and Paying Agent:

Zions Bancorporation, National Association
1801 Main Street, Suite 460
Houston, Texas 77002
Attention: Robert Lozano
Telephone: (713) 232-1919
Facsimile: (844) 527-2686

Each party hereto may, by notice given under this Agreement to the other parties described above, designate other addresses to which subsequent notices, requests, reports or other communications shall be directed.

(b) This Agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns. The terms "successors" and "assigns" shall not include any purchaser of any of the ECP Notes merely because of such purchase. No owner of the ECP Notes or other third party shall have any rights or privileges hereunder.

(c) All of the representations and warranties of the City and the Dealer in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the Dealer or the City, (ii) the offering and sale of and any payment for any ECP Notes hereunder, or (iii) suspension, termination or cancellation of this Agreement.

(d) This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties.

(e) This Agreement and each provision hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto.

(f) Nothing herein shall be construed to make any party an employee of the other or to establish any fiduciary relationship between the parties except as expressly provided herein.

(g) If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable for any reason, such circumstances shall not have the effect of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of Texas except that the duties and obligations of the Dealer shall be governed by the laws of the State of New York. Each party hereto irrevocably waives, if and to the extent permitted by applicable law, any and all right to a trial by jury in any action, suit or legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby.

(i) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

Section 15. **Relationship of Parties.** The City acknowledges and agrees that (i) the offer and sale of the ECP Notes pursuant to this Agreement is an arm's length commercial transaction between the City and the Dealer, (ii) the Dealer is not acting as a Municipal Advisor (as defined in Section 17B of the Securities Exchange Act of 1934, as amended), (iii) the Dealer has not assumed a fiduciary responsibility in favor of the City with respect to the offer or sale of the ECP Notes or the process leading thereto (whether the Dealer, or any affiliate of the Dealer, has advised or is currently advising the City on other matters) or any obligation to the City except the obligations expressly set forth in this Agreement, (iv) the Dealer has financial and other interests that differ from those of the City, and (v) the City has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offer and sale of the ECP Notes.

Section 16. **Anti-Boycott Verification.** The Dealer represents and verifies that to the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code that the Dealer and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dealer do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable federal or Texas law. As used in the foregoing verification, "boycott Israel," a term defined in Section 2271.001, Texas Government Code, by reference to Section 808.001(1), Texas Government Code, 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.

Section 17. **Iran, Sudan and Foreign Terrorist Organizations.** The Dealer represents and verifies that neither the Dealer nor any parent company, wholly- or majority-owned

subsidiaries, and other affiliates of the Dealer, is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, 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/fto-list.pdf.

The foregoing representation is made solely to enable the City to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable federal or Texas law and excludes the Dealer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Dealer, 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.

Section 18. **Fossil Fuels**. The Dealer represents and verifies that to the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session ("SB 13")), as amended, the Dealer and the parent company, wholly- or majority- owned subsidiaries, and other affiliates of the Dealer do not boycott energy companies and, such entities will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable federal or Texas law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code (as enacted by SB 13) by reference to Section 809.001, Texas Government Code (also as enacted by SB 13), shall mean, without an ordinary business purpose, 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 with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above.

Section 19. **Firearms.** The Dealer represents and verifies that to the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, ("SB 19")), as amended, neither Dealer nor the parent company, wholly- or majority- owned subsidiaries, and other affiliates of the Dealer have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and such entities will not during the term of this Agreement discriminate against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable federal or Texas law.

As used in the foregoing verification and the following definitions, (a) "discriminate against a firearm entity or firearm trade association," a term defined in Section 2274.001(3), Texas Government Code (as enacted by SB 19), (A) means, with respect to the firearm entity or firearm

trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association, (b) "firearm entity," a term defined in Section 2274.001(6), Texas Government Code (as enacted by SB 19), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by SB 19, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by SB 19, as devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (defined in Section 2274.001(1), Texas Government Code, as enacted by SB 19, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting), and (c) "firearm trade association," a term defined in Section 2274.001(7), Texas Government Code (as enacted by SB 19), means any person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

Section 20. **Use of the Term Affiliate.** As used in the verifications contained in Sections 16 through 19 of this Agreement, the Dealer understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Dealer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. The Dealer represents and warrants, for purposes of Section 2252.908 of the Texas Government Code, that the Dealer is a publicly traded business entity or a wholly owned subsidiary of a public traded business entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF EL PASO, TEXAS

By: _____
Name: _____
Title: _____

MORGAN STANLEY & CO. LLC

By: _____
Name: _____
Title: _____

APPENDIX A

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

I, the undersigned, in my capacity as General Counsel of the EL PASO WATER UTILITIES of the CITY OF EL PASO, TEXAS (the "City"), and in connection with the Extendible Commercial Paper Program pursuant to which the "City of El Paso, Texas, Municipal Drainage Utility System Extendable Commercial Paper Note, Series A (Tax-Exempt) ("ECP Notes") are from time to time issued, do certify that each of the persons listed below have been designated in accordance with the City's Ordinance adopted on May 9, 2023 (the "Ordinance") to act severally as an Authorized Representative (as defined in the Ordinance) in connection with the issuance, from time to time, by the City of ECP Notes in accordance with the Ordinance. The specimen signature of each Authorized Representative is set forth beside their respective names.

[Remainder of Page Intentionally Left Blank]

Authorized Representatives
City of El Paso, Texas
El Paso Water Utilities Public Service Board
Extendible Commercial Paper Program

Name	Specimen Signature
John E. Balliew President and Chief Executive Officer El Paso Water	_____
Ana Sanchez Vice President El Paso Water	_____
Arturo Duran Chief Financial Officer El Paso Water	_____

[Remainder of Page Intentionally Left Blank]

_____

General Counsel
El Paso Water

Dated:_____

[Remainder of page intentionally left blank]

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared John E. Balliew, President and Chief Executive Officer of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL] _____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared Ana Sanchez, Vice President, of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL] _____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared Arturo Duran, Chief Financial Officer of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL] _____
Notary Public, State of Texas

THE STATE OF TEXAS §
COUNTY OF EL PASO §

Before me, on this day personally appeared Daniel Ortiz, General Counsel of the El Paso Water Utilities of the City of El Paso, Texas, known to me to be the person whose name was subscribed to the foregoing instrument in my presence.

Given under my hand and seal of office this _____, 2023.

[NOTARY SEAL]

_____
Notary Public, State of Texas