

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

AGENDA DATE: August 16, 2021

PUBLIC HEARING DATE: Not applicable

CONTACT PERSON(S): Omar de la Rosa, (915) 212-1124, delarosaoa@elpasotexas.gov

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 6. Set the standard for sound governance and fiscal management

SUBGOAL: Sub-goal 6.8: Support transparent and inclusive government

SUBJECT:

Presentation and discussion on the creation and governance structure of the El Paso Water Utilities – Public Service Board.

BACKGROUND / DISCUSSION:

The El Paso Water Utilities (EPWater) provides water, wastewater, reclamation water, and stormwater services to the City of El Paso and surrounding areas. As a provider of water services, EPWater is a critical component to our community's quality of life and place. In accordance with Council direction provided on August 2, 2021, this presentation serves to provide an overview of the utility's history, creation, and governance structure, including a summary of the utility's enabling state and local statutes, regulations, rules and ordinances.

PRIOR COUNCIL ACTION:

On August 2, 2021, City Council directed the City Manager and City Attorney to draft a resolution requesting that EPWater provide quarterly updates to City Council regarding customer service, capital improvement projects, sale of property held in trust by EPWater, open space land management and plans, and prepare a presentation on the creation and governance structure of the water utility. The presentation addresses the creation and governance structure of the utility.

AMOUNT AND SOURCE OF FUNDING:

None

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: City Attorney's Office

SECONDARY DEPARTMENT: City Manager's Office

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


Elizabeth Triggs, Strategic Partnerships Officer

ORDINANCE #752

Ordinance

for

\$2,940,000 Water and Sewer Revenue Bonds

of the

City of El Paso, Texas

PUBLIC SERVICE BOARD

Municipal Water and Sewer System

May 22, 1952

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El Paso, Texas
May 13, 1952

The City Council of the City of El Paso met in regular session at the regular meeting place of the council in the City Hall in the City of El Paso at 10:00 o'clock A.M., on May 13, 1952. Roll call disclosed the following to be present:

Fred Hervey, Mayor
Clarence Harper, Alderman
H. T. Etheridge, Jr., Alderman
Ernest Ponce, Alderman
Allen Falby, Alderman
Travis White, City Attorney
W. R. Collins, City Clerk

After the meeting had been duly called to order and the minutes of the preceding meeting approved, an ordinance entitled:

"AN ORDINANCE fixing the details and form for Water and Sewer Revenue Bonds of the City of El Paso in the total amount of \$2,940,000 originally authorized by ordinances adopted on November 20, 1951; making certain provisions for the security and payment of such bonds; providing for the sale thereof, and providing for the issuance and delivery of such bonds.",

was introduced and read in open meeting, and unanimously passed on first reading.

(Other business not pertinent to the above appears in the minutes.)

Pursuant to motion duly made and carried, the meeting was adjourned.

/s/ Fred Hervey
Mayor

ATTEST:

/s/ W. R. Collins
City Clerk

May 22, 1952. The ordinance was adopted on second reading without change by the following vote:

Aye: C. W. Harper, Allen G. Falby, Ernest Ponce,
H. T. Etheridge, Jr.

Nay: None

The ordinance was then signed by the Mayor and Clerk, was declared to be in effect, and is as follows:

"AN ORDINANCE fixing the details and form for Water and Sewer Revenue Bonds of the City of El Paso in the total amount of \$2,940,000 originally authorized by ordinances adopted on November 20, 1951; making certain provisions for the security and payment of such bonds; providing for the sale thereof, and providing for the issuance and delivery of such bonds."

WHEREAS the City of El Paso now owns and operates a waterworks plant and system and a sewer system as a combined public utility lying within and without the boundaries of the City; and

WHEREAS said waterworks plant and system and sewer system have become inadequate to meet the needs of the city and its inhabitants and it is necessary to provide for the improvement and extension thereof and to finance the cost thereof through the issuance of revenue bonds under the provisions of Articles 1111 et seq.; Texas Revised Civil Statutes, as amended; and

WHEREAS the revenues to be derived by the city from the operation of said plant and systems have not been pledged or hypothecated in any manner or for any purpose and all of the net revenues of the aforesaid plant and systems are available to be pledged for the payment of the bonds so hereinafter authorized; and

WHEREAS it is estimated that the cost of the aforesaid improvements and extensions to the waterworks plant and system and sewer system will be \$2,940,000 and in order to pay the cost thereof it is necessary to issue bonds in the amount of \$2,940,000; and

WHEREAS to that end there was held in the City of El Paso on December 8, 1951, an election at which there were submitted to the qualified electors of said city who owned taxable property therein and who had duly rendered the same for taxation, the following propositions:

PROPOSITION NUMBER 1

Shall the City Council of the City of El Paso, Texas, be authorized to issue water revenue bonds of said city in the amount of \$855,000, maturing over a period commencing not less than one year and ending not more than 30 years from their date or dates, as may be determined by the City Council of said city, and bearing interest at a rate or rates not exceeding three and one-half

per cent (3 1/2%) per annum, for the purpose of improving and extending the waterworks plant and system of said city, through the acquisition of additional wells, complete with reservoir and pumping and other related equipment, and to provide for the payment of principal of and interest on such bonds by pledging the net revenues from the operation of said waterworks plant and system, provided that if this proposition and any or all of Propositions Numbers 2, 3, 4, and 5 appearing on this ballot carry at the election, the City Council shall be authorized to combine into a single issue all of the bonds authorized in this proposition and in any or all of said additional propositions which so carry and to pledge to the payment of principal of and interest on the combined issues all net revenues authorized to be pledged to the payment of all of the individual issues so combined (being net revenues of the waterworks plant and system alone or of the sewer system along, or of both waterworks plant and system and sewer system, as the case may be), as authorized by the Constitution and Laws of Texas, and particularly Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas and amendments thereto?

PROPOSITION NUMBER 2

Shall the City Council of the City of El Paso, Texas, be authorized to issue water revenue bonds of said city in the amount of \$330,000, maturing over a period commencing not less than one year and ending not more than 30 years from their date or dates, as may be determined by the City Council of said city, and bearing interest at a rate or rates not exceeding three and one-half per cent (3 1/2%) per annum, for the purpose of improving and extending the waterworks plant and system of said city, through the extension of the water distribution system, and to provide for the payment of principal of and interest on such bonds by pledging the net revenues from the operation of said waterworks plant and system, provided that if this proposition and any or all of Propositions Numbers 1, 3, 4, and 5 appearing on this ballot carry at the election, the City Council shall be authorized to combine into a single issue all of the bonds authorized in this proposition and in any or all of said additional propositions which so carry and to pledge to the payment of principal of and interest on the combined issues all net revenues authorized to be pledged to the payment of all of the individual issues so combined (being net revenues of the waterworks plant and system alone or of the sewer system alone, or of both waterworks plant and system and sewer system, as the case may be), as authorized by the Constitution and Laws of Texas, and particularly Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas and amendments thereto?

PROPOSITION NUMBER 3

Shall the City Council of the City of El Paso, Texas be authorized to issue water revenue bonds of said city in the amount of \$45,000, maturing over a period commencing not less than one year and ending not more than 30 years from their date or dates, as may be determined by the City Council of said city, and bearing interest at a rate or rates not exceeding three and one-half per cent (3 1/2%) per annum, for the purpose of improving and extending the waterworks plant and system of said city, through the acquisition of shallow wells, and to provide for the payment of principal of and interest on such bonds by pledging the net revenues from the operation of said waterworks plant and system, provided that if this proposition and any or all of the Propositions Numbers 1, 2, 4, and 5 appearing on this ballot carry at the election, the City Council shall be authorized to combine into a single issue all of the bonds authorized in this proposition and in any or all of said additional propositions which so carry and to pledge to the payment of principal of and interest on the combined issues all net revenues authorized to be pledged to the payment of all of the individual issues so combined (being net revenues of the waterworks plant and system alone or of the sewer system alone, or of both waterworks plant and system and sewer system, as the case may be), as authorized by the Constitution and Laws of Texas, and particularly Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas and amendments thereto?

PROPOSITION NUMBER 4

Shall the City Council of the City of El Paso, Texas, be authorized to issue sewer revenue bonds of said city in the amount of \$710,000, maturing over a period commencing not less than one year and ending not more than 30 years from their date or dates, as may be determined by the City Council of said City, and bearing interest at a rate or rates not exceeding three and one-half per cent (3 1/2%) per annum, for the purpose of improving and extending the sewer system of said city, through the extension of the sewer collection system, and to provide for the payment of principal of and interest on such bonds by pledging the net revenues from the operation of said sewer system, provided that if this proposition and any or all of Propositions Numbers 1, 2, 3, and 5 appearing on this ballot carry at the election, the City Council shall be authorized to combine into a single issue all of the bonds authorized in this proposition and in any or all of said additional propositions which so carry and to pledge to the payment of principal of and interest on the combined issues all net revenues authorized to be pledged to the payment of all of the individual issues so combined (being net revenues of the waterworks plant and system

alone or of the sewer system alone, or of both waterworks plant and system and sewer system, as the case may be), as authorized by the Constitution and Laws of Texas, and particularly Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas and amendments thereto?

PROPOSITION NUMBER 5

Shall the City Council of the City of El Paso, Texas, be authorized to issue sewer revenue bonds of said city in the amount of \$1,000,000, maturing over a period commencing not less than one year and ending not more than 30 years from their date or dates, as may be determined by the City Council of said city, and bearing interest at a rate or rates not exceeding three and one-half per cent (3 1/2%) per annum, for the purpose of improving and extending the sewer system of said city, through the acquisition of secondary sewer treatment facilities and to provide for the payment of principal of and interest on such bonds by pledging the net revenues from the operation of said sewer system, provided that if this proposition and any or all of Propositions Numbers 1, 2, 3, and 4 appearing on this ballot carry at the election, the City Council shall be authorized to combine into a single issue all of the bonds authorized in this proposition and in any or all of said additional propositions which so carry and to pledge to the payment of principal of and interest on the combined issues all net revenues authorized to be pledged to the payment of all of the individual issues so combined (being net revenues of the waterworks plant and system alone or of the sewer system alone, or of both waterworks plant and system and sewer system, as the case may be), as authorized by the Sonstitution and Laws of Texas, and particularly Articles 1111 to 1118, inclusive, Revised Civil Statutes of Texas and amendments thereto?

and

WHEREAS notice of said election was duly given and said election was duly and properly held and at said election a majority of the duly qualified electors of said city who own taxable property therein and who had duly rendered the same for taxation voting on said propositions voted in favor of said propositions by a vote of 1379 in favor of and 238 opposed to Proposition Number 1, 1339 in favor of and 272 opposed to Proposition Number 2, 1349 in favor of and 259 opposed to Proposition Number 3, 1308 in favor of and 315 opposed to Proposition Number 4, and 821 in favor of and 805 opposed to Proposition Number 5; and

WHEREAS the city is accordingly now authorized to issue its bonds in the sum of \$2,940,000 to be payable from the net revenues of the city's waterworks plant and system and sewer system in the manner for which provision is hereinafter more particularly made;

NOW, THEREFORE, be it ordained by the City Council of the City of El Paso:

Section 1. That the qualified electors of the City of El Paso, Texas (hereinafter sometimes referred to as "thecity",) who own taxable property therein and who have duly rendered the same for taxation, voting at an election called for the purpose and duly held on December 8, 1951, have authorized the issuance of the bonds for which provision is hereinafter made.

Section 2. That for the purpose of improving and extending the waterworks plant and system and sewer system of said city through the acquisition of additional wells, complete with reservoir and pumping and other related equipment, the extension of the water distribution system, acquiring shallow wells, extending the sewer collection system and acquiring secondary sewer treatment facilities, there be borrowed upon the credit of the income and revenues of the system, as defined in the next paragraph hereof, the sum of \$2,940,000, the expenditure of which amount shall be allocated as set forth in the aforesaid propositions.

The words "the system" as hereinafter used shall be understood to mean the complete waterworks plant and system of the city as they now exist and may be improved, added to, or extended hereafter, and the complete sewer system of the city as it now exists and may hereafter be improved, added to, or extended, there being included in such term all water and sewer facilities now or hereafter owned or operated by the city, lying within and without the boundaries of the city, and including all real estate and real and personal property of every kind and nature comprising any part of or used or useful in the operation of the water and sewer facilities of the city.

Section 3. That the bonds herein authorized in the amount of \$2,940,000 shall be issued pursuant to Articles 1111 et seq., Texas Revised Civil Statutes, 1925, as amended, and shall be payable as to both principal and interest solely from the net revenues of the system as more specifically hereinafter provided.

Section 4. That the bonds herein authorized shall be called "Water and Sewer Revenue Bonds," shall be dated March 1, 1952, shall be in the denomination of \$1,000 each, and shall be numbered 1 to 2940, inclusive. Such bonds shall be payable as to both principal and interest in lawful money of the United States of America at the main office of the Chemical Bank & Trust Company in the City of New York, New York, and shall mature serially in numerical order on March 1 of each year and shall bear interest as follows:

<u>Bond Numbers</u>	<u>Amount</u>	<u>Interest Rate</u>	<u>Year</u>
1 - 245	\$245,000		1954
246 - 505	260,000		1955
506 - 770	265,000		1956
771 - 1040	270,000		1957
1041 - 1320	280,000		1958
1321 - 1610	290,000		1959
1611 - 1905	295,000		1960
1906 - 2215	310,000		1961
2216 - 2575	360,000		1962
2576 - 2940	365,000		1963

Interest shall be payable semiannually on March 1 and September 1 of each year, and interest falling due on and prior to maturity shall be represented by appropriate coupons to be attached to the bonds.

Such bonds shall be callable for redemption prior to maturity at the option of the city on September 1, 1953 and at any time thereafter, in inverse order of maturities, with the bonds within any maturity to be selected by lot, at the principal amount thereof plus accrued interest to the date fixed for redemption and a premium of \$25 for each bond redeemed on or before March 1, 1958, and thereafter at a premium of \$2.50 for each six months or fraction thereof from the date fixed for redemption to the stated maturity date of the bond. Notice of the proposed redemption of any bond is to be given not less than thirty days prior to the date fixed for redemption by registered mail to the registered owner of such bond, mailed to the address of such owner shown on the Registrar's registration books. If any bond so called for redemption is not at the time registered as to principal, thirty days' notice of redemption shall be given by publication of an appropriate notice at least once in a newspaper published in the English language and having a general circulation in the City of El Paso, Texas, and in a financial newspaper or journal published in the Borough of Manhattan, City and State of New York, and by registered mail to the bank at which the bonds are payable.

Section 5. That each of said bonds shall be signed by the Mayor of the City of El Paso, shall be countersigned by the City Clerk, and shall have the corporate seal of the city impressed thereon. The coupons shall be signed by the facsimile signatures of the Mayor and City Clerk, and said officials by the execution of the bonds shall adopt as and for their own proper signatures their respective facsimile signatures appearing on said coupons.

Section 6. That said bonds shall be registrable as to principal in the manner for which provision is made in the following section hereof.

Section 7. That said bonds, the coupons to be thereto attached, and the endorsements to appear on the back thereof shall be in substantially the following form:

(form of bond)

UNITED STATES OF AMERICA

STATE OF TEXAS

COUNTY OF EL PASO

CITY OF EL PASO

WATER AND SEWER REVENUE BOND

Number _____

\$1,000

The City of El Paso, a lawfully created and existing municipal corporation in El Paso County, Texas, solely from the special fund hereinafter specified and from no other source, for value received hereby promises to pay to bearer, or if this bond be registered as to principal then to the registered owner hereof, on the first day of March, 19____, the principal sum of One Thousand Dollars (\$1,000), and to pay, solely from said special fund, interest thereon at the rate of _____ per cent (____%) per annum from date hereof until principal has been paid, which interest is payable semiannually on March 1 and September 1 of each year. Both principal of and interest on this bond are payable in lawful money of the United States of America at the main office of Chemical Bank & Trust Company in the City of New York, New York. Interest falling due on and prior to maturity is payable only upon presentation and surrender of the interest coupons hereto attached as they severally become due.

This bond is one of a duly authorized issue of \$2,940,000, of like date and tenor, except as to maturity, option of redemption (and rate of interest), issued for the purpose of extending and improving the waterworks plant and system and sewer system of said city through the acquisition of additional wells, complete with reservoir and pumping and other related equipment, the extension of the water distribution system, acquiring shallow wells, extending the sewer collection system and acquiring secondary sewer treatment facilities, pursuant to authority granted at an election held in said City on December 8, 1951, and pursuant to ordinance adopted by the City Council of said city on November 20, 1951, reference to which ordinance is hereby made for a description of the funds charged with and pledged to the payment of the interest on and principal of the bonds of said issue, the conditions under which additional parity bonds payable from such funds may be issued, the nature and extent of the security thereof, and a statement of the rights, duties and obligations of the city and the rights of the holders of the bonds, to all the provisions of which ordinance the holder hereof by the acceptance of this bond assents.

The bonds of the issue of which this bond is one are callable for redemption prior to maturity at the option of the city on September 1, 1953, and at any time thereafter, in inverse order of maturities, with the bonds within any maturity to be selected by lot, at the principal amount thereof plus accrued interest to the

date fixed for redemption and a premium of \$25 for each bond redeemed on or before March 9, 1958, and thereafter at a premium of \$2.50 for each six months or fraction thereof from the date fixed for the redemption to the stated maturity date of the bond. Notice of the proposed redemption of any bond is to be given not less than thirty days prior to the date fixed for redemption by registered mail to the registered owner of such bond, mailed to the address of such owner shown on the Registrar's registration books. If any bond so called for redemption is not at the time registered as to principal, thirty days' notice of redemption is to be given by publication of an appropriate notice at least once in a newspaper published in the English language and having a general circulation in the City of El Paso, Texas, and in a financial newspaper or journal published in the Borough of Manhattan, City and State of New York, and by registered mail to the bank at which the bonds are payable.

This bond shall not be deemed to constitute a debt of the city or a pledge of its faith and credit, but shall be payable as to principal and interest solely from the net revenues derived from the operation of the waterworks plant and system and sewer system of said city, including all additions, extensions and improvements thereto which may hereafter be made, and the holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

This bond is issued under and pursuant to the Constitution and Laws of the State of Texas, including the charter of the city and Articles 1111 et seq., Texas Revised Civil Statutes, 1925, as amended, and it is required by said laws and said city hereby covenants and agrees that it will make and collect rates and charges for all services supplied by said plant and system fully sufficient to pay the expenses of operating and maintaining said plant and systems, and to pay principal of and interest on all obligations payable from such revenues, including this bond and the series of which it is a part, and to establish an adequate reserve therefor.

This bond may be registered as to principal in accordance with the provisions endorsed hereon.

Each successive holder of this bond during such time as it is payable to bearer, and each successive holder of each of the coupons attached, is conclusively presumed to forego and renounce his equities in favor of subsequent holders for value without notice, and to agree that this bond while so payable to bearer, and each of the coupons hereto attached, may be negotiated by delivery by any person having possession hereof, howsoever such possession may have been acquired, and that any holder who shall have taken this bond or any of the coupons from any person for value and without notice, thereby has acquired absolute title thereto, free from any defenses enforceable against any prior holder and free from all equities and claims of ownership of any such prior holder. The city and its officials and the paying agent hereinabove named shall not be affected by any notice to the contrary.

It is hereby certified and recited that all acts and things required by the Constitution and Laws of the State of Texas and the charter of the city to happen, exist and be performed precedent to and in the issuance of this bond and the adoption of said ordinance have happened, exist and have been performed as so required.

IN WITNESS WHEREOF, the City of El Paso has caused this bond to be signed by its Mayor and countersigned by its City Clerk and its corporate seal to be impressed hereon and has caused the coupons hereto attached to be executed with the facsimile signatures of said officials, all as of this first day of March, 1952.

/s/ Fred Hervey
Mayor

Countersigned:

/s/ William R. Collins
City Clerk

(Form of Coupon)

Number _____ \$ _____

One _____, 19____, unless the hereinafter mentioned bond is then optional for redemption and has been properly called and provision for the redemption thereof made, the City of El Paso, Texas, will pay to bearer at the main office of Chemical Bank & Trust Company in the City of New York, New York, the sum of _____ Dollars (\$ _____)

in lawful money of the United States of America, solely from the special fund referred to in and for interest on its Water and Sewer Revenue Bond, dated March 1, 1952. The holder of this coupon shall never have the right to demand payment thereof out of any funds raised or to be raised by taxation. Bond Number _____.

/s/ Fred Hervey
Mayor

Countersigned:

/s/ William R. Collins
City Clerk

(Form of Registration Endorsement)

The within bond may be registered as to principal on books kept by the City Comptroller of the City of El Paso, as Registrar, upon presentation hereof to such Registrar, who shall make notation of such registration in the registration blank below, and this bond may thereafter be transferred only upon a written assignment of the registered owner or his attorney thereunto duly authorized, duly acknowledged or proved, such transfer to be made on such books and endorsed hereon by the Registrar. If so registered this bond may thereafter be transferred to bearer and thereby transferability by delivery shall be restored but this bond shall again be subject to successive registration and transfers as before. The principal

of this bond, if registered, unless registered to bearer, shall be payable only to the registered owner or his legal representatives. Notwithstanding the registration of this bond as to principal, the coupons hereto attached shall remain payable to bearer and shall continue to be transferable by delivery.

Date of Registration	Name of Registered Owner	Signature of Registrar
:	:	:
:	:	:
:	:	:
:	:	:

(Form of State Comptroller's Certificate)

Office of Comptroller)
) Register Number _____
 State of Texas)

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this bond has been examined by him as required by law, and that he finds that it has been issued in conformity with the Constitution and Laws of the State of Texas, and that it is a valid and binding special obligation of the City of El Paso, payable from the revenues pledged to its payment by and in the ordinance authorizing same, and said bond has this day been registered by me.

WITNESS my hand and seal of office at Austin, Texas, this
 _____ day of _____, 1952.

/s/

 Comptroller of Public Accounts
 of the State of Texas

Public Service Board

Section 8. That pursuant to authority contained in Article 1115, Texas Revised Civil Statutes, the complete management and control of the system during such time as any of the bonds herein authorized are outstanding and unpaid shall be in the hands of a Board of Trustees, to consist of five citizens of the United States of America residing in El Paso County, Texas, to be known as the "Public Service Board", hereinafter sometimes referred to as the "Board". The Mayor of the City of El Paso shall ex officio be one member of the Board, and the remaining members of the Board shall consist of M. Conrey Bryson to serve for a term ending December 31, 1954, Carl A. Beers to serve for a term ending December 31, 1955, Clifton G. Whyburn to serve for a term ending December 31, 1956, and Paul Harvey to serve for a term ending December 31, 1957, each term of office to commence on the date of the adoption of this

ordinance. After the expiration of each of the above prescribed terms of office, each member of the Board other than the Mayor shall serve for a term of five years. Each member shall serve until his successor qualifies. All vacancies in membership whether occasioned by expiration of office or otherwise shall be filled in the following manner: The Chairman of the Board and the Mayor shall jointly agree upon and submit to the Board for its approval, the names of three or more persons eligible to serve as members of such Board. At such time as the Board has signified by majority vote its approval of any three names so submitted to it, said Board shall file with the City Council the names of such three persons. Within 30 days after the filing of such names the City Council shall by majority vote appoint one of the three. If the City Council rejects all three names submitted, three other names shall be submitted to the City Council in like manner, and so on until an appointment is made. Members shall be eligible for re-election.

Subject to the provisions and restrictions contained in this ordinance, the Board shall have complete authority and control of the management and operation of the System and the expenditure and application of its revenues.

The members of the Board shall meet for the purpose of organization as soon as may be after the adoption of this ordinance, and shall organize through the election of one of its members as Chairman and one as Vice Chairman, and through the appointment of a Secretary and a Treasurer or a Secretary-Treasurer, who may but need not be, a member or members of the Board. The Board may make such regulations and by-laws for the orderly handling of its affairs as it may in its discretion see fit and shall thereafter, subject to the pertinent laws of the State of Texas, operate and manage the system with the same freedom and in the same manner as are ordinarily enjoyed by the Board of Directors of a private corporation operating properties of a similar nature.

The Board shall obtain and keep continually in force an employees' fidelity and indemnity bond of the so-called blanket type, written by a solvent and recognized indemnity company, and covering losses to the amount of not less than \$50,000.

The Board shall elect or appoint all officers and employees which it may consider desirable, including a general manager of the system and an attorney or attorneys. All officers and employees, except the members of the Board and its treasurer, general manager, and attorneys, shall be under such civil service provisions as are or may be established by the Charter of El Paso or the laws of Texas.

The members of the Board, other than the Mayor, shall, for each regular meeting attended, receive the sum of \$20.00, except that the amount to be so paid to any member of the Board in any fiscal year shall not exceed the sum of \$1,000. The members of the Board shall not be personally liable for any act or omission not wilfully fraudulent or mala fide. Any member of the Board, other than the Mayor of the City, who shall be continuously absent from

all meetings of the Board for a period of three consecutive months shall, unless he shall have been granted leave of absence by the unanimous vote of the remaining members of the Board, be considered to have vacated his office. Any member of the Board, other than the Mayor, may be removed from office by the unanimous vote of the remaining members of the Board only for adequate cause.

Wherever references appear in this ordinance to actions to be performed or covenants or agreements carried out "by the city" they shall, unless the context shall plainly make it appear otherwise, or unless the action is one required by law to be performed by the City Council rather than by the Public Service Board, be understood to refer to the Public Service Board.

Flow of Funds

Section 9. (1) That from and after the issuance of any of the bonds herein authorized the system shall be operated on the basis of a fiscal year commencing on March 1 of each year and ending on the last day of February of the following year, and all revenues of every nature received through the operation of the system, shall be paid from day to day as collected into a fund to be held by the Trustee for whom provision is hereinafter made and to be known as the "Waterworks and Sewage Fund". All payments made by consumers of water to the city, either directly or indirectly, for or measured by the amount of water used shall be regarded as revenues of the system for all purposes of this ordinance. There shall also be paid into the Waterworks and Sewage Fund at the time of the delivery of the first bonds to be delivered hereunder all money at the time on deposit in city funds to the credit of the Department of Water and Sewerage which shall have been received for water or service theretofore supplied by the system.

(2) There is hereby established a fund to be held by the Trustee and to be known as the "Maintenance and Operation Fund". During the remainder of the month in which the first bonds are issued hereunder the Trustee shall transfer from the Waterworks and Sewage Fund to the Maintenance and Operation Fund such amount as the Board shall estimate will be required to maintain and operate the system during such month. On the first day of the next succeeding month and from time to time thereafter as money is available in the Waterworks and Sewage Fund the Trustee shall transfer therefrom to the Maintenance and Operation Fund such sums as will cause to be maintained therein an amount equal to the expenses of maintaining and operating the system for the ensuing three months, as estimated by the Board. The money in said fund shall be used for the payment of the reasonable and proper expenses of operating and maintaining the system, including salaries, labor, materials, repairs, and extensions necessary to render efficient service. The words "repairs" and "extensions" as used in this paragraph shall be construed to refer only to such repairs and extensions as are necessary to keep the system in operation or which are necessary to remedy some physical accident or condition which

would otherwise impair the security of the bonds herein authorized, and the making of which is expressly authorized by the Board, it being expressly hereby recited and agreed that only emergency replacements are intended to be made as a maintenance and operation expense.

(3) All money in the Waterworks and Sewage Fund not required to be paid into the Maintenance and Operation Fund under the foregoing provisions of this section shall to the extent hereinafter required be paid into a fund to be held by the Trustee for the payment of principal of and interest and redemption premiums on the bonds herein authorized and any bonds issued on a parity therewith, which fund shall be designated as the "Water and Sewer Revenue Bond Fund" and is referred to hereinafter as the "Bond Fund". The amounts to be so paid into the Bond Fund in each fiscal year shall be as follows:

(a) At some time during the first 15 days of each month, beginning with the month of September, 1952, there shall be paid into the Bond Fund an amount equal to one-sixth of the interest payable on the interest payment date next ensuing with respect to all bonds payable therefrom. The sum received from the purchasers of the bonds as interest accrued thereon to the date of delivery shall be placed in the Bond Fund; and

(b) At some time during the first 15 days of each month, beginning with the month of March, 1953, there shall be paid into the Bond Fund an amount equal to one-twelfth of the principal that will mature on March 1 next ensuing with respect to all bonds payable therefrom; and

(c) In the event that at any time any of the bonds have been called for redemption prior to their stated dates of maturity, the amount of the premium to be paid on such bonds at the time of redemption shall be added to the amount hereinabove required to be paid on account of principal during the month immediately preceding the date on which such bonds are to be redeemed. The amount of such premium may be paid from the "Reserve Fund" hereafter established. If in any fiscal year the Board shall for any reason fail to pay into the Bond Fund the full amounts above stipulated, an amount equivalent to such deficiency shall be set apart and paid into said fund from the first money in the Waterworks and Sewage Fund in the following fiscal year or years not required to be paid into the Maintenance and Operation Fund, and such payments shall be in addition to the amounts hereinabove provided to be otherwise paid into said fund during such fiscal year or years.

(4) There is hereby created in the hands of the Trustee a separate fund to be known as the "Water and Sewer Revenue Bond Reserve Fund" and referred to hereafter as the "Reserve Fund",

into which there shall be transferred from the Waterworks and Sewage Fund on or before the fifteenth day of each month beginning with the month of June 1952 and continuing through the month of February 1953 the sum of \$20,000 and thereafter, beginning with the month of March 1953 the sum of \$10,000, (but subject to the prior payment from the Waterworks and Sewage Fund of the amounts hereinabove required to be paid into the Maintenance and Operation Fund and Bond Fund) until such time as there shall be in the Reserve Fund the sum of \$400,000. Money in the Reserve Fund shall be used to pay principal or interest payable from the Bond Fund at any time and to the extent that there is not sufficient money in the Bond Fund and as to which there would be a default if money in the Reserve Fund were not used. Payments into the Reserve Fund at the rate of \$20,000 a month shall be resumed whenever, by reason of the making of payments out of said fund or otherwise, the money in the fund shall not be in the full amount above required to be maintained therein.

(5) At the end of each month there shall be paid to the City Treasurer from any money which may remain in the Waterworks and Sewage Fund after all payments hereinabove required to be paid from such fund in such month have been made and all deficiencies accumulated from prior months have been remedied such amounts consistent with the revenues available for such purpose in each such month as will result in there having been so paid in each of the following fiscal years amounts equal to the following percentages of the total amounts received by the Board from the sale of water during the fiscal year:

<u>Fiscal Year Ending February 28 or 29</u>	<u>Percentage of Total Water Sales</u>
1953	20%
1954	15%
1955	14%
1956	14%
1957	14%
1958	14%
1959	13%
1960	13%
1961	13%
1962	10%
1963	10%

If the city shall prior to February 28, 1963, issue any junior lien bonds payable from the revenues of the system, the payments for which provision is made in this paragraph shall no longer be made. The money so received by the City Treasurer may be expended by the city under the direction of the City Council for any purpose for which revenues of the system may legally be used under the laws of the State of Texas.

(6) All money remaining in the Waterworks and Sewage Fund at the end of each month after all payments hereinabove required to be made from such fund in such month have been made and all

deficiencies accumulated from prior months have been remedied shall be paid by the Trustee to such bank or trust company authorized by the Board to act as depository of a special fund, hereby created and established, to be known as the "Waterworks and Sewage System Improvement Fund", and referred to hereafter as the "Improvement Fund", and such depository shall deposit the amounts so received in such fund. Money in such fund shall be held or used for the following purposes:

(a) To pay principal or interest payable from the Bond Fund falling due at any time at which at to the extent that there is not sufficient money in the Bond Fund and Reserve Fund for the making of such payment.

(b) For any of the following purposes, but not necessarily in the order named:

1. To pay the cost of any special or extraordinary repairs or replacements to or of the properties comprising the system, properly payable with such money under the provisions of the laws of Texas, necessitated by reason of some emergency.

2. To the extent permitted by law, for the making of extensions, improvements, and betterments to the system.

3. For the retirement of bonds payable from the Bond Fund, through purchase on the open market at the best prices obtainable or through redemption.

4. For the payment of principal, interest and redemption premiums on any junior lien bonds which may be issued payable from the revenues of the system.

Money in the Reserve Fund and in the Improvement Fund may at the request of the Board be invested in direct obligations of, or unconditionally guaranteed by the United States of America, which obligations shall be held by the Trustee as a trust fund for the benefit of the bondholders. Whenever money in either fund which has been so invested is required for the purposes for which the fund is created, the Board shall require the depository of such fund to sell at prevailing market prices a sufficient amount of such obligations to produce the sum necessary to be paid from the fund. Such requirement shall be evidenced by written order to be signed by the Chairman of the Board and directed to the depository of such fund.

The funds hereinabove created shall be secured in the manner required by the laws of Texas for the security of city funds. In addition thereto, the money in the Bond Fund and, to the extent that it is not invested, the money in the Reserve Fund and the Improvement Fund, shall be continually secured by the deposit of collateral securities having a market value at all times not less

the amount in the fund. The money in the Bond Fund and Reserve Fund shall be held by the Trustee as a trust fund for the benefit of the holders of the bonds, the beneficial interest in which shall be regarded as existing in such holders. The Secretary of the Board shall require the Trustee not later than February 15 and August 15 of each year to transmit to the paying agent bank from the Bond Fund, or if necessary, from the Reserve Fund, money fully sufficient to pay all principal, interest and redemption premiums which will become payable on the next succeeding March 1 or September 1 as the case may be, including amounts so due on bonds called for redemption or purchased on the open market as above provided, except that by agreement with the holders of any bonds so purchased on the open market, payment of principal, interest, and premiums thereon due by reason of such purchase, may be made by the Trustee to the holders thereof upon surrender of bonds and proper coupons. All bonds so paid, redeemed or purchased shall be canceled and shall not be subject to reissuance.

Insurance

Section 10. That the Board hereby agrees to carry at all times for the benefit of the holders of the bonds, insurance on the system of the kinds and in the amounts which are usually carried by private companies operating similar properties. All moneys received for losses under such insurance policies, other than public liability policies, are hereby pledged by the Board as security for the bonds until and unless such proceeds are paid out in making good the loss or damage in respect of which such proceeds are received, either by repairing the property damaged or replacing the property destroyed, and adequate provision for making good such loss and damage made within ninety days from the date of the loss. The payment of premiums for all insurance policies required under the provisions of this section shall be considered to be maintenance and operation expenses.

Books and Records

Section 11. That the Board covenants and agrees that so long as any of the bonds remain outstanding proper books of record and account will be kept by the Board showing complete and correct entries of all transactions relating to the system, and that the holders of any of the bonds, or any duly authorized agent or agents of such holders, shall have the right at all reasonable times to inspect all records, accounts and data relating thereto and to inspect the system and all properties comprising the system. The Board will furnish to the City Clerk, to the Trustee, to the Paying Agent and to the Consulting Engineers each month a statement in reasonable detail showing the earnings and expenditures of the system and the application of money in the Waterworks and Sewage Fund for the preceding month. The Board further agrees that it will within sixty days following the close of each fiscal year cause an audit of such books and accounts to be made by an independent firm of certified public accountants, showing the receipts and disbursements for account of the system, and that such audit

will be available for inspection by the holders of any of the bonds. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

1. A statement in detail of the income and expenditures of the system for such fiscal year.
2. A balance sheet as of the end of such fiscal year.
3. The accountant's comment regarding the manner in which the Board has carried out the requirements of this ordinance.
4. A list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer and the expiration date of the policy.
5. A list of the securities which have been on deposit as security for the money in the funds herein required to be secured by the deposit of collateral securities, and a list of the securities in which money in the Reserve Fund and Waterworks and Sewerage Improvement Fund has been invested during the fiscal year.
6. The number of metered water customers, the number of unmetered water customers and the number of properties connected with the sewer system at the end of the year.

All expenses incurred in the making of the audits required by this section shall be regarded and paid as a maintenance and operation expense. The Board agrees to furnish a copy of each such audit to the City Clerk, the Trustee, the Paying Agent, the Consulting Engineers and to each of the original purchasers of the bonds hereinafter named and to the holder of any of the bonds at his request after the close of each fiscal year, and that any such holder shall have the right to discuss with the accountant making the audit the contents of the audit and to ask for such additional information as he may reasonably require.

Additional Covenants

Section 12. That the City Council and the Board respectively, further covenant and agree with the holder or holders of said bonds from time to time or any of them:

- A. That the Board will maintain and operate the system with all possible efficiency while any of the bonds remain outstanding and unpaid and that it will faithfully and punctually perform all duties with reference to the system required by the Constitution and Laws of the State of Texas, including the making and collecting of reasonable and sufficient rates for water and services supplied by the system and segregation and application of the revenues of

the system as required by the provisions of this ordinance. Such rates shall always be sufficient to produce or yield revenues (sometimes referred to in this ordinance as "Required Revenues") to produce in each fiscal year an amount adequate to pay all expenses incurred for the operation and maintenance of the system as such expenses shall accrue during such year and to produce an additional amount equal to 150% of the aggregate amount required to be paid in such year for principal of an interest and redemption premiums on bonds payable from the Bond Fund.

B. That the Board will bill charges for sewer services jointly with charges made for the sale of water and for water services, and will require the sewerage charges to be paid by the customer at the same time the water charges due by such customer are paid. New water connections will be permitted to be made by the water system only on a metered basis.

C. That in consideration of the purchase of the bonds, and in order better to secure the prompt payment of principal thereof and interest thereon, as well as for the purpose of protecting the health and welfare of the inhabitants of the City of El Paso, and acting under authority of the general laws of Texas and Section 42 of the city charter, the City Council and the Board, respectively hereby expressly agree and covenant with the holders of the bonds from time to time that:

1. Acting in the exercise of its police powers, the City Council will take all action necessary to require every owner, tenant or occupant of each lot or parcel of land in the city which abuts upon a street or other public way containing a sewer line and upon which lot or parcel a building shall have been constructed for residential, commercial or industrial use to connect such building with the system and to cease to use any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with rules and regulations to be adopted from time to time, which rules and regulations may provide for an inspection charge to assure the proper making of such connection.

2. The city will require the occupant of any premises, the owner or occupant of which shall be delinquent for more than thirty days in the payment of sewer charges imposed hereunder, to cease to dispose of sewage or industrial or commercial waste originating from or on such premises by discharge thereof into the system until such delinquent charges with all penalties for delinquencies shall have been paid, and, in order to enforce the provisions of this paragraph and to prevent the creation of a health hazard, it is agreed

that if any such occupant shall not cease such disposal at the expiration of a period of thirty days running from the giving of the notice to cease such disposal, it will cease supplying water to or selling water for use on such premises until such time as all delinquencies have been removed.

3. If the owner or occupant of any premises connected with the system shall become delinquent for more than thirty days in the payment of sewer charges assessed against him or it, the Board will proceed immediately with a suit in assumpsit or similar action against such owner or occupant to recover the amount of any such delinquent charges, together with penalties and with interest computed thereon at the rate of six per cent per annum.

4. The Board will shut off the supply of water to any premises the owner or occupant of which shall be delinquent for more than thirty (30) days in the payment of any charges imposed hereunder.

D. That neither the Board or the City Council will do, or omit to do, or suffer to be done, or omitted to be done, any matter or thing whatsoever whereby the lien of the bonds on the revenues of the system might or could be lost or impaired, and that the Board will pay or cause to be paid, or will make adequate provision for the satisfaction and discharge of all lawful claims and demands for labor, materials, supplies, or other objects which, if unpaid, might by law be given precedence to, or an equality with the bonds as a lien or charge upon the revenues of the system or any part thereof; provided that nothing in this paragraph shall be construed to require the Board to pay, discharge or make provision for any such lien, charge, claim or demand so long as the validity thereof shall be by it in good faith contested.

E. That the city will not sell, encumber or in any manner dispose of the system or any substantial part thereof, including any and all extensions and additions that may be made thereto, until the bonds herein authorized to be issued shall have been paid in full as to both principal and interest (provided 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 the disposition of such property are placed in the Bond Fund, in addition to all other amounts required to be placed in the Bond Fund in the current fiscal year, and are used for the retirement of bonds in advance of maturity).

F. That so long as any of the bonds herein authorized remain outstanding, any obligations hereafter issued payable in whole

or in part from the revenues of the system shall be junior and subordinate in all respects to the bonds herein authorized and to any bonds which may hereafter be issued on a parity with the bonds herein authorized under the following paragraphs of this subsection, and such junior and subordinate bonds shall be payable only from such revenues of the system as are not required to make all of the payments and carry out all of the covenants and agreements for which provision is made in this ordinance.

The provisions of this subsection are subject to the following exceptions:

1. If prior to the payment of the bonds herein authorized it shall be found desirable to refund said bonds under the provisions of any law then available, said bonds or any part thereof may be refunded, with the consent of the holders thereof (unless said bonds have matured or have been properly called for redemption), and the refunding bonds so issued shall enjoy complete equality of lien with the portion of said bonds which is not refunded, if any there be, and the refunding bonds shall continue to enjoy whatever priority of lien over subsequent issues may have been enjoyed by the bonds refunded, provided, however, that if only a portion of the bonds outstanding is so refunded and if such bonds are refunded in such manner that the interest rate of the bonds is increased or that any refunding bond matures at a date earlier than the maturity date of the corresponding bond refunded thereby, then such bonds may not be refunded without the consent of the holders of the unrefunded portion of the bonds issued hereunder.

2. Additional bonds may also be issued on a parity with the bonds authorized herein, but only if all of the following conditions are met:

- (a) The net revenues of the system must in each of the two completed fiscal years immediately preceding the issuance of the additional bonds have been equal to one and one-half (1 1/2) times the highest combined interest and principal requirements for any succeeding twelve months' period on all bonds then outstanding payable from the revenues of the system and the bonds so proposed to be issued, excluding from such calculation any bonds having a lien on the net revenues inferior to the lien of the bonds proposed to be issued. "Net Revenues" for the purpose of this paragraph shall be understood to refer to the gross revenues of the system remaining after there have been deducted therefrom the expenses of operating and maintaining the system as such expenses are defined in Section 9 above.

- (b) All payments hereinabove required to be

made into the Bond Fund and Reserve Fund must be current.

(c) The additional bonds must be payable as to principal on March of each year in which principal falls due, and payable as to interest on March 1 and September 1 of each year.

(d) The proceeds of the bonds must be used solely for the purpose of improving, extending or bettering the system.

G. That so far as it legally may, the city will not grant a franchise for the operation of any competing water or sewer system in the city until all bonds issued pursuant hereto shall have been retired.

H. That the Board will at its own expense employ in each fiscal year an independent engineer or firm of engineers having a wide and favorable reputation for skill in such matters, whose employment shall be approved in writing to the Board by the Trustee, to report upon the physical condition of the real property assets of the system, the adequacy of the system to supply the inhabitants of the city with sufficient quantities of potable water, adequate fire protection and adequate sewer service, and to make such recommendations for improvements in the management and operation of the system and for the making of needed extensions, additions and improvements thereto as such engineer or engineers may think proper. A copy of each such annual report of the consulting engineer shall be filed by the Board with the City Clerk and the Trustee and shall be mailed to each holder of the bonds herein authorized who shall have so requested in writing. The engineer or engineers so retained are herein sometimes referred to as the "Consulting Engineers," and the payment of their fees shall be regarded as one of the expenses of maintaining and operating the system.

I. That the Board will impose and collect rates and charges for water and services supplied by the system fully adequate to produce the "Required Revenues" referred to in subsection A of this section, and to carry out all of the covenants and agreements contained in this ordinance. The Board will permit no free water or services to be supplied to the city or to any other user, and the city agrees that it will pay from its general funds the reasonable value of all water and services obtained from the system by the city and all departments and agencies thereof.

Concerning the Trustee

Section 13. That El Paso National Bank of El Paso, Texas, is hereby appointed as Trustee. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by the

ordinance by filing with the City Clerk its acceptance in writing in form satisfactory to the City Council, and, by filing such acceptance in writing, the Trustee shall be deemed to have accepted such duties and obligations with respect to all bonds thereafter to be issued under this ordinance.

The recitals of fact and representations in this ordinance and in the bonds contained shall be taken as the statements of the city, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this ordinance or of the bonds or in respect of the security afforded by the ordinance, and the Trustee shall incur no responsibility in respect thereof. The Trustee shall be under no responsibility or duty with respect to the issuance of the bonds for value, or the application of the proceeds thereof except to the extent that such proceeds are paid to the Trustee in its capacity as Trustee, or the application of any moneys paid to the city or others in accordance with the ordinance. The Trustee shall be under no obligation or duty to perform any act which would involve it in expense or liability or to institute or defend any suit in respect of this ordinance or of the bonds, or to advance any of its own moneys, unless properly indemnified. The Trustee shall not be liable in connection with the performance of its duties except for its own negligence or default.

The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may or may not be of counsel to the city, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it in good faith and in accordance therewith. Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this ordinance, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by an authorized officer of the city, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of this ordinance upon the faith thereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable. Except as otherwise expressly provided herein, any request, order, notice, or other direction required or permitted to be furnished pursuant to any provision hereof by the city to the Trustee shall be sufficiently executed if executed in the name of the city by an authorized officer of the city.

Unless otherwise provided by contract with the Trustee, the city shall pay to the Trustee from time to time, reasonable compensation for all services rendered by it hereunder, and also all its reasonable expenses, charges, counsel fees and other disbursements and those of its attorneys, agents, and employees,

incurred in and about the performance of its powers and duties hereunder.

The Trustee, or any successor thereof, may at any time resign and be discharged of its duties and obligations hereunder by giving not less than 60 days' written notice to the city and publishing notice thereof, specifying the date when such resignation shall take effect, at least once in a newspaper printed in the English language and customarily published on each business day and of general circulation in the Borough of Manhattan, City and State of New York, the first publication to be made within 20 days after the giving of such written notice. Such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed by the city or bondholders as herein provided, in which event such resignation shall take effect immediately on the appointment of such successor.

The Trustee or any successor thereof, may be removed at any time by the holders of a majority in principal amount of the bonds then outstanding, excluding any bonds held by or for the account of the city, by an instrument or concurrent instruments in writing signed and acknowledged by such bondholders or by their attorneys-in-fact duly authorized and delivered to the city. The Trustee, or any successor thereof, may be removed by the city for cause. Copies of each such instrument and of any resolution of the city providing for any such removal shall be delivered by the city to the Trustee, and any successor thereof.

In case the Trustee, or any successor thereof, shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof or of its property shall be appointed, or if any public officer shall take charge or control thereof or of its property or affairs, a successor shall be appointed by the holders of a majority in principal amount of the bonds then outstanding, excluding any bonds held by or for the account of the city, by an instrument or concurrent instruments in writing signed and acknowledged by such bondholders or by their attorneys-in-fact **duly** authorized and delivered to the city. Pending such appointment by the bondholders, the city shall forthwith appoint a successor to act until such appointment is made by the bondholders. Copies of each such instrument and of any resolution of the city providing for any such appointment shall be delivered by the city to the successor and to the predecessor Trustee. The city shall publish notice of any such appointment at least once in a newspaper printed in the English language and customarily published on each business day and of general circulation in the Borough of Manhattan, City and State of New York, the first publication to be made within 20 days after such appointment. Any appointment made by the city shall, immediately and without further act, be superceded and revoked by appointment subsequently made by bondholders. If in a proper case no appointment of a successor shall be made within 45 days after

the giving of written notice or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any bondholder may apply to any court of competent jurisdiction for the appointment of such a successor, and said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint such successor. Any successor appointed under the provisions of this section shall be a bank or trust company located in the State of Texas or in the Borough of Manhattan, City and State of New York, and having a capital and surplus aggregating at least \$2,500,000, if there be such a bank or trust company willing and able to accept the appointment on reasonable and customary terms and authorized by law to perform all the duties required by this ordinance. If any such successor Trustee shall be a bank not located in the City of El Paso, such successor Trustee is authorized to appoint a subdepository located in the City of El Paso for the purpose of holding and paying out the Maintenance and Operation Fund under the foregoing provisions of this ordinance.

Any successor appointed under the provisions of this section shall execute, acknowledge and deliver to its predecessor, and also to the city, an instrument accepting such appointment, and thereupon such successor, without any further act, shall become fully vested with all moneys, securities, rights, powers, duties, and obligations of its predecessor hereunder, with like effect as if originally appointed herein as Trustee, but the Trustee then ceasing to act shall nevertheless, on request by the city or of such successor, execute, acknowledge and deliver such instruments of transfer and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the right, title and interest of such Trustee in and to any property held by it hereunder, and shall pay over, assign and deliver to such successor any money or other property subject to the trusts and conditions herein set forth. Should any instrument in writing from the city be required by such successor for more fully and certainly vesting in and confirming to it any such moneys, securities, rights, powers, duties or obligations, any and all such instruments in writing shall, on request, and so far as may be authorized by law be executed and acknowledged and delivered by the city.

All notices required or permitted by this ordinance to be served on the city shall be adequately served if sent by registered mail to the Secretary of the Board, addressed to the principal office of such Board.

In computing the percentages of bondholders required by the provisions of this section, there shall be taken into consideration not only the bonds herein authorized at the time outstanding, but also any bonds then outstanding which may have been issued on a parity under the provisions of Section 12 hereof.

Remedies

Section 14. A. No coupon which in any way before, at, or

after maturity shall have been transferred or pledged separate and apart from the bond to which it appertains shall, unless accompanied by such bond, be entitled, in case of default hereunder, to any benefit of or from this ordinance, except after the prior payment in full of the principal of all bonds and of all coupons not so transferred or pledged. In case the time for the payment of any coupon or the interest on any bond shall be extended, whether or not such extension be by or with the consent of the city, such coupon or such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this ordinance except subject to the prior payment in full of the principal of all bonds then outstanding and of all coupons and interest the time for the payment of which shall not have been extended.

B. Each of the following events is hereby declared an "event of default," that is to say: If

(a) payment of the principal of any of the bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any installment of interest shall not be made when the same shall become due and payable or within 30 days thereafter; or

(c) the city shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) any part of the system shall be destroyed or damaged and shall not be promptly repaired, replaced or reconstructed (whether such failure promptly to repair, replace or reconstruct the same be due to the impracticability of such repair, replacement or reconstruction or lack of funds therefor or for any other reason); or

(e) an order or decree shall be entered, with the consent or acquiescence of the city, appointing a receiver or receivers of the system or any part thereof or of the revenues thereof, or if such order or decree, having been entered without the consent or acquiescence of the city, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof; or

(f) any proceedings shall be instituted, with the consent or acquiescence of the city, for the purpose of effecting a composition between the city and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors or under any circumstances payable from the revenues of

the system; or

(g) the city shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the bonds or in this ordinance on the part of the city to be performed, other than the covenant contained in Sub-section I of Section 12 of this ordinance with respect to the maintenance of rates.

C. Upon the happening and continuance of any event of default specified in Sub-section B of this section, then and in every such case the Trustee may, and upon the written request of the holders of not less than 25% in principal amount of the bonds then outstanding shall, give to each member of the City Council of the city and to the Secretary of the Board 90 days' written notice of the happening of such event of default (and if the default be in the payment of principal or interest which has become due, stating that payment has been demanded and default made) which notice shall date from the sending of a letter to each person to be notified, by registered mail, postage and registration fees prepaid, and addressed to them at the post office in such city. If such default be not remedied within such ninety days as may be provided by law, the Trustee may, and upon the written request of the holders of not less than 20% in principal amount of the bonds then outstanding shall, proceed to protect and enforce its rights and the rights of the bondholders under the laws of Texas or under this ordinance by such suits, actions or special proceedings in equity or at law; or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Trustees, being advised by counsel, shall deem most effectual to protect and enforce such rights. In the enforcement of any remedy under this ordinance the Trustee shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any default becoming, and at any time remaining, due from the city for principal, interest or otherwise under any of the provisions of the ordinance or of the bonds and unpaid, together with any and all costs and expenses of collection and of all proceedings hereunder and under such bonds, without prejudice to any other right or remedy of the Trustee or of the bondholders, and to recover and enforce judgment or decree against the city, but solely as provided herein and in such bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from moneys in the Bond Fund and Reserve Fund and any other moneys available for such purpose) in any manner provided by law, the moneys

adjudged or decreed to be payable.

D. In case any proceeding taken by the Trustee on account of any default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the city, the Trustee and the bondholders, to the extent not inconsistent with such adverse proceedings, shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

E. Anything in this ordinance to the contrary notwithstanding, the holders of a majority in principal amount of the bonds then outstanding hereunder shall have the right by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law or the provisions of the ordinance, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to bondholders not parties to such direction.

F. All rights of action under this ordinance or under any of the bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the bonds or the coupons appertaining thereto or the production thereof on the trial or other proceeding relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the benefit of all the holders of such bonds and coupons, subject to the provisions of the ordinance.

G. Nothing in this section contained shall affect or impair the right of any bondholder to enforce the payment of the principal of and interest on his bonds, or the obligation of the city to pay the principal of and interest on each bond issued hereunder to the holder thereof at the time and place in said bond and the appurtenant coupons, if any, expressed.

H. Wherever any action or right permitted by this section is delegated to a fixed percentage of bondholders, there shall be included for purposes of computing such percentage not only all bonds at the time outstanding hereunder, but also any bonds which may hereafter be issued on a parity with the bonds herein authorized. No bonds owned by or held for the account of the city or any of its funds may be taken into consideration for the purpose of such computation.

Construction Fund

Section 15. That the sale of the bonds herein authorized to Drexel & Company, of New York, New York, and associates at the price of \$2,940,089.08 and accrued interest to the date of delivery is hereby confirmed. Such part of the proceeds of the sale of the bonds as is to be reserved for future expenditure in the making of the improvements and extensions for such the bonds are herein authorized shall be paid to the Trustee and the Trustee shall pay such moneys into a special fund to be known as the "Waterworks and Sewer System Construction Fund" hereinafter referred to as the "Construction Fund", which shall be established by the Trustee. Such moneys shall be subject to a lien and charge in favor of the holders of the bonds and shall be held for the further security of the holders until paid out from such fund for the purposes for which the bonds were voted, including proper incidental costs. Payments from the Construction Fund shall be made by the Trustee upon requisitions of the Board. Each requisition shall be signed by the Secretary of the Board and by one member thereof and shall certify that an obligation in the amount stated in the requisition has been incurred and that the same is a proper charge against the Construction Fund and has not been paid, and shall specify the purpose of such obligation in reasonable detail and to whom such obligation is owed.

Contribution in Aid of Construction

Section 16. Any moneys that may be received by the Board that shall represent contributions in aid of construction, shall be deposited in a separate bank account and shall at no time be considered as part of the revenues of the system. Payments from such bank account shall be made only for the purposes for which the contributions were made, including any refunds that may become due to any contributor.

Section 17. That as soon as may be after the adoption of this ordinance it shall be the duty of the Mayor and City Attorney to submit a complete certified transcript of proceedings had in connection with the adoption of this ordinance and the authorization of the bonds and to submit the printed bonds to the Attorney General of the State of Texas for his approval and for registration of such bonds by the State Comptroller after they have been so approved.

Section 18. That if any section, paragraph, clause or provision of this ordinance shall be held to be invalid for any reason, the invalidity thereof shall not affect any of the remaining sections, paragraphs, clauses or provisions of this ordinance.

Section 19. That all ordinances, resolutions and orders or parts thereof in conflict herewith are to the extent of such conflict hereby repealed.

Section 20. That this ordinance shall take effect immediately upon its adoption.

Adopted and approved May 22, 1952.

/s/ Fred Hervey
Mayor

Attest:

/s/ W. R. Collins
City Clerk

The above ordinance and the form of bond and coupon therein contained are approved this 22nd day of May, 1952.

/s/ Travis White
City Attorney

(Other business not pertinent to the above appears in the minutes of the meeting.)

Pursuant to motion duly made and carried, the City Council adjourned.

STATE OF TEXAS)
)
COUNTY OF EL PASO)

I, W. R. Collins, do hereby certify that I am the duly qualified and acting Clerk of the City of El Paso, El Paso County, Texas.

I further certify that the above and foregoing is a true and correct copy of excerpts of the minutes of two regular meetings of the City Council held on the dates indicated therein, and of an ordinance read and adopted at said meetings as such minutes and ordinance are officially of record in my possession.

IN WITNESS WHEREOF, I have hereunto set my official signature and affixed the seal of said city this 22nd day of May, 1952.

/s/ W. R. Collins
City Clerk

(SEAL)

CITY CLERK DEPT:

09 AUG -4 PM 5:25

RESOLUTION

A RESOLUTION ESTABLISHING THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD SELECTION COMMITTEE AND THE PROCESS FOR SELECTION OF EL PASO WATER UTILITIES PUBLIC SERVICE BOARD MEMBERS IN ACCORDANCE WITH TEXAS GOVERNMENT CODE SECTION 1502.070.

WHEREAS, the 81st Regular Session of the Texas Legislature passed H. B. 4004, signed into law by the Governor of Texas May 23, 2009 which amended Texas Government Code Section 1502.070 to provide that the management and control of a utility system may be vested in a board of trustees consisting of not more than seven members, one of whom must be the Mayor of El Paso;

WHEREAS, the City Council of the City of El Paso considered and accepted a PSB Governance Practices Review Phase 2 Report April 7, 2009 from Public Affairs Consulting and Prestige Consulting Services, which report, among other things, recommended a process for the appointment by the City Council of members of the El Paso Water Utilities Public Service Board necessitated by the revised State Law or expiration of term of office or otherwise;

WHEREAS, the City Council of the City of El Paso and the El Paso Water Utilities Public Service Board approved the appointment recommendations of the Consultant for the process for the selection of El Paso Water Utilities Public Service Board Members whose position may be vacated by expiration of term of office, resignation, removal or necessitated by appointment required as a result of the revision of Section 1502.070, Texas Government Code; and,

WHEREAS, the City Council of the City of El Paso passed and adopted an Ordinance to implement the changes provided for by H.B. 4004 and the amendment to Texas Government Code Section 1502.070 finding that the changes are necessary, desirable and in the best interest of the citizens and ratepayers of the City and will not be materially adverse to the interest of the owners of previously issued and outstanding City water and sewer revenue bonds.

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

- 1. Number of Board Members.** The El Paso Water Utilities Public Service Board ("PSB") shall hereafter consist of seven (7) members, one of whom must be the Mayor of the City of El Paso as provided for by Texas Government Code Section 1502.070(a)(B).
- 2. Terms of Office.** PSB members will serve no more than two (2) consecutive terms of office. With the exception of one 2-year term for one of the members added after the adoption of this Resolution, terms of office shall continue to be four (4) years and to be staggered. The two (2) PSB members added after the adoption of this resolution will draw lots to determine whether

Doc. No.: 50131 v3

Doc. Name: Reso PSB Selection Committee

Doc. Author: SFIR

his or her first term will be a two (2) year term or four (4) year term. Thereafter each PSB member term shall be four (4) years. The member who drew the lot that resulted in a two-year term will be ineligible for reappointment after serving six (6) consecutive years unlike the remaining PSB members who are eligible to serve two (2) consecutive terms of four (4) years each.

3. **Current Board Members.** The current PSB members, dates of term expirations and areas of expertise are as follows: Ruben E. Guerra, Chair, December, 2011(Financial Management); Fermin Acosta, Vice Chair, December, 2009 (Consumer or Citizen Advocacy); Richard O. Martinez, P.E., Secretary/Treasurer, December, 2010 (Engineering); and Maria F. Teran, Member, December, 2012 (General Business Management). The City Council acknowledges that adopting this resolution shall in no way modify the terms of the existing PSB members or their designated areas of expertise.

4. **Creation of El Paso Water Utilities Public Service Board Selection Committee.** By adopting this Resolution, the City Council of the City of El Paso hereby creates the El Paso Water Utilities Public Service Board Selection Committee ("PSB Selection Committee"). The PSB Selection Committee shall include: the Mayor of the City of El Paso who shall act as the Chairperson; one member appointed by each member of City Council to represent each City Council District; and each of the current members of the Board. Initially the PSB Selection Committee shall total thirteen (13) including the Mayor and thereafter when the Board has been expanded to seven (7), the PSB Selection Committee will total fifteen (15) members.

5. **Term.** PSB Selection Committee members shall serve as members until either: the expiration of his or her term as Mayor; his or her replacement is appointed by the member of City Council responsible for the respective district the Committee member was representing; or upon expiration of his or her term on the PSB and appointment of a successor, as may be applicable.

6. **Meetings of PSB Selection Committee.** The PSB Selection Committee shall meet upon call of the Chairperson and regularly thereafter as established by the Chairperson until such time as a slate of three (3) persons for each vacancy or upcoming vacancy on the PSB has been identified. All meetings of the PSB Selection Committee shall be open to the public, posted and held in accordance with the Texas Open Meetings Act. Provided however, in accordance with Section 551.074 of the Texas Open Meetings Act regarding personnel matters, deliberations regarding the creation of the slate of eligible candidates may be held in Executive Session upon a majority vote of the PSB Selection Committee. Any candidate being considered for nomination has the right to demand that deliberations regarding his or her nomination occur in public as provided for in the Texas Open Meetings Act.

7. **Filling Vacancies on the Board.** Vacancies on the Board whether occasioned by expiration of office or otherwise shall be filled by appointment of the majority vote of the City Council. PSB members shall be selected from a slate of three (3) persons eligible to serve as Board members, nominated by the PSB Selection Committee and presented to the City Council by the Mayor.

Once a slate of three (3) eligible candidates for each vacancy has been presented to the El Paso City Council for consideration, the City Council may by resolution either: specify a reasonable amount of time to allow for interviews of each candidate by each City Council Representative and schedule the voting session to select the member or members to fill each vacancy; or refer the matter to a City Council Legislative Review Committee to conduct interviews and schedule the vote.

The City Council is committed to filling vacancies promptly and will ensure there is no unreasonable delay in interviewing the nominees once a slate is presented. Should the Mayor determine that an unreasonable delay has occurred, he will immediately present the nominees to the City Council for a vote at the next available City Council meeting.

8. **Selection Criteria.** The City Council hereby directs the PSB Selection Committee that to the extent practical, the Board shall be comprised of members who come from six (6) areas of expertise: (1) financial management; (2) general business management; (3) engineering; (4) environmental or health; (5) consumer or citizen advocacy; (6) communications, public administration, or education. The Mayor is the representative of municipal government. The PSB Selection Committee will keep the criteria in mind when nominating members and creating slates of candidates for consideration by City Council.

9. **Additional Guidance.** To the extent that guidance is necessary in the implementation of these matters, the Mayor and City Council will look to the PSB Governance and Practices Review: Phase 2 Report—April 7, 2009. A copy of said report will be maintained on file in the Office of General Counsel of the Public Service Board.

10. **Resolution of Conflicts.** All prior Resolutions and By-laws of the Board, or parts thereof, in conflict with this Resolution are hereby amended or modified to the extent of such conflict and the provisions of this Resolution shall be and remain controlling as to the matters resolved hereby.

11. **Savings Clause.** If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and application of it shall nevertheless be valid and the El Paso City Council declares that such Resolution would have been enacted without such invalid provision.

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


[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

CITY CLERK DEPT.

09 AUG -4 PM 5:25

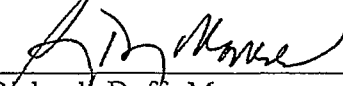
ADOPTED by the El Paso City Council on the 11th day of August 2009.

CITY OF EL PASO



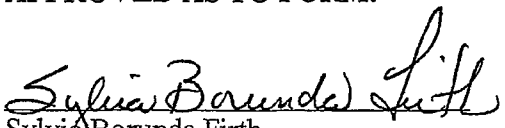
John F. Cook
Mayor

ATTEST:



Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Senior Assistant City Attorney

09 JUL 30 AM 11:09

ORDINANCE NO. 017167

AN ORDINANCE RELATING TO THE COMPOSITION OF THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD AND RESOLVING MATTERS INCIDENT AND RELATED THERETO.

WHEREAS, the 81st Regular Session of the Texas Legislature passed H.B. 4004 which the Governor of Texas signed into law on May 23, 2009; and

WHEREAS, H.B. 4004 amends Texas Government Code Section 1502.070 by increasing the maximum number of members that the governing bodies of certain municipalities, including the City of El Paso, Texas (the "City"), may appoint to the board of trustees charged with the management and control of a utility system on behalf of the municipality; and

WHEREAS, the El Paso Water Utilities Public Service Board (the "Board") is charged with the management and control of the water, sewer, and drainage systems of the City and members of the Board are appointed by the City Council of the City; and

WHEREAS, the City Council currently appoints five members to the Board, one of whom must be the Mayor of the City, and wishes to increase that number to seven members, one of whom must be the Mayor of the City, as provided for H.B. 4004; and

WHEREAS, the City Council has adopted recommendations for the process by which Board members will be selected and other Board governance terms which may be more specifically established by separate City Council resolution, Board bylaw or otherwise;

WHEREAS, the City Council deems the adoption of this Ordinance, the changes to the Board, the other changes set forth herein and any resulting amendments or modifications to prior ordinances to be necessary, desirable and in the best interest of the citizens and rate payers of the City and not materially adverse to the interests of the owners of previously issued and outstanding City water and sewer revenue bonds; now, therefore,

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

SECTION 1: The El Paso Water Utilities Public Service Board will now consist of seven members, one of whom must be the Mayor of the City as provided for by Texas Government Code Section 1502.070(a)(B).

SECTION 2: Each vacancy in Board membership whether occasioned by expiration of office or otherwise shall be filled by the City Council from three persons eligible to serve as Board members and presented to City Council. A selection committee selected by the City Council and comprised of the Board and such additional members as appointed by City Council shall agree upon and submit to City Council the names of such three eligible persons.

ORDINANCE NO. 017167

Doc. No. 50035 v2

Doc. Name: Ordinance/PSB Board

Doc. Author: CMCN

09 JUL 30 AM 11:09

SECTION 3: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 4: The provisions of this ordinance shall be incorporated into all future ordinances authorizing the issuance of the City's water and sewer revenue bonds. All prior ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby amended or modified to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein. If it is determined under applicable law, that bondholder consent is required pursuant to the terms of certain ordinances authorizing the issuance of the City's water and sewer revenue bonds prior to 2004 before certain of the provisions hereof may be effective, then the provisions of this Ordinance for which consent is required shall not be effective until such consent is obtained, such bonds are no longer outstanding or a court of competent jurisdiction or other legal authority makes a determination that such provisions are effective.

SECTION 5: This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America. References to "applicable law" herein include all applicable federal, state and local statutes, regulations, rules and ordinances.

SECTION 6: If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 7: It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

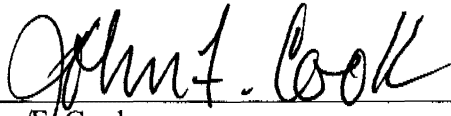
SECTION 8: This Ordinance shall be effective as of the date of its adoption by City Council.

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ORDINANCE NO. 017167

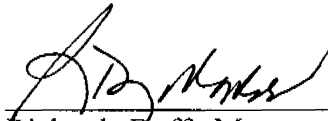
PASSED, ADOPTED AND APPROVED on this the 11th day of August, 2009.

CITY OF EL PASO, TEXAS




John F. Cook
Mayor, City of El Paso, Texas

ATTEST:

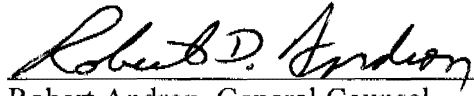


Richarda Duffy Momsen
City Clerk, City of El Paso, Texas

APPROVED AS TO FORM:



Charles McNabb
City Attorney



Robert Andron, General Counsel
El Paso Water Utilities

CITY CLERK DEPT.
09 JUL 30 4M11:09

ORDINANCE NO. 017167

Doc. No. 50035 v2
Doc. Name: Ordinance/PSB Board
Doc. Author: CMCN

10 APR -5 AM 8:57

JOINT RESOLUTION BETWEEN THE EL PASO CITY COUNCIL AND THE EL PASO WATER UTILITIES/PUBLIC SERVICE BOARD SETTING FORTH THE POLICIES, PROCEDURES AND REIMBURSEMENTS RELATING TO TRANSFERS OF REAL ESTATE, LAND USE POLICIES, RELOCATION OF EPWU/PSB FACILITIES, JOINT USE AND WATER RIGHTS.

WHEREAS, on May 22, 1952 the City of El Paso ("City") adopted Ordinance No. 752 for the purpose of creating the Public Service Board ("PSB"), a governing board of trustees duly formed in accordance with Texas law, to operate and manage the El Paso water and waste water system with the same freedom and in the same manner as are ordinarily enjoyed by the Board of Directors of a private corporation operating properties of a similar nature;

WHEREAS, on May 22, 1952, the City issued, \$2,940,000 of City of El Paso Water and Sewer Revenue Bonds for the purpose of improving and extending the waterworks plant and system through the acquisition of additional wells, complete with reservoir and pumping and other related equipment, and to provide for the payment of principal and interest on such bonds by pledging the net revenues from the operation of the waterworks plant and system;

WHEREAS, the City will not sell, encumber or in any manner dispose of the system or any substantial part thereof, including any and all extensions and additions that may be made thereto, until the bonds have been paid in full as to both principal and interest (provided that this covenant shall not be construed to prevent the disposal by the City of property which in the PSB's judgment has become inexpedient to the use in connection with the system, when other property of equal value is substituted therefore, or when the proceeds of the disposition of such property are placed in the Bond Fund, in addition to all other amounts required to be placed in the Bond Fund in the current fiscal year, and are used for the retirement of bonds in advance of maturity);

WHEREAS, on September 7, 1965 a Memorandum of Policies, was approved by the City and the PSB, to evidence concurrence regarding policies with respect to charges and payments between the Department of Water Utilities and other City departments;

WHEREAS, the City and the PSB agree that the 1965 Memorandum of Policies needs modification to reflect the latest goals, objectives and policies regulating the desired development within the City and to fairly reimburse the transferring party when real estate is removed from their respective care, custody and control;

WHEREAS, the PSB has master planned land in northeast and northwest El Paso and these master plans will allow for congruent, contiguous and planned growth while providing reservations of lands for needed public improvements; and

WHEREAS, both the City and PSB find that it is in the best interest of all the citizens of El Paso for the City and its PSB to work together in cooperation to minimize overall costs to taxpayers and ratepayers.

NOW, THEREFORE, the El Paso City Council and the El Paso Water Utilities/Public Service Board hereby adopt the policies and procedures set forth below.

1. Land Use Planning and Public Uses. In order to ensure that the real estate sold by the City and PSB is used in manners consistent with the current land use policies in place at the time of the sale, the City and PSB jointly adopt the following policies and procedures:

- A. PSB Land Sales of Parcels Less than 25 acres.** If the PSB makes a finding and determination that a parcel of land less than 25 acres in size is inexpedient to the system and desires to sell the parcel, the PSB shall submit a request to the Office of the City Manager for administrative review and recommendations for the appropriate zoning and design standards compatible with the City's Comprehensive Plan and reflective of City's goals to develop sustainable neighborhoods. The City and PSB will complete the process to rezone any parcel requiring a change in zoning pursuant to the staff's recommendation before the property is advertised for sale. Any design requirements imposed by the City during the rezoning process and administrative review shall be a condition of sale.

Should any portion of the subject parcel be required for City Public Facilities, as that term is defined herein, the City and PSB shall complete the transfer of land in accordance with Paragraph 2 below.

- B. PSB Land Sales of Parcel of 25 acres or larger.** If the PSB makes a determination that land is inexpedient to the PSB systems, and the parcel of land is 25 acres in size or greater, the PSB shall submit a Land Study (as that is defined in Title 19 of the El Paso City Code, as amended) application to the City for approval by the City Plan Commission before any portion of the property is sold. As part of the land study process, the City will determine the appropriate zoning for all parcels and the development will be designed in accordance with standards and regulations in effect at the time of the review, compatible with the City's Comprehensive Plan and reflective of City's goals to develop sustainable neighborhoods. The City and PSB will jointly undertake rezoning pursuant to the approved Land Study. Any rezoning shall be accomplished prior to the sale of the property.

During the Land Study, if the City determines it needs land for Public Facilities that a developer will not be required to dedicate as part of the development process in accordance with current development regulations and ordinances, the PSB will transfer the land designated in the land study to the City's inventory without cost. "Public Facilities" will include, but shall not be limited to, any public improvement providing required services for proper development such as; streets, bridges, public buildings, public works buildings or facilities, and community facilities such as parks, police and fire stations, libraries, and health clinics. However, "water, wastewater, reclaimed water and stormwater systems",

“water rights”, and “schools” will not be considered City public facilities for purposes of this joint resolution.

The City will be responsible for all costs associated with the engineering plans, surveys, environmental assessments and all onsite and offsite, development and construction of the identified City Public Facility.

The transfers of property to the City will be “as is”, and the costs of demolishing structures, cleaning the identified land, removing or relocating PSB infrastructure, capping or plugging wells, or mitigation costs will be the sole responsibility of the City.

A land study application may be replaced with an application for subdivision plat approval for the entire parcel(s) of land, provided that the subdivision plat is processed and duly recorded prior to the development of any portion of the parcel(s), and the improvements required by the recorded subdivision plat are required as a condition of sale. Any rezoning or transfer of land to the City for needed City public facilities as identified in the recorded subdivision plat shall be completed prior to the sale of any portion of the parcel.

2. Land Transfers to the City. In addition to transfers for Public Facilities described in Paragraph 1(B) relating to parcels more than 25 acres, which will be without monetary reimbursement, the City of El Paso may, from time to time, request a transfer of real estate from the PSB inventory to the City inventory. Upon receipt of such a request, if the property has not already been declared inexpedient to the system as described in Paragraph 1(A), the matter will be presented to the PSB for a determination that the requested land is inexpedient to the system and contiguous to existing water and sewer infrastructure. If the PSB makes such a determination, the PSB will have the property appraised, survey the land and conduct an environmental site assessment, as agreed upon between the City and the PSB. The City will pay the cost of the appraisal, the land survey, and the environmental assessment. However, if it is more convenient to the City and PSB, the City may have the property appraised by an appraiser approved by the PSB, and subject to the approval of the PSB, provide a land survey and environmental site assessment. The City will pay the greater of 25% of the appraised value of the land to the PSB to compensate the PSB for management and maintenance and other land costs incurred while in possession of the PSB or the original cost for the land plus an annual CPI adjustment from the date of purchase; provided however, departments such as the Department of Aviation, Environmental Services and Sun Metro, which operate as an enterprise fund, shall be required to reimburse the PSB in an amount equal to 100% of fair market value determined by an independent appraiser.

Any transfer of property to the City will be “as is”, and any costs of demolishing structures, cleaning the identified land, removing or relocating PSB infrastructure, capping or plugging wells, or mitigation costs will be the sole responsibility of the City.

The PSB and the City, in addressing specific economic development initiatives, may negotiate a separate land transfer agreement with payments and cost reimbursements developed on a case-by-case basis.

3. City Land Transfers to the PSB. If the PSB desires to acquire property from the City for PSB uses, it will submit a request to the City Manager who will present the matter to City Council for a determination as to whether the City consents to the transfer. The PSB will follow the same procedures identified for the City in having an identified parcel appraised, surveyed and identified for an environmental assessment as outlined in Paragraph 2 above. The PSB will be responsible for the costs of appraisals, surveys, etc. and will reimburse the City an amount equal to 25% of the fair market value as determined by the appraisal, unless the property is held by a department that operates as an enterprise fund in which case the PSB shall be required to pay 100% of the fair market value. The land transfer will be "as is", and any costs of demolishing structures, cleaning the identified land, removing or relocating City or PSB infrastructure, capping or plugging wells, or mitigating costs will be the sole responsibility of the PSB.

In the event the land requested by the PSB is restricted because of the source of funds used to acquire the land, federal regulations, grant assurances, etc. and the City is prohibited from transferring the property for PSB uses in accordance with the terms of this paragraph; but the City is willing to make the transfer, the PSB must compensate the City in an amount sufficient to satisfy the granting agency, etc.

4. Land Exchanges Between City and PSB. If the City, PSB and the Municipal Drainage Utility desire to exchange real estate in their respective inventories rather than pay cash in connection with transfers; the City Manager and the President and CEO of El Paso Water Utilities may identify parcels of comparable value and administratively effectuate such transfers.

5. Joint Use, Rights of Way or Easements. Whenever possible, the City and the PSB will work together to create joint use agreements, right of way access or easements to accommodate the City, PSB and Municipal Drainage Utility facilities without payment of additional monetary consideration. Both parties recognize that these opportunities will be limited by existence of applicable deed restrictions, grant assurances, bond covenants, and federal regulations and that one party or the other may from time to time be required to pay for the use of property in order to comply with federal regulations, grant assurances, etc.

6. Cost Reimbursement for Replacement of Infrastructure. In the event City projects require the relocation of EPWU/PSB water, sewer, reclaimed water and stormwater facilities, the City will be responsible for costs of relocation and replacement if the work is necessitated by and directly resulting from the City's project; provided, however, that the PSB will be responsible for the total costs of relocation and replacement of their existing facilities if a PSB relocation or upgrade has been planned and budgeted by the PSB as part of their current five-year capital improvement program and the work was to commence within two years or less of the City's project. When the City is responsible for the costs of relocation and replacement, and during the project design process, the PSB will provide an estimate of the actual costs to relocate or adjust the existing EPWU/PSB facilities using the appropriate percentage based on the depreciated values of the existing EPWU/PSB facilities established in the PSB Depreciation Schedule, a

copy of which is attached hereto as Exhibit "A" and which will be updated periodically by the PSB to account for new infrastructure materials. The City will pay to the PSB, upon written notice, the actual cost of the relocation and adjustment of the EPWU/PSB facilities for the City identified street and drainage improvement project using the appropriate percentage and the PSB Depreciation Schedule; provided, however, in the event the actual cost exceeds the estimate provided by PSB by greater than 10%, the City shall not be responsible for the amount in excess of 10% of the estimate without the prior approval of the City. If the PSB is responsible for the costs of relocation and replacement, the City and the PSB will coordinate the timing and budgeting of the relocation and replacement of the PSB's facilities to coincide with the City's project timeline. If the PSB has to relocate or replace EPWU/PSB facilities ahead of the City's repaving timeline, then the PSB will pay the City the depreciated value of the existing pavement and the City will budget and pay for the difference in the replacement cost of the paving and the depreciated value of the paving.

7. **Joint Facilities.** The City and the PSB pledge to actively participate in the mutual identification, planning, reserve and development of jointly owned and offered facilities throughout the City on real estate held by either the City or the PSB.

8. **Water Rights.** The City will hold for the benefit and use of its PSB all existing and future groundwater and surface water rights in all land owned by the City, including but not limited to parks and recreation centers, streets, police and fire stations, libraries, and other public rights-of-way. The use of the City water rights shall be without monetary compensation by the PSB whenever legally allowed; but will not conflict with any deed restrictions, grant assurances or federal or state regulations.

9. **Vacated Streets and Alleys.** When land which is held in the PSB inventory abuts a street, alley or other public right-of-way which the El Paso City Council vacates, the PSB will have the same rights in the vacated street, alley or other public right-of-way as a private owner and may receive its proportionate share of the vacated property without the need to pay monetary compensation.

10. **Municipal Drainage Utility.** To the extent permitted by applicable law, bond covenants, etc. real estate managed by the PSB for the benefit of the Municipal Drainage Utility shall also be subject to the policies and procedures set forth in this Joint Resolution.

11. **PSB Land Sales to Other Public Agencies.** The PSB and the City will sell land requested by other public agencies including TxDOT, school districts, universities, hospitals, county, state, and federal governments through its approved PSB appraisal process.

12. **Repeal of 1965 Memorandum of Policies.** Except as prohibited by law or state and federal regulations, covenants and restrictions and grant assurances, this Joint Resolution supercedes the 1965 Memorandum of Policies. It is the intention of both the PSB and the City that the policies and procedures adopted herein have future application only and not affect transactions already approved by both bodies, whether or not the transfers are consummated. Specifically, the land transfer approved August 13, 2003 by the PSB and subsequently by the City Council for the future expansion of the City's McCombs Landfill and any other land


10 APR -5 AM 8:57

transfers approved by formal action of the PSB and the City shall not be affected by this Joint Resolution.

13. **Notice to Neighborhood Associations.** Prior to the sale of any property, the City and the PSB will ensure that notice is provided to affected recognized Neighborhood Associations.

Passed and approved by the El Paso City Council March 31, 2010.

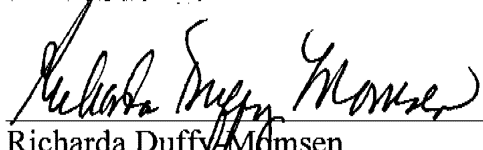
CITY OF EL PASO



John Cook
Mayor

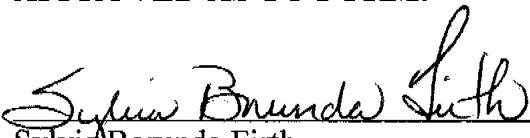


ATTEST:



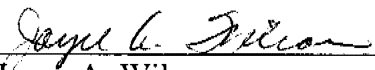
Richarda Duffy-Momsen
City Clerk

APPROVED AS TO FORM:



Sylvia Borunda Firth
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



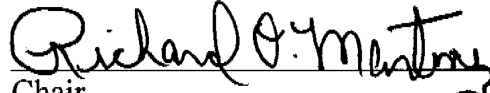
Joyce A. Wilson
City Manager

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]


10 APR -5 AM 8:57

Passed and approved by the El Paso Water Utilities – Public Service Board
31 MARCH, 2010.


El Paso Water Utilities –
Public Service Board


Chair


ATTEST:


Secretary/Treasurer

APPROVED AS TO FORM:


Robert D. Andron
General Counsel

APPROVED AS TO CONTENT:


Edmund G. Archuleta, P.E.
CEO and President

ATTACHMENT A
PUBLIC SERVICE BOARD - EL PASO WATER UTILITIES
A COMPONENT UNIT OF THE CITY OF EL PASO
UTILITY PLANT AND DEPRECIATION
FEBRUARY 28, 2009

DEPRECIATION	
<u>TYPE OF PIPE</u>	<u>RATE</u>
<u>WATER PIPE</u>	
CONCRETE PIPE, 6 INCH	3%
CONCRETE PIPE, 8 INCH	3%
CONCRETE PIPE, 12 INCH	3%
CONCRETE PIPE, 16 INCH	3%
CONCRETE PIPE, 18 INCH	3%
CONCRETE PIPE, 20 INCH	3%
CONCRETE PIPE, 24 INCH	3%
CONCRETE PIPE, 30 INCH	3%
CONCRETE PIPE, 36 INCH	3%
CONCRETE PIPE, 42 INCH	3%
CONCRETE PIPE, 48 INCH	3%
CAST IRON PIPE, 2 INCH	2%
CAST IRON PIPE, 4 INCH	2%
CAST IRON PIPE, 6 INCH	2%
CAST IRON PIPE, 8 INCH	2%
CAST IRON PIPE, 10 INCH	2%

CAST IRON PIPE, 12 INCH	2%
CAST IRON PIPE, 14 INCH	2%
CAST IRON PIPE, 16 INCH	2%
CAST IRON PIPE, 18 INCH	2%
CAST IRON PIPE, 20 INCH	2%
CAST IRON PIPE, 24 INCH	2%
CAST IRON PIPE, 30 INCH	2%
CAST IRON PIPE, 36 INCH	2%
GALVANIZED PIPE, 1 INCH	5%
GALVANIZED PIPE, 1 ¼ INCH	5%
GALVANIZED PIPE, 2 INCH	5%
ASBESTOS CEMENT PIPE, 4 INCH	3%
ASBESTOS CEMENT PIPE, 6 INCH	3%
ASBESTOS CEMENT PIPE, 8 INCH	3%
ASBESTOS CEMENT PIPE, 10 INCH	3%
ASBESTOS CEMENT PIPE, 12 INCH	3%
ASBESTOS CEMENT PIPE, 14 INCH	3%
ASBESTOS CEMENT PIPE, 16 INCH	3%
ASBESTOS CEMENT PIPE, 20 INCH	3%
ASBESTOS CEMENT PIPE, 24 INCH	3%
PLASTIC PIPE, 1 INCH	2%
PLASTIC PIPE, 1 1/2 INCH	2%
PLASTIC PIPE, 2 INCH	2%
PLASTIC PIPE, 4 INCH	2%
POLYVINYL PIPE, 6 INCH	2%
STEEL PIPE, 6 INCH	2%

Doc. No.: 55035 v17
Doc. Name: Joint Reso-PSB-Land Transfers
Doc. Author: SFIR
Attachment A

STEEL PIPE, 8 INCH	2%
STEEL PIPE, 12 INCH	2%
STEEL PIPE, 18 INCH	2%
STEEL PIPE, 21 INCH	2%
STEEL PIPE, 24 INCH	2%
STEEL PIPE, 48 INCH	2%
STEEL CYLINDER CONCRETE PIPE, 20 INCH	2%
STEEL CYLINDER, 24 INCH	2%
STEEL CYLINDER CASING, 26 INCH	2%
STEEL CYLINDER CONCRETE PIPE, 30 INCH	2%
STEEL CYLINDER CONCRETE PIPE, 36 INCH	2%
STEEL CYLINDER CONCRETE PIPE, 48 INCH	2%
STEEL CASING, 12 INCH	2%
STEEL CASING, 16 INCH	2%
STEEL CASING, 18 INCH	2%
STEEL CASING, 20 INCH	2%
STEEL CASING, 24 INCH	2%
STEEL CASING, 30 INCH	2%
STEEL CASING, 72 INCH	2%
POLYVINYL PIPE, 2 INCH	2%
POLYVINYL PIPE, 4 INCH	2%
POLYVINYL PIPE, 8 INCH	2%
POLYVINYL PIPE, 12 INCH	2%
POLYVINYL PIPE, 15 INCH	2%
POLYVINYL PIPE, 16 INCH	2%
POLYVINYL PIPE, 18 INCH	2%

Doc. No.: 55035 v17

Doc. Name: Joint Reso-PSB-Land Transfers

Doc. Author: SFIR

Attachment A

POLYVINYL PIPE, 20 INCH	2%
COPPER PIPE, 1 INCH	2%
COPPER PIPE, 2 INCH	2%
COPPER PIPE, 1-1/2 INCH	2%
COPPER PIPE, 3/4 INCH	2%

SEWER PIPE

VITRIFIED CLAY PIPE, 4 INCH	2%
VITRIFIED CLAY PIPE, 6 INCH	2%
VITRIFIED CLAY PIPE, 8 INCH	2%
VITRIFIED CLAY PIPE, 9 INCH	2%
VITRIFIED CLAY PIPE, 10 INCH	2%
VITRIFIED CLAY PIPE, 12 INCH	2%
VITRIFIED CLAY PIPE, 15 INCH	2%
VITRIFIED CLAY PIPE, 18 INCH	2%
VITRIFIED CLAY PIPE, 21 INCH	2%
VITRIFIED CLAY PIPE, 24 INCH	2%
VITRIFIED CLAY PIPE, 27 INCH	2%
VITRIFIED CLAY PIPE, 33 INCH	2%
VITRIFIED CLAY PIPE, 36 INCH	2%
VITRIFIED CLAY PIPE, 42 INCH	2%
CONCRETE PIPE, 6 INCH	2%
CONCRETE PIPE, 8 INCH	2%
CONCRETE PIPE, 10 INCH	2%
CONCRETE PIPE, 12 INCH	2%
CONCRETE PIPE, 15 INCH	2%

Doc. No.: 55035 v17
 Doc. Name: Joint Reso-PSB-Land Transfers
 Doc. Author: SFIR
 Attachment A

CONCRETE PIPE, 18 INCH	2%
CONCRETE PIPE, 20 INCH	2%
CONCRETE PIPE, 21 INCH	2%
CONCRETE PIPE, 24 INCH	2%
CONCRETE PIPE, 25 INCH	2%
CONCRETE PIPE, 30 INCH	2%
CONCRETE PIPE, 36 INCH	2%
CONCRETE PIPE, 39 INCH	2%
CONCRETE PIPE, 48 INCH	2%
CAST IRON PIPE, 4 INCH	2%
CAST IRON PIPE, 6 INCH	2%
CAST IRON PIPE, 8 INCH	2%
CAST IRON PIPE, 10 INCH	2%
CAST IRON PIPE, 12 INCH	2%
CAST IRON PIPE, 16 INCH	2%
CAST IRON PIPE, 18 INCH	2%
CAST IRON PIPE, 20 INCH	2%
CAST IRON PIPE, 24 INCH	2%
CAST IRON PIPE, 36 INCH	2%
STEEL PIPE, 6 INCH	2%
STEEL PIPE, 8 INCH	2%
STEEL PIPE, 12 INCH	2%
STEEL CASING, 12 INCH	2%
STEEL CASING, 16 INCH	2%
STEEL CASING, 20 INCH	2%
STEEL CASING, 24 INCH	2%

Doc. No.: 55035 v17

Doc. Name: Joint Reso-PSB-Land Transfers

Doc. Author: SFIR

Attachment A

STEEL CASING, 26 INCH	2%
STEEL CASING, 30 INCH	2%
STEEL CASING, 32 INCH	2%
STEEL CASING, 36 INCH	2%
STEEL CASING, 42 INCH	2%
TRANSIT PIPE, 6 INCH	2%
ASBESTOS CEMENT SEWER PIPE, 6 INCH	2%
ASBESTOS CEMENT SEWER PIPE, 8 INCH	2%
ASBESTOS CEMENT SEWER PIPE, 10 INCH	2%
ASBESTOS CEMENT SEWER PIPE, 12 INCH	2%
ASBESTOS CEMENT SEWER PIPE, 14 INCH	2%
ASBESTOS CEMENT SEWER PIPE, 16 INCH	2%
LINER PIPE, 6 INCH	2%
LINER PIPE, 8 INCH	2%
LINER PIPE, 11 INCH	2%
LINER PIPE, 12 INCH	2%
LINER PIPE, 14 INCH	2%
LINER PIPE, 16 INCH	2%
LINER PIPE, 18 INCH	2%
LINER PIPE, 20 INCH	2%
LINER PIPE, 22 INCH	2%
LINER PIPE, 24 INCH	2%
POLYVINYL CHLORIDE PIPE, 2 INCH	2%
POLYVINYL CHLORIDE PIPE, 4 INCH	2%
POLYVINYL CHLORIDE PIPE, 6 INCH	2%
POLYVINYL CHLORIDE PIPE, 8 INCH	2%

Doc. No.: 55035 v17

Doc. Name: Joint Reso-PSB-Land Transfers

Doc. Author: SFIR

Attachment A

POLYVINYL CHLORIDE PIPE, 10 INCH	2%
POLYVINYL CHLORIDE PIPE, 12 INCH	2%
POLYVINYL CHLORIDE PIPE, 15 INCH	2%
POLYVINYL CHLORIDE PIPE, 18 INCH	2%
POLYVINYL CHLORIDE PIPE, 21 INCH	2%
POLYVINYL CHLORIDE PIPE, 24 INCH	2%
POLYVINYL CHLORIDE PIPE, 27 INCH	2%
POLYVINYL CHLORIDE PIPE, 30 INCH	2%
POLYVINYL CHLORIDE PIPE, 36 INCH	2%
POLYVINYL CHLORIDE PIPE, 48 INCH	2%
POLYVINYL CHLORIDE PIPE, 60 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 6 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 8 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 12 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 16 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 20 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 21 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 24 INCH	2%
POLYVINYL CHLORIDE PIPE FM, 33 INCH	2%
POLYETHYLENE PIPE, 24 INCH	2%
POLYETHYLENE PIPE, 27 INCH	2%
POLYETHYLENE PIPE, 30 INCH	2%
POLYETHYLENE PIPE, 33 INCH	2%
FORCE MAIN, 30 INCH	2%
FORCE MAIN, 42 INCH	2%
FORCE MAIN, 36 INCH	2%

Doc. No.: 55035 v17

Doc. Name: Joint Reso-PSB-Land Transfers

Doc. Author: SFIR

Attachment A

FORCE MAIN, 54 INCH	2%
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RECLAIMED WATER PIPE

6" RECLAIMED PIPE	2%
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12" RECLAIMED PIPE	2%
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16"RECLAIM PVC PIPE	2%
---------------------	----

20"DI RECLAIM PIPE	2%
--------------------	----

8"PVC RECLAIM PIPE	2%
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JOINT RESOLUTION BETWEEN THE EL PASO CITY COUNCIL AND THE
EL PASO WATER UTILITIES – PUBLIC SERVICE BOARD SETTING FORTH THE POLICIES, PROCEDURES
AND REIMBURSEMENTS RELATING TO TRANSFERS OF REAL ESTATE, LAND USE POLICIES,
RELOCATION OF EPWU-PSB FACILITIES, JOINT USE AND WATER RIGHTS.
ADOPTED MARCH 31, 2010

WHEREAS, the City of El Paso ("City") and the El Paso Water Utilities – Public Service Board ("PSB") are proposing changes to the land management program administered by the PSB; and

WHEREAS, both the City and the PSB find that it is in the best interest of all the citizens of El Paso to cooperate through the implementation of the proposed changes enumerated herein to minimize overall costs to taxpayers and ratepayers, and to satisfy municipal priorities related to growth;

NOW, THEREFORE, the El Paso City Council and the El Paso Water Utilities – Public Service Board hereby adopt the policies and procedures set forth below.

1. That Article 1 of the Joint Resolution between the El Paso City Council and the El Paso Water Utilities/Public Service Board setting forth the policies, procedures and reimbursements relating to transfers of real estate, land use policies, relocation of EPWU/PSB facilities, joint use and water rights adopted on March 31, 2010 shall be amended in its entirety to read as follows:

1. Land Use Planning and Public Uses. In order to ensure that the real estate sold by the City and PSB is used in manners consistent with the current land use policies in place at the time of the sale, the City and PSB jointly adopt the following policies and procedures:

A. All PSB Land Sales. All requests for purchase of City land under the management and control of the PSB as trustee shall be made in writing to the President and CEO of the utility, the Mayor and City Manager of the City, and shall include a legal description of the land, the acreage needed, and the proposed use(s) to which such land will be used. Following receipt of a written request, the PSB shall have sixty (60) days to make a determination of whether the land asset, regardless of size, is deemed inexpedient to the utility system. A determination of inexpediency shall follow the methodology described in Paragraph 1.E. If a determination of inexpediency is denied by the PSB for the land parcel(s), the decision of the PSB shall be binding and no further action of the PSB shall be required. Notice of the PSB ruling shall be provided the applicant, with copy to the City Manager, in a timely manner.

Where a determination of inexpediency is granted by the PSB, a copy of the written request and PSB ruling shall be forwarded to the City Manager for administrative review and City action on the disposition of the land parcel(s). Any action taken by the City on the disposition of the land parcel(s) shall be forwarded by the City Manager to the President and CEO of the utility with copy to the applicant. Should the City take action to deny the sale of the land parcel(s), whether or not a determination of inexpediency has been made by the PSB, the action shall be deemed final and binding on all parties and no further action of the PSB shall be required. Where City authorization is received to sell the land parcel(s), the PSB shall handle the land sale in accordance with this Joint Resolution and in accordance with bidding statutes.

- B. PSB Land Sales of Parcels Less than 25 acres. If the PSB makes a finding and determination that a parcel of land less than 25 acres is inexpedient to the utility system and the PSB and City desire to sell the parcel, the PSB shall submit a request to the Office of the City Manager for administrative review and recommendations for the appropriate zoning and design standards compatible with the City's Comprehensive Plan and reflective of the City's goals to develop sustainable neighborhoods. The City and PSB will complete the process to rezone any parcel requiring a change of zoning pursuant to the staff's recommendation before the property is advertised for sale. Any design requirements imposed by the City during the rezoning process and administrative review shall be a condition of sale.

Should any portion of the subject parcel be required for City Public Facilities, as that term is defined herein, the City and PSB shall complete the transfer of land in accordance with Paragraph 2 below.

- C. PSB Land Sales of Parcels of 25 acres or larger. If the PSB makes a finding and determination that land is inexpedient to the utility system, and the parcel of land is 25 acres in size or greater, and the PSB and City desire to sell the parcel, the PSB shall submit a Land Study (as that term is defined in Title 19 of the El Paso City Code, as amended) application to the City for approval by the City Plan Commission before any portion of the property is sold. As part of the land study process, the City will determine the appropriate zoning for all parcels and the development will be designed in accordance with standards and regulations in effect at the time of the review, compatible with the City's Comprehensive Plan and reflective of the City's goals to develop sustainable neighborhoods. The City and PSB will jointly undertake rezoning pursuant to the approved Land Study. Any rezoning shall be accomplished prior to the sale of the property.

During the Land Study, if the City determines it needs land for Public Facilities that a developer will not be required to dedicate as part of the development process in accordance with current development regulations and ordinances, the PSB will transfer the land designated in the Land Study to the City's inventory without cost. "Public Facilities" will include, but shall not be limited to, any public improvement providing required services for proper development such as; streets, bridges, public buildings, public works buildings or facilities, and community facilities such as parks, open space, police and fire stations, libraries, and health clinics. However, "water, wastewater, reclaimed water and stormwater systems," "water rights," and "schools" will not be considered City public facilities for purposes of this joint resolution.

The City will be responsible for all costs associated with the engineering plans, surveys, environmental assessments and all onsite and offsite development and construction of the identified City Public Facility.

The transfers of property to the City will be "as is" and the costs of demolishing structures, cleaning the identified land, removing or relocation PSB infrastructure, capping or plugging wells, or mitigation costs will be the sole responsibility of the City.

A Land Study application may be replaced with an application for subdivision plat approval for the entire parcel(s) of land, provided that the subdivision plat is processed and duly recorded prior to the development of any portion of the parcel(s), and the improvements required by the recorded subdivision plat are required as a condition of sale. Any rezoning or transfer of land to

the City for needed City Public Facilities as identified in the recorded subdivision plat shall be completed prior to the sale of any portion of the parcel.

D. Land sale and development goals. In considering land sale opportunities, the PSB shall first consider whether disposition of any portion of real estate comprising part of its utility system is fiscally prudent and constitutes good management and control of its assets. In making this determination, the following goals shall serve as the basis on which the PSB shall make its determination:

- Meets the needs of the community at-large.
- Satisfies legislative and policy priorities of the City related to growth.
- Maximizes land values with reasonable risk levels.
- Provides a significant rate of return as compared to future values.
- Promotes the land policies and goals established in the City's comprehensive plan.
- Preserves open spaces and critical arroyos.
- Considers a phased approach to land management and development.
- Insures orderly growth of areas contiguous to existing development and availability of water, sewer and stormwater system capacity.
- Strengthens efficient utility service production and distribution.
- Promotes water conservation initiatives, and use of reclaimed water if available.
- Protects the water supply.
- Promotes economic development and recreational opportunities.

Upon a finding that one or more of the goals have been met, the PSB shall proceed to make a determination of inexpediency as set forth in Paragraph 1E.

E. Methodology for Land Inexpediency. Following a determination by the PSB that land may be considered for sale pursuant to Paragraph 1D above, the PSB shall then consider a declaration of the land as land inexpedient to the utility system per City water and sewer revenue bond ordinances. For purposes of this Joint Resolution, and as defined in Ordinance No. 752 adopted on May 22, 1952, "property may be disposed of when, in the Board's judgment it has become inexpedient to use in connection with the system. Inexpedient shall be defined as that which is something which does not tend to promote a determined purpose or desired result or is inadvisable, unfit or unsuitable at a time and place."

All lands declared by the PSB as inexpedient to the utility system shall meet all of the following criterion, as solely determined by the PSB:

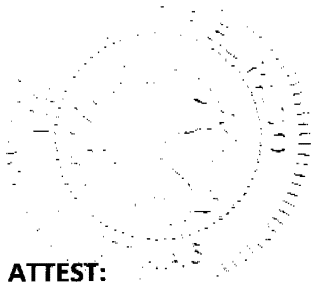
1. There is adequate water, sewer and stormwater capacity at the treatment, distribution and collection facilities in order to ensure service to the land.
2. The land is not necessary for future operations of the PSB, whether for water, wastewater or stormwater systems.
3. The land is not necessary for the underlying ground water for eventual use as a potable water resource, or where surface water rights may be reasonably retained.
4. There is adequate water resource supply to serve the land and development contemplated.
5. The land will be developed in a manner that will enhance regional watershed management.
6. The land is contiguous to and in the direct path of development where utility service is available or can be easily extended.

7. The development of the land does not necessitate major utility capital investment, unless otherwise projected and within the utility's Capital Improvements Plan.
8. The rules and regulations governing the furnishing and control of water, sewer and stormwater services can and will be satisfied within the development without exception.
9. The development proposed incorporates utility conservation methods as defined in its Rules & Regulations, and other City ordinances and policies.

F. Land inventory report to the El Paso City Council. The PSB shall conduct a land inventory annually that identifies the land(s) under its management and control which may be considered for land sale, and for which the PSB has or can declare these lands inexpedient to the utility system. An annual report based on the land inventory shall be provided the El Paso City Council by the PSB on each January, starting in 2013 and each subsequent year thereafter. Collectively, the City and PSB shall coordinate any land sale that is determined to be necessary or viable given the goals stated herein. In addition, the PSB shall report to the City semi-annually, or more frequently as may be necessary, on the activities of the Land Management Program subject of the Joint Resolution.

2. Except as herein amended, the Joint Resolution between the El Paso City Council and the El Paso Water Utilities/Public Service Board setting forth the policies, procedures and reimbursements relating to transfers of real estate, land use policies, relocation of EPWU/PSB facilities, joint use and water rights adopted on March 31, 2010, shall remain in full force and effect.

PASSED AND APPROVED by the El Paso City Council on September 26, 2012.



ATTEST:

Richarda Duffy Momsen
Municipal Clerk

CITY OF EL PASO

John Cook
Mayor

CITY CLERK DEPT.
2012 OCT 15 PM 3:15

APPROVED AS TO FORM:

Sylvia Borunda Firth
City Attorney

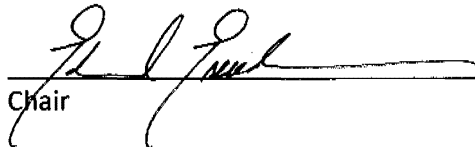
APPROVED AS TO CONTENT:

Joyce A. Wilson
City Manager


(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

PASSED AND APPROVED by the El Paso Water Utilities – Public Service Board on September 26, 2012.


**EL PASO WATER UTILITIES –
PUBLIC SERVICE BOARD**


Chair


ATTEST:


Secretary/Treasurer

APPROVED AS TO FORM:


Robert D. Andron
General Counsel

APPROVED AS TO CONTENT:


Edmund G. Archuleta, P.E.
President and CEO

CITY CLERK DEPT.
2012 OCT 15 PM 3:15

17.3

AN AMENDMENT TO THE JOINT RESOLUTION ADOPTED MARCH 31, 2010 AND AMENDED SEPTEMBER 26, 2012 BETWEEN THE EL PASO CITY COUNCIL AND THE EL PASO WATER UTILITIES – PUBLIC SERVICE BOARD SETTING FORTH THE POLICIES, PROCEDURES AND REIMBURSEMENTS RELATING TO TRANSFERS OF REAL ESTATE, LAND USE POLICIES, RELOCATION OF EPWU-PSB FACILITIES, JOINT USE AND WATER RIGHTS TO DELETE THE REQUIREMENT THAT A LAND STUDY BE PREPARED BEFORE ANY PSB HELD PARCELS OVER 25 ACRES MAY BE SOLD.

WHEREAS, on March 31, 2010, the El Paso City Council (“City”) and the El Paso Water Utilities/Public Service Board (“PSB”) adopted a joint resolution which set for the policies, procedures and reimbursements relating to transfers of real estate, land use policies, relocation of EPWU-PSB facilities, joint use and water rights; and

WHEREAS, on September 26, 2012, the City and the PSB amended the March 31, 2010 joint resolution; and

WHEREAS, the City and the PSB are proposing changes to the land management program administered by the PSB, and

WHEREAS, both the City and the PSB find that it is in the best interest of all the citizens of El Paso to cooperate through the implementation of the proposed changes enumerated herein to minimize overall costs to taxpayers and ratepayers, and to satisfy municipal priorities related to growth.

NOW, THEREFORE, the El Paso City Council and the El Paso Water Utilities - Public Service Board hereby amend the Joint Resolution March 31, 2010, and amended September 26, 2012, as set forth below.

1. That Paragraph 1, **Land Use Planning and Public Uses**, shall be amended in its entirety to read as follows:

1. **Land Use Planning and Public Uses**. In order to ensure that the real estate sold by the City and the PSB is used in manners consistent with the current land use policies in place at the time of the sale, the City and the PSB jointly adopt the following policies and procedures:
 - A. **All PSB Land Sales**. All requests for purchase of City land under the management and control of the PSB as trustee shall be made in writing to the President and CEO of the utility, with a copy to the Mayor and the City Manager, and shall include a legal description of the land, the acreage needed, and the proposed use(s) to which such land will be used. Following receipt of a written request, the PSB shall have sixty (60) days to make a determination of whether the land asset, regardless of size, is deemed inexpedient to the utility system. A determination of inexpediency shall follow the methodology described in

Paragraph 1.D. If a determination of inexpediency is denied by the PSB for the land parcel(s), the decision of the PSB shall be binding and no further action of the PSB shall be required. Notice of the PSB ruling shall be provided to the applicant, with a copy to the City Manager, in a timely manner.

Where a determination of inexpediency is granted by the PSB, a copy of the written request and PSB ruling shall be forwarded to the City Manager for administrative review and City action on the disposition of the land parcel(s). Any action taken by the City on the disposition of the land parcel(s) shall be forwarded by the City Manager to the President and CEO of the utility with copy to the applicant. Should the City take action to deny the sale of the land parcel(s), whether or not a determination of inexpediency has been made by the PSB, the action shall be deemed final and binding on all parties and no further action of the PSB shall be required. Where City authorization is received to sell the land parcel(s), the PSB shall handle the land sale in accordance with the conditions of this Joint Resolution and in accordance with Texas state law.

B. PSB Land Sales – all Parcels. If the PSB makes a finding and determination that a parcel of land is inexpedient to the utility system and the PSB and the City desire to sell the parcel, the PSB shall submit a request to the City Manager for administrative review and recommendations for the appropriate zoning and design standards compatible with the City's Comprehensive Plan and reflective of the City's goals to develop sustainable neighborhoods. The City and the PSB will complete the process to rezone any parcel requiring a change of zoning pursuant to the staff's recommendation before the property is advertised for sale, in accordance with Texas state law. Any design requirements imposed by the City during the rezoning process and administrative review shall be a condition of sale.

Should any portion of the subject parcel be required for City Public Facilities, as that term is defined herein, the City and the PSB shall complete the transfer of land in as follows:

1. "Public Facilities" will include, but shall not be limited to, any public improvement providing required services for proper development such as; streets, bridges, public buildings, public works buildings or facilities, and community facilities such as parks, open space, police and fire stations, libraries, and health clinics. However, "water, wastewater, reclaimed water and stormwater systems," "water rights," and "schools" will not be considered City Public Facilities for purposes of this joint resolution
2. If the subject parcel is less than 25 acres in size, and any portion of the subject parcel should be required for City Public Facilities, as that term is defined herein, the City and the PSB shall complete the transfer of the land in accordance with Paragraph 2 below.

3. If the subject parcel is 25 acres in size or greater, and the City Manager determines it needs land for Public Facilities that a developer will not be required to dedicate as part of the development process in accordance with current development regulations and ordinances, the PSB will transfer the land designated to the City's inventory without cost. The City will be responsible for all costs associated with the engineering plans, surveys, environmental assessments and all onsite and offsite development and construction of the identified City Public Facility.

The transfers of property to the City will be "as is" and the costs of demolishing structures, cleaning the identified land, removing or relocation PSB infrastructure, capping or plugging wells, or mitigation costs will be the sole responsibility of the City.

C. Land sale and development goals. In considering land sale opportunities, the PSB shall first consider whether disposition of any portion of real estate comprising part of its utility system is fiscally prudent and constitutes good management and control of its assets. In making this determination, the following goals shall serve as the basis on which the PSB shall make its determination:

- Meets the needs of the community at-large.
- Satisfies legislative and policy priorities of the City related to growth.
- Maximizes land values with reasonable risk levels.
- Provides a significant rate of return as compared to future values.
- Promotes the land policies and goals established in the City's comprehensive plan.
- Preserves open spaces and critical arroyos.
- Considers a phased approach to land management and development.
- Insures orderly growth of areas contiguous to existing development and availability of water, sewer and stormwater system capacity.
- Strengthens efficient utility service production and distribution.
- Promotes water conservation initiatives, and use of reclaimed water if available.
- Protects the water supply.
- Promotes economic development and recreational opportunities.

Upon a finding that one or more of the goals have been met, the PSB shall proceed to make a determination of inexpediency as set forth in Paragraph 1.D.

D. Methodology for Land Inexpediency. Following a determination by the PSB that land may be considered for sale pursuant to Paragraph 1.C above, the PSB shall then consider a declaration of the land as land inexpedient to the utility system per City water and sewer revenue bond ordinances. For purposes of this Joint Resolution,

and as defined in Ordinance No. 752 adopted on May 22, 1952, "property may be disposed of when, in the Board's judgment it has become inexpedient to use in connection with the system. Inexpedient shall be defined as that which is something which does not tend to promote a determined purpose or desired result or is inadvisable, unfit or unsuitable at a time and place."

All lands declared by the PSB as inexpedient to the utility system shall meet all of the following criterion, as solely determined by the PSB:

1. There is adequate water, sewer and stormwater capacity at the treatment, distribution and collection facilities in order to ensure service to the land.
2. The land is not necessary for future operations of the PSB, whether for water, wastewater or stormwater systems.
3. The land is not necessary for the underlying ground water for eventual use as a potable water resource, or where surface water rights may be reasonably retained.
4. There is adequate water resource supply to serve the land and development contemplated.
5. The land will be developed in a manner that will enhance regional watershed management.
6. The land is contiguous to and in the direct path of development where utility service is available or can be easily extended.
7. The development of the land does not necessitate major utility capital investment, unless otherwise projected and within the utility's Capital Improvements Plan.
8. The rules and regulations governing the furnishing and control of water, sewer and stormwater services can and will be satisfied within the development without exception.
9. The development proposed incorporates utility conservation methods as defined in its Rules & Regulations, and other City ordinances and policies.

E. Land inventory report to the El Paso City Council. The PSB shall conduct a land inventory annually that identifies the land(s) under its management and control which may be considered for land sale, and for which the PSB has or can declare these lands inexpedient to the utility system. An annual report based on the land inventory shall be provided the City by the PSB each January. Collectively, the City and the PSB shall coordinate any land sale that is determined to be necessary or viable given the goals stated herein. In addition, the PSB shall report to the City semi-annually, or more frequently as may be necessary, on the activities of the Land Management Program subject of the Joint Resolution.

2. That Paragraph 2, Land Transfers to the City, shall be amended in its entirety to read as follows:

2. Land Transfers to the City. In addition to transfers for Public Facilities described in Paragraph 1.B.3, which will be without monetary reimbursement, the City may, from time to time, request a transfer of real estate from the PSB inventory to the City inventory. Upon receipt of such a request, if the property has not already been declared inexpedient to the system as described in Paragraph 1A, the matter will be presented to the PSB for a determination that the requested land is inexpedient to the system and contiguous to existing water and sewer infrastructure. If the PSB makes such a determination, the PSB will have the property appraised, survey the land and conduct an environmental site assessment, as agreed upon between the City and the PSB. The City will pay the cost of the appraisal, the land survey, and the environmental assessment. However, if it is more convenient to the City and the PSB, the City may have the property appraised by an appraiser approved by the PSB, and subject to the approval of the PSB, provide a land survey and environmental site assessment. The City will pay the greater of 25% of the appraised value of the land to the PSB to compensate the PSB for management and maintenance and other land costs incurred while in possession of the PSB or the original cost for the land plus an annual CPI adjustment from the date of purchase; provided however, departments such as the Department of Aviation, Environmental Services and Sun Metro, which operate as an enterprise fund, shall be required to reimburse the PSB in an amount equal to 100% of fair market value determined by an independent appraiser.

Any transfer of property to the City will be "as is", and any costs of demolishing structures, cleaning the identified land, removing or relocation PSB infrastructure, capping or plugging wells, or mitigation costs will be the sole responsibility of the City.

The PSB and the City, in addressing specific economic development initiatives, may negotiate a separate land transfer agreement with payments and cost reimbursements developed on a case-by-case basis.

3. Except as herein amended, the Joint Resolution between the El Paso City Council and the El Paso Water Utilities/Public Service Board setting forth the policies, procedures and reimbursements relating to transfers of real estate, land use policies, relocation of PSB facilities, joint use and water rights adopted on March 31, 2010 and amended on September 26, 2012, shall remain in full force and effect.

(Signatures begin on next page)



PASSED AND APPROVED By the El Paso City Council on this 19th day of December, 2017.

CITY OF EL PASO:

Dee Margo
Mayor

ATTEST:

Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Fur

Tomás González
City Manager

PASSED AND APPROVED By the El Paso Water Utilities/Public Service Board on this 8th day of February, 2017.

EL PASO WATER UTILITIES/PUBLIC
SERVICE BOARD:

Henry Gallardo
Chairman

ATTEST:

Terri Garcia
Secretary-Treasurer

APPROVED AS TO FORM:

Cynthia Osborn
EPWU Real Estate Manager and Counsel

APPROVED AS TO CONTENT:

John E. Balliew
President and CEO

CITY CLERK DEPT.
2017 DEC 13 PM5:42

Amendment to Joint Resolution (2/6/17)
Deleting requirement that PSB submit Land Study
Prior to Sale of more than 25 acres.
16-1009-286/630173/TC

CITY CLERK DEPT. Ordinance No. 010668

07 JUN 19 AM 11:54

**AN ORDINANCE OF THE CITY OF EL PASO, TEXAS,
ESTABLISHING A MUNICIPAL DRAINAGE UTILITY SYSTEM
AND RESOLVING MATTERS RELATED THERETO.**

WHEREAS, the creation of a drainage utility system within the City of El Paso ("City") is necessary and essential to ensure that the collection of storm water runoff and management and control of storm water runoff adequately protects the health, safety, and welfare of the citizens of the City including, but not limited to, protection from loss of life and property caused by surface water overflows and surface water stagnation; and

WHEREAS, Chapter 402, Subchapter C of the Texas Local Government Code, as amended (the "Municipal Drainage Utility Systems Act" or the "Act"), authorizes the City to establish a municipal drainage utility system within the boundaries of the City and its extraterritorial jurisdiction; and

WHEREAS, through this Ordinance, the City desires to adopt the Act and declare the drainage system of the City to be a public utility; and

WHEREAS, the City has adopted an Open Space Master Plan which emphasizes open spaces and natural areas as a possible method to help manage storm water, reduce flooding risk and improve water quality; and

WHEREAS, notice of the time and place of the public hearing to consider this Ordinance (including the full text of this Ordinance) has been published in the El Paso Times three times, with the date of first publication occurring on or before the 30th date before the date of such hearing, all in accordance with the Act; and

WHEREAS, the City intends to fund a storm water drainage system that fairly and equitably allocates the cost of storm water control to properties in proportion to storm water runoff potential for each type of property.

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

**SECTION I.
FINDINGS REQUIRED BY LAW**

The City hereby adopts the Municipal Drainage Utility Systems Act and finds that the City will, and hereby directs the El Paso Water Utilities Public Service Board of the City ("Board"), on behalf of the City, to:

- (i) Establish a schedule of drainage charges against all real property in the proposed service area subject to charges;
- (ii) Provide drainage service for all real property in the proposed area upon payment of drainage charges (except real property that is exempt from such charges); and
- (iii) Offer and provide drainage service on nondiscriminatory, reasonable, and equitable terms in accordance with Rules and Regulations as promulgated by the Board.

SECTION II. CITY CLERK DEPT.
DEFINITIONS 07 JUN 19 AM 11:54

In this Ordinance, the following capitalized terms shall have the meanings specified below:

"Benefited property" means an improved lot or tract to which drainage service is made available under the Act and this Ordinance and in accordance with applicable Rules and Regulations.

"Board" means that certain board of trustees known as the "Public Service Board" established by the City pursuant to Section 1502.070 of the Texas Government Code and charged with having complete authority and control of the management and operation of the water and wastewater system of the City, as represented by the various persons appointed to such board from time to time.

"City" means the City of El Paso, Texas, a Texas Home Rule Municipality.

"Municipal Drainage Utility Systems Act" or the "Act" means Section 402.041, et seq., as it may be amended by the Texas Legislature from time to time to include, but not by way of limitation, the applicable definitions in the Act. .

"Service Area" means all that area of land located within the city limits of the City and any other land areas in the City's extraterritorial jurisdiction as provided by the Municipal Drainage Utility Systems Act which, as a result of topography or hydraulics, contribute to overland flow into the watersheds served by the drainage system of the City. Upon the effective dates of completed annexation of additional lands into the City, each such annexed additional land shall become part of the service area. Land annexed for limited purposes shall become a part of the service area upon annexation for full purposes. The Service Area may be extended by written resolution of the Board, to the extent permitted by the Act at the time of adoption of such resolution, to include other land areas outside the city limits of the City which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the System provided, however, in no event may the Service Area extend farther than the boundaries of the City's then current extraterritorial jurisdiction, nor, except as expressly provided by the Act, may the Service Area extend into the boundaries of another municipality.

"Storm 2006 Projects" means those projects set forth under Priority I and Priority II in the Storm 2006 Update dated May 7, 2007 (the "Update") given by the Acting City Engineer to the City Council and the Board and on file with the City Clerk.

"System" means the Municipal Drainage Utility System established by this Ordinance and encompasses the complete drainage system of the City as it now exists and may be improved, added to, or extended hereafter, there being included in such term all drainage facilities now or hereafter owned or operated by the City, lying within and without the boundaries of the City, and including all real estate and real and personal property of every kind and nature comprising any part of or used or useful in the operation of the System but excluding parks, roads, streets and bridges.

"Wholly sufficient and privately owned drainage system" means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert or other channel that is part of a municipal drainage utility system.

All other words unless specifically defined shall have their usual and customary meaning.

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**SECTION III.
ESTABLISHMENT AND MANAGEMENT OF THE SYSTEM**

A. The System is hereby established as a municipal drainage utility system and declared to be a public utility.

B. The Board shall cause to be prepared a Master Stormwater Management Plan ("Stormwater Plan") which shall be approved by the City Council. In developing the Stormwater Plan, the Board shall take into account the use of open space as natural drainage and to extent reasonably possible preserve the City's open spaces, greenways, arroyos and wilderness areas in their natural state as a means to assist in the management of storm water and in accordance with the City's Open Space Master Plan.

C. Notwithstanding anything herein to the contrary and even to the extent such operation may constitute storm water maintenance, the City shall continue to be responsible for (i) zoning and floodplain regulation, including floodplain administrator duties, floodplain mapping, FEMA and community rating system; (ii) road, street and bridge construction and maintenance; (iii) subdivision plans and building permits; (iv) parks; and (v) certain administration and support services, such as human resources, as agreed to by the City Manager and the General Manager of the El Paso Water Utilities (the "General Manager") in accordance with the transition provisions of Section X hereof.

D. Except as otherwise expressly provided in this Ordinance or under applicable law, the Board shall have complete authority and control of the management and operation of the System on behalf of the City. The Board shall approve an annual budget for the System and shall approve such fees or charges as recommended by the General Manager. The Board shall appoint the General Manager as general manager of the System. The General Manager shall establish an organizational structure for management of the System which may be changed from time to time with Board approval.

The General Manager shall bring to the Board annually a Stormwater Capital Improvement Plan (the "Capital Plan") for its approval which shall include both short and long term objectives. To assure compliance with the Stormwater Plan, the City's Flood Plain Administrator shall review the proposed Capital Plan prior to its presentation to the Board. The Capital Plan shall, to the extent reasonably possible, include the use and maintenance of arroyos and other natural drainage systems as a means to manage stormwater and otherwise take into account environmental best practices in the construction of any stormwater infrastructure. The Capital Plan shall identify stormwater infrastructure projects (including land acquisitions) which have the potential dual purposes of stormwater management and preservation of the City's open spaces, greenways, arroyos and wilderness areas in their natural state in accordance with the City's Open Space Master Plan and the City's Parks and Recreation Master Plan ("Green Projects"). The Board shall allocate an amount equal to ten percent (10%) of the System's annual drainage utility fee revenues for such Green Projects.

E. A drainage utility fee shall be imposed on each improved parcel within the City for services and facilities provided by the System, except as to exemptions provided for by law or by this Ordinance. For purposes of imposing the drainage utility fee, all eligible parcels within the Service Area shall be classified into categories assigned by Rules and Regulations of the Board to be hereafter set by the Board. Such classifications of the eligible parcels shall distinguish between residential and non-residential use, take into account estimated impervious area or surface and be nondiscriminatory, equitable and reasonable, in accordance with the Act. In evaluating drainage utility fee structures, the Board shall consider alternatives that group or establish sub-categories of residential uses based on parcel size, impervious area or other reasonable criteria.

F. At least once a year beginning with the Fiscal Year ending August 31, 2009, the General Manager, on behalf of the Board, shall present to the City Council a report on the status of the System.

SECTION IV. ADMINISTRATIVE PROVISIONS

A. No Assumed Liability City. By the passage of this Ordinance, the City makes no representation that all of the City's drainage problems will be immediately remedied and the City Council is given full discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The passage of this Ordinance shall not be construed to relieve private landowners, developers or other individuals or entities from providing drainage improvements pursuant to the ordinances of the City and the laws of this State which relate to drainage, storm water or storm water improvements. The City itself shall be responsible for the funding and construction of the Storm 2006 Projects (regardless of final cost of completion). Neither the Board nor the System shall be responsible for the funding and construction of the Storm 2006 projects. The Board shall be responsible for those projects listed as "Priority III" work in the Update as part of the System. Nothing in this Ordinance shall be deemed to waive the City's immunity under State law.

B. No Assumed Liability Board. The Board makes no representation that all of the City's drainage problems will be immediately remedied and the Board recognizes the City Council's governmental budgeting discretion in establishing the time and quantitative priorities in expending funds as the same become available to meet the storm water needs of the City on a reasonable basis. The City and the Board recognize that the Board is undertaking a governmental function in accepting the delegation of the rights, duties and responsibilities of a municipal drainage utility system pursuant to the Act and the authority of the City acting as a Texas Home Rule Municipality. The effective date of this Ordinance provides the effective date for the beginning of the actions and responsibilities of the Board in this matter.

C. Exemptions from Civil Service. The General Manager shall be responsible to appoint officers and employees that directly report to the General Manager, including, an attorney or attorneys, Assistant General Manager(s) of the System and such other officers or personnel that directly report to the General Manager in his capacity as general manager of the System. All other officers and employees, except members of the Board, the General Manager, attorneys, Assistant General Manager(s) and persons directly reporting to the Assistant General Manager(s) shall serve under the City Civil Service provisions as are or may be established by the Charter of the City or the laws of Texas, and the Board shall have the same authority with respect to such officers and employees as that of the City Council with respect to other officers and other employees of the City.

D. Insurance. The Board will obtain overall property insurance on the assets of the Municipal Drainage Utility System in a form and amount as the Board may determine to be reasonable and prudent. Such insurance may take the form of general liability insurance or an umbrella insurance policy.

SECTION V. DRAINAGE UTILITY FUND

A. Drainage Utility Fund. The Board shall establish a drainage utility fund. All drainage utility fees shall be deposited as collected and received into this fund, and shall be used exclusively for the drainage services set forth under the Act, including but not limited to those services referenced in Local Government Code Section 402.044(2).

07 JUN 19 AM 11:54
CITY CLERK DEPT.

B. Drainage Fund Accounting. The revenues collected from drainage utility fees must be segregated and completely identifiable from other City or Board accounts.

SECTION VI. EXEMPTIONS

The following entities or persons shall be exempt from this Ordinance:

A. Any property to which a mandatory exemption under Chapter 402.053 of the Local Government Code applies, including without limitation:

1. Property with proper construction and maintenance of a wholly sufficient and privately owned storm water system that does not discharge under any storm frequency events or conditions to waterways controlled or maintained by the City or the Board;
2. Property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the City or Board for maintenance; and
3. A subdivided parcel or lot, until a structure has been built on the lot and a certificate of occupancy has issued, or the City has taken another official action to release the property for occupancy.

B. Any property to which a mandatory exemption under Chapter 430.003 of the Local Government Code applies or which is exempt under applicable federal law, including without limitation:

1. A federal or state agency; and
2. A public institution of higher education.

SECTION VII. CUMULATIVE

This Ordinance shall be cumulative of all provisions of ordinances and of the El Paso City Code, as amended. To the greatest extent reasonably possible, this Ordinance and such prior ordinances and City Code shall be interpreted on a consistent basis and this Ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof are in direct conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed with respect to the subject matter of this Ordinance only.

SECTION VIII. SEVERABILITY CLAUSE

The phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, phrase, paragraph or section.

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CITY CLERK DEPT.

**SECTION IX.
EFFECTIVE DATE**

This Ordinance shall take effect upon its adoption.

**SECTION X.
TRANSITION**

The City Manager and the General Manager shall provide for a transition process for the organization and transfer to the System personnel, physical assets and real property currently dedicated by the City to its storm water management program.

It is intended that the transfers provided for in the transition process shall be completed by March 1, 2008, but in no event later than June 1, 2008. The City Manager is hereby authorized to take whatever action, including but not limited to, budget transfers to accomplish the intent of this Ordinance.

APPROVED AND ADOPTED this 19th of June, 2007.

CITY OF EL PASO, TEXAS



John F. Cook
Mayor

ATTEST:



Richarda Duffy Momsen, City Clerk

APPROVED AS TO CONTENT:



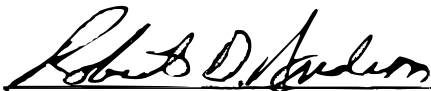
Edmund G. Archuleta, P. E.
General Manager, El Paso Water Utilities

APPROVED AS TO CONTENT:



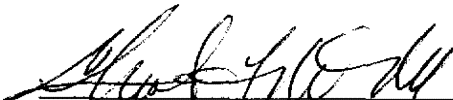
Joyce A. Wilson
City Manager, City of El Paso

APPROVED AS TO FORM:



Robert D. Andron
General Counsel, El Paso Water Utilities

APPROVED AS TO FORM:



Charles F. McNabb, City Attorney

07 JUN 19 AM 11:54

CITY CLERK DEPT.