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Ordinance No. 9598

BOND ORDINANCE

\$21,075,000

CITY OF EL PASO, TEXAS,  
WATER AND SEWER REFUNDING REVENUE BONDS,  
SERIES 1989

Dated: January 1, 1989  
Adopted: January 10, 1989

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ORDINANCE NO. 9598

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF CITY OF EL PASO, TEXAS, WATER AND SEWER REFUNDING REVENUE BONDS, SERIES 1989, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$21,075,000; AND ENACTING OTHER PROVISIONS RELATING THERETO

WHEREAS, in accordance with the Constitution and the laws of the State of Texas, specifically Article 1111, et seq., Vernon's Annotated Texas Civil Statutes, as amended, the City of El Paso, Texas (the "City"), has previously issued waterworks and sewer system revenue bonds payable from and secured by a first and superior lien on and pledge of the net revenues of the City's combined waterworks and sewer system (the "System"); and

WHEREAS, certain of the such previously issued waterworks and sewer system revenue bonds are intended to be and shall be refunded pursuant to this Ordinance, those bonds intended to be refunded being described as follows (collectively, the "Refunded Bonds"):

"City of El Paso, Texas, Water and Sewer Revenue Bonds, Series 1984," dated March 1, 1984, maturing on and after March 1, 1990 and aggregating \$19,510,000 in outstanding principal amount; and

WHEREAS, the City Council hereby finds, determines and declares that the refunding of the Refunded Bonds is necessary and required to restructure the debt of the City payable from the net revenues of the System, thereby reducing the debt service requirements thereof; and

WHEREAS, in the ordinances authorizing such previously issued waterworks and sewer system revenue bonds, the City reserved the right and option to issue, under certain conditions, additional bonds on a parity as to lien and right with such bonds; and

WHEREAS, the City Council considers it in the best interests of the City at this time to authorize the issuance and delivery of a series of its bonds on a parity with its previously issued waterworks and sewer system revenue bonds for the purpose of refunding the Refunded Bonds in accordance with the laws of the State of Texas and the Charter of the City; and

WHEREAS, the City Council has found and determined that the aforesaid refunding bonds should be issued pursuant to this

Ordinance as permitted by the General Laws of the State of Texas, particularly Article 717k, Vernon's Annotated Texas Civil Statutes, as amended; and

WHEREAS, a public hearing was held, following proper publication of notice thereof, on January 10, 1989, before the City Council with respect to the adoption of this Ordinance; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Article 6252-17, Vernon's Annotated Texas Civil Statutes, as amended;

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

## ARTICLE I

### DEFINITIONS, FINDINGS AND INTERPRETATION

Section 1.01. Definitions. Unless otherwise expressly provided or unless the context clearly requires otherwise, in this Ordinance, the following terms shall have the meanings specified below:

"Additional Bonds" means the additional parity revenue bonds permitted to be issued by Section 10.03(b) of this Ordinance.

"Board" or "Board of Trustees" means that certain board of trustees known as the "Public Service Board" heretofore established for the purpose of managing the System, as represented by the various persons appointed from time to time.

"Bond" means any of the Bonds.

"Bondholder," "Holder" or "Owner" means the person who is the registered owner of a Bond or Bonds.

"Bonds" means the City of El Paso, Texas, Water and Sewer Refunding Revenue Bonds, Series 1989, authorized by Section 3.01 of this Ordinance.

"City" means the City of El Paso, Texas, and with respect to those matters requiring action regarding the authority and control of management and operation of the System or the expenditure and application of the System's revenues, shall mean the Board acting on behalf of the City.

"City Council" means the governing body of the City of El Paso, Texas.

"Code" means the Internal Revenue Code of 1986, as amended, including the regulations and published rulings thereunder.

"Delivery Date" means the date of the initial delivery of the Bonds to the initial purchasers thereof against concurrent payment therefor.

"Depository Bank" means any financial institution duly designated by the Board of Trustees to serve as a depository for funds controlled by the Public Service Board.

"Escrow Agent" means MTrust Corp, National Association, acting through its office located in El Paso, Texas.

"Escrow Agreement" means the escrow agreement, dated as of January 1, 1989, by and between the City and the Escrow Agent.

"Escrow Fund" means the fund established by the Escrow Agreement to hold cash and securities for the payment of principal and interest on the Refunded Bonds.

"Government Securities" means direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, which are noncallable prior to the respective maturities of the Bonds and may be United States Treasury Obligations such as the State and Local Government Series and may be in book-entry form.

"Gross Revenues" means all of the revenues of every nature received through the operation of the System.

"Improvement Fund" means the fund by such name described in Section 8.02(d) hereof.

"Initial Bond" means the single bond authorized by Section 3.04(b) of this Ordinance.

"Initial Date" means the date designated as the Initial Date by Section 3.02(a) of this Ordinance.

"Interest and Sinking Fund" means the fund by that name described in Section 8.01(b) hereof.

"Net Revenues" means the Gross Revenues less the Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means the reasonable and proper expenses of operating and maintaining the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service; provided, however, that only such repairs and extensions as are necessary to keep the System in operation or which are necessary to meet some physical accident or condition that would otherwise impair the Bonds, the Previously Issued Bonds and any Additional Bonds shall be included as Operation and Maintenance Expenses.

"Paying Agent/Registrar" means MTrust Corp, National Association, acting through its office located in El Paso, Texas, or any successor thereto or replacement therefor as provided in this Ordinance.

"Previously Issued Bonds" means the outstanding bonds of the following issues of the City:

(1) Water and Sewer Revenue Bonds, Series 1965, authorized by ordinance duly passed and approved January 14, 1965;

(2) Water and Sewer Revenue Bonds, Series 1965-A, authorized by ordinance duly passed and approved October 14, 1965;

(3) Water and Sewer Revenue Bonds, Series 1967, authorized by ordinance duly passed and approved January 26, 1967;

(4) Water and Sewer Revenue Bonds, Series 1984, authorized by ordinance duly passed and approved February 28, 1984;

(5) Water and Sewer Revenue Bonds, Series 1986, authorized by ordinance duly passed and approved June 17, 1986; and

(6) Water and Sewer Revenue Bonds, Series 1988, authorized by ordinance duly passed and approved October 18, 1988.

"Purchaser" means the initial purchaser named in Section 3.10 hereof.

"Record Date" means with respect to each interest payment date the fifteenth day of the month next preceding such interest payment date.

"Refunded Bonds" means the City's Water and Sewer Revenue Bonds, Series 1984, dated March 1, 1984, maturing on and after March 1, 1990 and aggregating \$19,510,000, intended to be refunded pursuant to this Ordinance.

"Register" means the Register specified in Section 3.06(a) of this Ordinance.

"Reserve Fund" means the fund by that name described in Section 8.01(c) hereof.

"Reserve Fund Requirement" means the amount which is equal to the average annual principal and interest requirements on the Bonds, the Previously Issued Bonds and any Additional Bonds at any time outstanding.

"Revenue Fund" means the Waterworks and Sewage Fund established in Section 8.01(a) hereof.

"Special Record Date" means the date established by the Paying Agent/Registrar in the event of nonpayment of interest on the scheduled payment date and for a period of 30 days thereafter as provided in Section 3.03 hereof.

"Special Payment Date" means the scheduled payment date for the payment of past due interest, which payment date shall be 15 days after the Special Record Date.

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

Section 1.03. Table of Contents, Titles and Headings. The table of contents, titles and headings of the Articles and Sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Ordinance or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 1.04. Interpretation. (a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and

neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

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

Section 1.05. Conflicts With Prior Ordinances. Except to the extent that the provisions hereof are in conflict with the ordinances authorizing the Previously Issued Bonds and such conflict constitutes an impairment of the rights of the owners of such Previously Issued Bonds, the provisions of this Ordinance shall apply to the Bonds.

## ARTICLE II

### SECURITY FOR THE BONDS

Section 2.01. Security for the Bonds. The Bonds, the Previously Issued Bonds and any Additional Bonds, both principal and interest, are and shall be equally and ratably secured by and payable from an irrevocable first lien on and pledge of the Net Revenues.

Section 2.02. Limited Obligations. The Bonds, the Previously Issued Bonds and any Additional Bonds, are special obligations of the City, payable solely from the Net Revenues, and do not constitute a prohibited indebtedness of the City; neither the Bonds, the Previously Issued Bonds, nor the Additional Bonds shall ever be payable out of funds raised or to be raised by taxation.

## ARTICLE III

### AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01. Authorization. The City's refunding revenue bonds to be designated the "City of El Paso, Texas, Water and Sewer Refunding Revenue Bonds, Series 1989," are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas and the Charter of the City, the Bonds to be issued in the aggregate principal amount of \$21,075,000 for the purpose of refunding the Refunded Bonds in order to restructure the debt of the City payable from the Net Revenues of the System, thereby reducing the debt service requirements thereof, and paying the costs of issuing the Bonds.

Section 3.02. Date, Denomination, Maturities, Numbers and Interest. (a) The Bonds shall have an Initial Date of January 1, 1989. The Bonds shall be in fully registered form, without coupons, in the denomination of \$5,000 or any integral multiple thereof and shall be numbered consecutively from one upward, except the Initial Bond, which shall be numbered T-1.

(b) The Bonds shall mature on March 1 in the years and as to the principal amounts set forth below, and interest on each Bond shall accrue from the later of the Initial Date or the most recent interest payment date to which interest has been paid or provided for at the respective rate per annum, payable beginning on September 1, 1989, and semiannually thereafter on March 1 and September 1 of each year until maturity or prior redemption, computed on the basis of a 360-day year of twelve 30-day months, as set forth in the schedule below:

<u>Year</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Year</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
1990	\$ 890,000	6.60%	1998	\$1,400,000	7.00%
1991	935,000	6.60%	1999	1,525,000	7.10%
1992	980,000	6.60%	2000	1,650,000	7.10%
1993	1,040,000	6.70%	2001	1,720,000	7.10%
1994	1,100,000	6.80%	2002	1,885,000	7.10%
1995	1,155,000	6.90%	2003	2,045,000	7.10%
1996	1,235,000	6.90%	2004	2,200,000	7.20%
1997	1,315,000	7.00%			

Section 3.03. Medium, Method and Place of Payment. (a) The principal of and interest on the Bonds shall be paid in lawful money of the United States of America, as provided in this Section.

(b) Interest on the Bonds shall be payable to the Owners thereof as shown in the Register at the close of business on the Record Date.

(c) Interest shall be paid by check (dated as of the interest payment date) and sent by the Paying Agent/Registrar to the person entitled to such payment, first class United States mail, postage prepaid, to the address of such person as it appears in the Register, or by such other method requested by and at the risk and expense of the Owner.

(d) In the event of nonpayment of interest on a scheduled payment date and for a period of 30 days thereafter, a Special Record Date and a Special Payment Date for such interest payment will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the

Special Record Date and the Special Payment Date shall be sent at least five business days prior to the Special Record Date by United States mail, first class, postage prepaid, to the address of each Bondholder appearing on the Bond Register at the close of business on the last business day next preceding the date of mailing of such notice.

(e) The principal of each Bond shall be paid to the Owner of such Bond on the due date thereof (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the office of the Paying Agent/Registrar.

Section 3.04. Control, Execution and Initial Registration. (a) The Mayor of the City is hereby authorized to have control of the Bonds and all necessary records and proceedings pertaining thereto pending investigation, examination, and approval by the Attorney General of the State of Texas, registration by the Comptroller of Public Accounts of the State of Texas and registration with, and initial exchange or transfer by, the Paying Agent/Registrar.

(b) The Initial Bond representing the entire principal amount of the Bonds shall be registered in the name of the initial purchaser of the Bonds, or his or her designee, shall be executed and submitted to the Attorney General of the State of Texas for his approval, and, thereupon, certified by the Comptroller of Public Accounts of the State of Texas, or a deputy designated in writing to act on behalf of the Comptroller, shall execute the Comptroller's Registration Certificate.

(c) If the Paying Agent/Registrar is in receipt of timely written instructions (in form and substance satisfactory to the Paying Agent/Registrar) from the initial purchaser of the Bonds, or his designee, designating the persons and their addresses, the maturities and principal amounts to and in which the Initial Bond is to be transferred, then the Paying Agent/Registrar, upon payment for the Initial Bond, shall cancel the Initial Bond and deliver, without cost, registered Bonds pursuant to such instructions. In the absence of such instructions, the cancellation of the Initial Bond and delivery of registered, printed Bonds will be delayed until such written instructions are received. The Paying Agent/Registrar is not required to accept registration instructions after the fifth day prior to the delivery and payment of the Initial Bond.

(d) The Bonds shall be executed on behalf of the City by the Mayor and City Clerk of the City, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each

of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds. In the event that any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such manual or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(e) No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon either (i) the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, or (ii) the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an authorized officer of the Paying Agent/Registrar. It shall not be required that the same officer of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. Either of such Certificates upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified or registered and delivered.

Section 3.05. Ownership. (a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal thereof, for the further purpose of making and receiving payment of the interest thereon (subject to the terms of this Ordinance requiring the Paying Agent/Registrar to make payments of interest to the person who is the registered owner on the Record Date or the Special Record Date), and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the person deemed to be the Owner of any Bond in accordance with this Section shall be valid and effectual and shall discharge the liability of the City and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

Section 3.06. Registration, Transfer and Exchange. (a) So long as any Bond remains outstanding, the City shall cause the Paying Agent/Registrar to keep at its office a Register in which, subject to such reasonable regulations as it may

prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) A Bond shall be transferable only upon the presentation and surrender thereof at the office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register. To the extent possible, a new Bond or Bonds will be required to be delivered by the Paying Agent/Registrar to the last assignee in exchange for such transferred and assigned Bond in not more than three business days after receipt of the Bond to be transferred in proper form and with proper instructions directing such transfer.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any authorized denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. Bonds delivered in exchange for another Bond or other Bonds shall be dated so that neither gain nor loss in interest shall result from such exchange. The Paying Agent/Registrar is hereby authorized to authenticate and deliver bonds exchanged for other Bonds in accordance with this Section. Each exchange Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(d) No service charge shall be made to the Owner for the registration, exchange or transfer of Bonds, except any tax or other governmental charge required to be imposed in connection with the registration, transfer or exchange of a Bond.

(e) Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange to an assignee of the Owner thereof any Bond called for redemption, in whole or in part, within 45 calendar days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

Section 3.07. Cancellation. All Bonds paid or redeemed before their scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance

with this Ordinance, shall be cancelled upon the making of proper records regarding such payment, redemption, exchange or replacement.

Section 3.08. Temporary Bonds. (a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the City may execute and, upon the City's request, the Paying Agent/Registrar shall authenticate and deliver, one or more temporary Bonds that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Ordinance. The City, without unreasonable delay, shall prepare, execute and deliver to the Paying Agent/Registrar, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a Bond or Bonds of the same maturity and series, in definitive form, in the authorized denomination, and in the same aggregate principal amount, as the Bond or Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

Section 3.09. Replacement Bonds. (a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount. Such replacement Bond shall bear a number not contemporaneously outstanding and may be imprinted with such words or letters as the City may deem appropriate to designate such Bond as being a replacement Bond. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected herewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount. Such replacement Bond shall bear a number not contemporaneously outstanding and may be imprinted with such words or letters as

the Paying Agent/Registrar may deem appropriate to designate such Bond as being a replacement Bond. A replacement Bond may not be issued under this paragraph unless the Owner first:

(i) furnishes to the Paying Agent/Registrar satisfactory evidence of his or her ownership and the circumstances of the loss, destruction or theft of such Bond;

(ii) furnishes such security or indemnity as may be required by the Paying Agent/Registrar, and acceptable to the City, to save it harmless;

(iii) pays all expenses and charges in connection therewith, including, but not limited to, printing costs, legal fees, fees of the Paying Agent/Registrar and any tax or other governmental charge that is authorized to be imposed; and

(iv) satisfies any other reasonable requirements imposed by the City and the Paying Agent/Registrar.

(c) If, after the delivery of such replacement Bond, a bona fide purchaser of the original Bond in lieu of which such replacement Bond was issued presents for payment such original Bond, the City and the Paying Agent/Registrar shall be entitled to recover such replacement Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the City or the Paying Agent/Registrar in connection therewith.

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable within six months, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond, together with interest thereon to the date of payment.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

Section 3.10. Approval of Sale, Official Statement.(a) The Bonds have been duly advertised for public sale; bid has been received pursuant thereto, and the Bonds are hereby sold and shall be delivered to Marine Midland Capital Markets Corp.,

for a price of par plus accrued interest to the Delivery Date less a discount of \$315,887.65, being the best bid submitted at said public sale.

(b) The Official Notice of Sale and Bidding Instructions, the Official Bid Form and the Official Statement, dated December 30, 1988, prepared and distributed in connection with the sale of the Bonds, are hereby approved, confirmed and adopted as official documents and statements of the City. The use of such Official Statement in the reoffering of the Bonds by the purchaser thereof is hereby approved and authorized, with such appropriate variations as are approved by the Mayor and the purchaser. The proper officers of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement, dated the Delivery Date, as prescribed in the Official Notice of Sale and Bidding Instructions.

(c) All officers of the City are authorized to execute such documents, certificates and receipts as they may deem appropriate in order to consummate the delivery of the Bonds.

(d) The obligation of the Purchaser to accept delivery of the Bonds is subject to the Purchaser being furnished with the final, approving opinions of Diamond, Rash, Leslie, Smith & Samaniego and Hutchison Boyle Brooks & Dransfield, Co-Bond Counsel for the City, which opinions shall be dated and delivered on the Delivery Date.

#### ARTICLE IV

##### REDEMPTION OF BONDS BEFORE MATURITY

Section 4.01. Limitation on Redemption. The Bonds shall be subject to redemption before their scheduled maturity only as provided in this Article.

Section 4.02. Optional Redemption. (a) The City reserves the option to redeem Bonds maturing on or after March 1, 2000, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof, before their respective scheduled maturity dates, on March 1, 1999, or on any date thereafter, at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the date fixed for redemption.

(b) The City, at least 45 days before the redemption date, shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds of each stated maturity to be redeemed.

Section 4.03. Partial Redemption. (a) If less than all of the Bonds are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed

and shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof, within such maturity or maturities and in such principal amounts, for redemption.

(b) A portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall assign a separate number for each \$5,000 portion of the Bonds and select the portion or portions of the Bond to be redeemed by lot or by any other customary method that results in a random selection.

(c) Upon surrender of any Bond for redemption in part, the Paying Agent/Registrar, in accordance with the provisions of this Ordinance, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge.

(d) The Paying Agent/Registrar shall promptly notify the City in writing of the principal amount to be redeemed of any Bond as to which only a portion thereof is to be redeemed.

Section 4.04. Notice of Redemption to Bondholders. (a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or portion thereof) to be redeemed, at the address shown in the Register.

(b) The notice shall state, among other things, the redemption date, the redemption price, the place at which the Bonds are to be surrendered for payment, that the Bonds so called for redemption shall cease to bear interest after the redemption date, and, if less than all the Bonds outstanding are to be redeemed, an identification of the Bonds or portions thereof to be redeemed.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Bondholder receives such notice.

Section 4.05. Payment Upon Redemption. (a) Before or on each redemption date, the Paying Agent/Registrar shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount received by the Trustee sufficient to pay the principal of and accrued interest on such Bonds.

(b) Upon presentation and surrender of any Bond called for redemption at the principal corporate trust office of the Paying Agent/Registrar, on or after the date fixed for

redemption, the Paying Agent/Registrar shall pay the principal of, and accrued interest on such Bond from the moneys set aside for such purpose.

Section 4.06. Effect of Redemption. (a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption and, unless the City defaults in the payment of the principal thereof or accrued interest thereon, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

(b) If any Bond or portion thereof called for redemption is not so paid upon presentation and surrender thereof for redemption, such Bond or portion thereof shall continue to bear interest at the rate stated on the Bond until paid or until due provision is made for the payment of same.

Section 4.07. Lapse of Payment. (a) Subject to any applicable unclaimed property laws of the State of Texas, money set aside for the redemption of Bonds and remaining unclaimed by the Owners of such Bonds for four years after the date of redemption shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat law or similar law.

(b) Money set aside for the redemption of Bonds and remaining unclaimed by the Owners of such Bonds after the redemption date shall be segregated in a special escrow account and held in trust, uninvested, without interest, for the account of such Owners.

## ARTICLE V

### PAYING AGENT/REGISTRAR

Section 5.01. Appointment of Initial Paying Agent/Registrar. (a) MTrust Corp, National Association, El Paso, Texas, is hereby appointed as the initial Paying Agent/Registrar for the Bonds.

(b) The Mayor is hereby authorized and directed to execute an agreement with the Paying Agent/Registrar specifying

the duties and responsibilities of the City and the Paying Agent/Registrar.

Section 5.02. Qualifications of Paying Agent/Registrar. Unless the City elects to serve as Paying Agent Registrar, which it hereby reserves the right to do, each Paying Agent/Registrar shall be a commercial bank, trust company organized under the laws of the State of Texas, or other entity duly qualified and legally authorized to serve as, and perform the duties and services of, paying agent and registrar for the Bonds.

Section 5.03. Maintaining Paying Agent/Registrar. (a) At all times while any Bonds are outstanding, the City will maintain a Paying Agent/Registrar that is qualified under Section 5.02 of this Ordinance.

(b) If the Paying Agent/Registrar resigns or otherwise ceases to serve as such, the City will promptly appoint a replacement.

Section 5.04. Termination of Paying Agent/Registrar. The City reserves the right to terminate the appointment of any Paying Agent/Registrar by delivering to the entity whose appointment is to be terminated a certified copy of a resolution of the City (i) giving notice of the termination of the appointment, stating the effective date of such termination, and (ii) appointing a successor Paying Agent/Registrar.

Section 5.05. Notice of Change of Paying Agent/Registrar to Bondholders. Promptly upon each change in the entity serving as Paying Agent/Registrar, the City will cause notice of the change to be sent to each Bondholder by first class United States mail, postage prepaid, at the address in the Register, stating the effective date of the change and the name and mailing address of the replacement Paying Agent/Registrar.

Section 5.06. Agreement of Paying Agent/Registrar to Perform Duties and Functions. By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar is deemed to have agreed to the provisions of this Ordinance and that it will perform the duties and functions of Paying Agent/Registrar prescribed hereby.

Section 5.07. Delivery of Records to Successor. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar.

## ARTICLE VI

### FORM OF THE BONDS

Section 6.01. Form Generally. (a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment to appear on each of the Bonds, (i) shall be substantially in the form set forth in this Article with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

(b) The definitive Bonds shall be printed, lithographed, or engraved, and may be produced by any combination of these methods or produced in any other similar manner, all as determined by the officers executing such Bonds, as evidenced by their execution thereof. The Initial Bond submitted to the Attorney General of the State of Texas may be typewritten and photocopied or otherwise reproduced.

Section 6.02. Form of the Bonds. (a) The form of the Bonds, including the form of the Registration Certificate of the Comptroller of Public Accounts of the State of Texas (which shall only appear on the Initial Bond), the form of Certificate of the Paying Agent/Registrar and the form of Assignment appearing on the Bonds shall be substantially as follows:

[Form of Bond]

REGISTERED

REGISTERED

No. \_\_\_\_\_

\$ \_\_\_\_\_

United States of America  
State of Texas  
COUNTY OF EL PASO  
CITY OF EL PASO, TEXAS  
WATER AND SEWER REFUNDING REVENUE BOND  
SERIES 1989

Interest Rate: \_\_\_\_\_%      Maturity Date: \_\_\_\_\_      Initial Date: January 1, 1989      CUSIP: \_\_\_\_\_

The City of El Paso (the "City"), in the County of El Paso, State of Texas, for value received, hereby promises to pay to

or registered assigns, but solely from the sources and in the manner hereinafter provided, on the Maturity Date specified above, the sum of

\_\_\_\_\_ DOLLARS,

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provided for, and to pay interest on such principal amount from the later of the Initial Date specified above or the most recent interest payment date to which interest has been paid or provided for until payment of such principal amount has been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on March 1 and September 1 of each year, commencing September 1, 1989. The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the office of the Paying Agent/Registrar or any successor thereto executing the registration certificate appearing hereon. Interest on this Bond is payable by check, dated as of the interest payment date, mailed by the Paying Agent/Registrar to the registered owner at the address shown on the registration books kept by the Paying Agent/Registrar or by such other method requested by and at the risk and expense of the Bondholder. For the purpose of the payment of interest on this Bond, the registered owner shall be the person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the fifteenth day of the month

next preceding such interest payment date. In the event of a nonpayment of interest on a scheduled payment date and for a period of 30 days thereafter, a new record date for such interest payment (the "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the "Special Payment Date," which shall be 15 days after the Special Record Date) shall be sent at least 5 business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Bondholder appearing on the Bond Register at the close of business on the last business day next preceding the date of mailing of such notice.

This Bond is one of a series of fully registered bonds specified in the title hereof issued in the aggregate principal amount of \$21,075,000 (herein referred to as the "Bonds"), issued pursuant to the authority provided by Article 717k, et seq., Vernon's Annotated Texas Civil Statutes, as amended, and a certain ordinance of the City (the "Bond Ordinance"), for the purpose of refunding certain outstanding revenue bonds of the City (the "Refunded Bonds") payable from and secured by a first lien on and pledge of the net revenues of the City's water and sewer system.

The City has reserved the right, subject to the restrictions stated in the Bond Ordinance, to issue additional parity revenue bonds that may be secured in the same manner and on a parity with the Bonds and the previously issued parity revenue bonds.

The City reserves the option to redeem Bonds maturing on or after March 1, 2000, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof, before their respective scheduled maturity dates, on March 1, 1999, or on any date thereafter, at a price equal to the principal amount of the Bonds so called for redemption plus accrued interest to the redemption date. If less than all of the Bonds are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot Bonds, or portions thereof, within such maturity or maturities and in such principal amounts, for redemption. A portion of a single Bond of a denomination greater than \$5,000 may be redeemed, but only in a principal amount equal to \$5,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall assign a separate number for each \$5,000 portion of the Bonds and select the portion or portions of the Bond to be redeemed by lot or by any other customary method that results in a random selection.

Notice of such redemption or redemptions shall be given by first class mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the registered owner of each of the Bonds to be redeemed in whole or in part. Notice having been so given, the Bonds or portions thereof designated for redemption shall become due and payable on the redemption date specified in such notice, and from and after such date, notwithstanding that any of the Bonds or portions thereof so called for redemption shall not have been surrendered for payment, interest on such Bonds or portions thereof shall cease to accrue.

As provided in the Bond Ordinance and subject to certain limitations therein set forth, this Bond is transferable upon surrender of this Bond for transfer at the office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar, and, thereupon, one or more new fully registered Bonds of the same stated maturity, of authorized denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond called for redemption, in whole or in part, within 45 days of the date fixed for redemption; provided, however, such limitations of transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

The City, the Paying Agent/Registrar, and any other person may treat the person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the person in whose name this Bond is registered on the Record Date or the Special Record Date) and for all other purposes, whether or not this Bond be overdue, and neither the City, the Paying Agent/Registrar, nor any such agent shall be affected by notice to the contrary.

IT IS HEREBY CERTIFIED AND RECITED that this Bond has been duly and validly issued and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the issuance and delivery of this Bond have been performed, existed, and been done in accordance with law; and that the interest on and principal of this Bond and the series of which it is a part, together with certain outstanding parity revenue bonds of the City, are secured by and payable from an irrevocable first lien on and pledge of the net revenues of the City's combined waterworks and sewer system, as provided in Bond Ordinance, and not from any other revenues, funds or assets of the City.

This Bond shall not be deemed to constitute a debt of the City or a pledge of its faith and credit; nor shall the Owners hereof ever have the right to demand payment of this Bond out of any funds raised or to be raised by taxation.

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

\_\_\_\_\_  
City Clerk, City of El Paso,  
Texas

\_\_\_\_\_  
Mayor, City of El Paso, Texas

[SEAL]

[Form of Comptroller's Registration Certificate  
to be printed on Initial Bond only]

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

§  
§  
§

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

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, 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, Texas, payable from the revenues pledged to its payment by and in the ordinance authorizing same and that said Bond has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, on this date: \_\_\_\_\_

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

[SEAL]

[Form of Certificate of Paying Agent/Registrar]

CERTIFICATE OF PAYING AGENT/REGISTRAR

The records of the Paying Agent/Registrar show that the Initial Bond of this series of Bonds was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas, and that this is one of the Bonds referred to in the within-mentioned Bond Ordinance.

MTrust Corp, National Association, as Paying Agent/Registrar

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

By: \_\_\_\_\_  
Authorized Officer

[Form of Assignment]

ASSIGNMENT

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Social Security or other identifying number: \_\_\_\_\_) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints \_\_\_\_\_

\_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

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

Signature Guaranteed By:  
  
\_\_\_\_\_

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed by an officer of a federal or state bank or a member of the National Association of Securities Dealers.

(b) The Initial Bond shall be in the form set forth in subsection (a) of this Section, except for the following alterations:

(i) immediately under the name of the Bond, the headings "Interest Rate" and "Maturity Date" shall both be completed with the words "as shown below;"

(ii) in the first paragraph of the Bond:

(A) the words "on the Maturity Date specified above" shall be deleted and the following will be inserted: "on March 1 in each of the years and in principal installments, and bearing interest at the per annum rates in accordance with the following schedule:

<u>Year</u>	<u>Principal Installments</u>	<u>Interest Rate</u>
-------------	-------------------------------	----------------------

(Information to be inserted from schedule in Section 3.02 of this Ordinance)

(B) the words "executing the registration certificate appearing hereon" shall be deleted and an additional sentence shall be added to the paragraph as follows: "The initial Paying Agent/Registrar is MTrust Corp, National Association, acting through its office located in El Paso, Texas.";

(iii) the Initial Bond shall be numbered T-1.

(c) The Comptroller's Registration Certificate may be deleted from the definitive Bonds if such Certificate on the Initial Bond is fully executed.

(d) The Certificate of the Paying Agent/Registrar may be deleted from the Initial Bond if the Comptroller's Registration Certificate appears thereon.

Section 6.03. Legal Opinion. The approving legal opinions of Diamond, Rash, Leslie, Smith & Samaniego, El Paso, Texas, and Hutchison Boyle Brooks & Dransfield, Dallas, Texas, Co-Bond Counsel, may be printed on the back of each Bond over the certification of the City Clerk of the City, which certification may be executed in facsimile.

ARTICLE VII

PUBLIC SERVICE BOARD

Section 7.01. Public Service Board.

Pursuant to authority contained in Article 1115, Texas Revised Civil Statutes, as amended, 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 the Public Service Board, which Board shall have complete authority and control of the management and operation of the System and the expenditure and application of its revenues. The Board shall operate and manage the System with the same freedom and in the same manner as is ordinarily enjoyed by the board of directors of a private corporation operating properties of a similar nature.

It is hereby specifically provided that 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 such 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, 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 employees of the City of El Paso.

Upon the expiration of the respective terms of those Board members serving on October 18, 1988, each term of office shall be four years with no member being appointed to more than two consecutive terms. To the extent not prohibited by State law, any member shall continue to serve until his successor is appointed and qualified, or until 30 days have past, whichever event occurs first. After that time a vacancy on the Board shall exist and the former member shall have no power to vote or participate in Board proceedings; but such vacancy shall not serve to reduce the number of members required for a quorum.

ARTICLE VIII

FUNDS; FLOW OF FUNDS

Section 8.01. Special Funds.

The City covenants and agrees that all revenues derived from the operation of the System shall be kept separate from other funds of the City. To that end, the following special

funds shall be established and maintained at the Depository Bank so long as any of the Bonds, Previously Issued Bonds, or Additional Bonds are outstanding and unpaid, to-wit:

(a) "City of El Paso, Texas, Water and Sewer Revenue Bonds Waterworks and Sewage Fund," herein called the "Revenue Fund"; and

(b) "City of El Paso, Texas, Water and Sewer Revenue Bonds Interest and Sinking Fund," herein called the "Interest and Sinking Fund"; and

(c) "City of El Paso, Texas, Water and Sewer Revenue Bonds Reserve Fund," herein called the "Reserve Fund."

Section 8.02. Revenue Fund.

All Gross Revenues shall be deposited from day to day as collected into the Revenue Fund. Moneys on deposit in the Revenue Fund shall first be used to pay all Operation and Maintenance Expenses. The revenues of the System not actually required to pay Operation and Maintenance Expenses (the "Net Revenues") shall be transferred from the Revenue Fund to the other Funds in this Ordinance, in the order of priority, in the manner, and in the amounts set forth below:

(a) Interest and Sinking Fund. In addition to the deposits required by ordinances authorizing the Previously Issued Bonds, there shall be deposited into the Interest and Sinking Fund the following:

(i) such amounts, in equal monthly installments, commencing March 1, 1989, and on the first day of each month thereafter, as will be sufficient to pay the interest scheduled to come due on the Bonds on the next interest payment date, less any amounts already on deposit therein for such purpose derived from the proceeds of the Bonds or from any other lawfully available source; and

(ii) such amounts, in equal monthly installments, commencing March 1, 1989, and on the first day of each month thereafter, as will be sufficient to pay the next maturing principal of the Bonds.

The Interest and Sinking Fund shall be used to pay the principal of and interest on the Bonds, the Previously Issued Bonds and any Additional Bonds as such principal matures and such interest becomes due.

(b) Reserve Fund. So long as the funds on deposit in the Reserve Fund created for the benefit of the Bonds, the

Previously Issued Bonds, and all Additional Bonds are equal to the Reserve Fund Requirement, no deposits need to be made to the credit of the Reserve Fund; but should the Reserve Fund at any time contain less than the Reserve Fund Requirement, then, subject and subordinate to making the required deposits to the credit of the Interest and Sinking Fund, the City shall transfer from the Net Revenues in the Revenue Fund and deposit to the credit of the Reserve Fund, on the first day of each month, such amounts in equal monthly installments to accumulate within at least five years and one month a sum equal to the Reserve Fund Requirement. The money on deposit in the Reserve Fund may be used to pay the principal of and interest on the Bonds, the Previously Issued Bonds and any Additional Bonds at any time there are not sufficient funds on deposit in the Interest and Sinking Fund for such purpose.

By reason of the issuance of the Bonds, the Reserve Fund Requirement is hereby determined to be \$5,151,862. In accordance with the procedures specified in the preceding paragraph, the City hereby directs that the deposits, if any, being made to the Reserve Fund be increased to accumulate in the Reserve Fund within five years and one month from the date of the Bonds an amount equal to the Reserve Fund Requirement.

(c) Payment to the City's General Fund. At the end of each month there shall be paid to the City Treasurer for deposit to the City's General Fund from any money which may remain in the Revenue Fund after all payments 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 as will result in there having been paid to the City during each fiscal year, ten percent (10%) of the total received by the Board from the sale of water during the fiscal year.

(d) Improvement Fund. All money remaining in the Revenue Fund at the end of each month after all payments required to be made therefrom in such month have been made and all deficiencies accumulated from prior months have been remedied shall continue to be paid to the Improvement Fund established in connection with the System, and shall be held in and paid out from such Fund for the following purposes:

(i) 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 laws of the State of Texas, necessitated by reason of some emergency; and

(ii) To the extent permitted by law, for the making of extensions, improvements, and betterments of the System.

Section 8.03. Investment of Funds. (a) Revenue Fund and Interest and Sinking Fund. The Funds hereinabove created shall be invested and secured in the manner required by State or federal law, as appropriate. Moneys on deposit in the Interest and Sinking Fund and the Revenue Fund shall be continually secured by the deposit of collateral securities having a market value at all times not less than the amount in such Fund. The money in the Interest and Sinking Fund and the Reserve Fund shall be held as a trust fund for the benefit of the Owners of the Bonds herein authorized, the beneficial interest in which shall be regarded as existing in such Owners. The Secretary of the Board shall require arrangements to be made with the Paying Agent/Registrar as will, to the extent of money in the Interest and Sinking Fund, and, if necessary, in the Reserve Fund, assure the prompt payment of principal of and interest on the Bonds herein authorized as such principal and interest become due, except that by agreement with the Owners of any Bonds purchased on the open market for retirement, payment of principal and interest thereon due by reason of such purchase, may be made by the Paying Agent/Registrar to the Owners thereof upon surrender of Bonds. All Bonds so paid, redeemed or purchased shall be cancelled and shall not be subject to reissuance.

(b) Investment of Reserve Fund. To the extent permitted by applicable law, moneys on deposit in the Reserve Fund may be invested and reinvested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States Government, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, Banks for Cooperatives or certificates of deposit, the payment of which are insured in full by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than ten years after the date of investment. Any obligations in which money is so invested shall be kept in escrow and shall be promptly sold and the proceeds of sale applied to the making of payments required to be made from the Reserve Fund whenever such payments are necessary to be made under this Section. The deposits into the Reserve Fund shall be subordinate to those required to be made into the bond funds for the Previously Issued Bonds, the Bonds, and any Additional Bonds.

ARTICLE IX

DEPOSIT OF PROCEEDS; TRANSFER OF FUNDS;  
APPROVAL OF ESCROW AGREEMENT; REDEMPTION OF  
SERIES 1984 BONDS

Section 9.01. Deposit of Proceeds. (a) All amounts received on the Delivery Date as accrued interest on the Bonds from the Initial Date to the Delivery Date, shall be deposited to the Interest and Sinking Fund.

(b) The sum of \$20,690,100.00 of the proceeds of the Bonds shall be deposited to the Escrow Fund, which sum shall be applied as provided in the Escrow Agreement.

(c) The sum of \$-0- of the proceeds of the Bonds shall be deposited to the Reserve Fund.

(d) The sum of \$103,545.50 shall be paid to or upon the order of First Southwest Company, the City's financial advisor, which sum shall be used to pay the costs and expenses pertaining to the issuance of the Bonds concurrently with the initial delivery thereof. To the extent any of such sum is not used for such purposes, such excess shall be deposited to the Interest and Sinking Fund.

(e) To the extent necessary to accomplish fully the purposes of this Ordinance, the Mayor of the City is authorized to reallocate the moneys directed to be used for the purposes specified above.

Section 9.02. Transfer of Funds. (a) The Mayor of the City is authorized to execute such subscriptions for the purchase of United States Treasury Securities--State and Local Government Series, as may be necessary for the Escrow Fund. In addition, the City may purchase for investment in the Escrow Fund such obligations of the United States of America that will be appropriate open market investments for the Escrow Fund.

(b) Officials of the City are directed, upon delivery of the Bonds, to transfer \$535,385.25 from moneys on hand in the Improvement Fund to be deposited in the Escrow Fund and used in accordance with the provisions of the Escrow Agreement to purchase such open market investments.

Section 9.03. Approval of Escrow Agreement. The Escrow Agreement and its execution and delivery by the Mayor of the City are hereby authorized and approved. The signature of the Mayor shall be attested by the City Clerk of the City.

Section 9.04. Redemption of Series 1984 Bonds. City of El Paso, Texas Water and Sewer Revenue Bonds, Series 1984, scheduled to mature on and after March 1, 1995, are hereby

called for redemption on March 1, 1994. Notice of such redemption shall be given as soon as practicable in accordance with the provisions of the ordinance authorizing such Bonds.

## ARTICLE X

### PARTICULAR REPRESENTATIONS AND COVENANTS

Section 10.01. Insurance. The City hereby agrees that it will 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. Such insurance may be provided by means of a self-insurance fund in which event deposits to such fund shall be a maintenance and operating expense of the System.

Section 10.02. Books and Records. The City hereby covenants and agrees that complete and proper books of records and account will be kept and that the holders of any of the Bonds, or any duly authorized agent or agents of such holders, shall have the right to inspect such records at all reasonable times. The Board will within sixty (60) days following the close of each fiscal year, cause an audit of the books and accounts to be made by an independent firm of certified public accountants and that such audit will be available for inspection by the holders of any of the Bonds.

Section 10.03. Additional Covenants. (a) Additional Bonds. The City may issue "Additional Bonds" if the following conditions are met:

(i) the City is not then in default as to any covenant, condition or obligation prescribed by an ordinance authorizing the issuance of any bonds payable from and secured by a first lien on and pledge of the Net Revenues;

(ii) the Additional Bonds are made to mature on March 1 in each of the years in which they are scheduled to mature;

(iii) the net earnings of the System for any consecutive period of 12 months of the 15 months next preceding the month of the date of the Additional Bonds then to be issued, or for the City's completed fiscal year next preceding the date of such Additional Bonds, are equal to at least 1.25 times the maximum annual principal and interest requirements of all bonds to be outstanding after the issuance of the Additional Bonds, as such net earnings are shown by a report by a certified public accountant or a licensed public accountant; and

(iv) the amount to be accumulated and maintained in the Reserve Fund shall be increased to an amount not less than the average annual requirements for the payment of principal of and interest on the Bonds, the Previously Issued Bonds and the Additional Bonds, such additional amount to be accumulated in equal monthly installments during a period not to exceed five years and one month.

(b) Maintain and Operate System Efficiently. The City and the Board hereby covenant, respectively, that they will maintain and operate the System with all possible efficiency while any of the Bonds remain outstanding and faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State.

(c) Rate Covenant. The Board hereby covenants that it will establish rates for water and sewer services supplied by the System which shall produce or yield revenues sufficient to pay maintenance and operating expenses of the System and an additional amount equal to 150% of the aggregate amount required to be paid in such year for principal and interest on all outstanding Previously Issued Bonds, the Bonds, and any Additional Bonds.

(d) Charges for Water and Sewer Service. The City and the Board hereby covenant that charges for sewer services will be made jointly with charges made for the sale of water and water services. Such charges shall be required to be paid by the customer at the same time. Water connections shall be permitted only on a metered basis.

(e) Enforcement.

(i) The City and the Board hereby respectively covenant, acting in the exercise of their respective police powers, to take all necessary action 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 using any other method for the disposal of sewage, sewage waste or other polluting matter. All such connections shall be made in accordance with the rules and regulations of the City and the Board, as may be adopted from time to time, which rules and regulations may provide for an inspection charge to assure the proper making of such connections.

(ii) The City and the Board hereby further covenant, respectively, to require the occupant of any premises, the owner or occupant of which shall be

delinquent for more than thirty (30) days in the payment of sewer charges imposed hereunder, to cease to dispose of sewage or industrial or commercial wastes originating from or on such premises by discharge thereof into the System until such delinquent charges, together with all penalties relating thereto, shall have been paid. In order to enforce the provisions of this covenant and to prevent the creation of a health hazard, in the event any such occupant shall not cease such disposal, the supply and sale of water to such premises shall cease until such time as all delinquencies have been removed.

(iii) The Board will proceed immediately with a suit in assumpsit or similar action against such owner or occupant to recover the amount of any delinquent charges, together with penalties and with interest computed thereon at the rate of six percent (6%) per annum.

(iv) 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.

(f) Nonimpairment of Lien. The City and the Board hereby covenant, respectively, to take no action or omit to take any action, or suffer to be done or omitted to be done, any matter or thing whatsoever whereby the lien of the Bonds, the Previously Issued Bonds and any Additional 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, the Previously Issued Bonds and any Additional Bonds as a lien or charge upon the revenues of the System or any part thereof; provided that nothing in this subsection (f) 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.

(g) No Sale or Encumbrance of System. The City and the Board hereby covenant, respectively, that they will not in any manner dispose of the System or any substantial part thereof, including any and all extensions and additions that may be made thereto, until the Bonds, the Previously Issued Bonds and any Additional Bonds shall have been paid in full as to both principal and interest; provided, however, that this covenant shall not be construed to prevent the disposal by the City of property, which in the Board's judgment has become inexpedient to use in connection with the System, when other property of equal value is substituted therefor or when the

proceeds of such disposition of such property are placed in the Interest and Sinking Fund, in addition to all other amounts required to be placed in the Interest and Sinking Fund in the current fiscal year, and are used for the retirement of Bonds, Previously Issued Bonds and any Additional Bonds in advance of their respective maturities.

(g) Payment to City from Sale of Land. An amount equal to five percent (5%) of the net proceeds from the sale of lands of the System shall be paid as received to the general fund of the City and used for any lawful purpose.

(h) No Competing Systems. The City hereby covenants that it will not grant a franchise for the operation of any competing water or sewer system in the City until all Bonds, Previously Issued Bonds and any Additional Bonds have been paid in full with respect to principal and interest.

(i) No Free Service. The Board hereby covenants that it will not permit free water or services to be supplied to the City or to any other user, and the City hereby agrees that it will pay from its general fund the reasonable value of all water and services obtained from the System by the City and all departments and agencies thereof.

Section 10.04. Tax Covenants. (a) The City hereby represents that the proceeds of the Bonds are needed at this time to refund the Refunded Bonds and to pay the costs of issuing the Bonds; that it is not reasonably expected that the proceeds of the Bonds or money deposited in the Interest and Sinking Fund will be used or invested in a manner that would cause the Bonds to be or become "arbitrage bonds," within the meaning of Section 148 of the Code; and that, except for the Interest and Sinking Fund, no other funds or accounts have been established or pledged to the payment of the Bonds.

(b) The City will not take any action or fail to take any action with respect to the investment of the proceeds of the Bonds or any other funds of the City, including amounts received from the investment of any of the foregoing, that, based upon the facts, estimates, and circumstances known on the Delivery Date, would result in constituting the Bonds "arbitrage bonds," within the meaning of such Section 148(f) of the Code, and the City will not take any deliberate action motivated by arbitrage that would have such result.

(c) Proper officers of the City charged with the responsibility of issuing the Bonds are hereby directed to make, execute and deliver certifications as to facts, estimates and circumstances in existence as of the Delivery Date and stating whether there are any facts, estimates or circumstances that would materially change the City's current expectations.

(d) If required, the City will comply with the provisions of Section 148(f) of the Code, and the regulations promulgated thereunder relating to paying certain excess earnings of investments of proceeds of the Bonds to the United States of America.

(e) The City covenants that it will not take or permit any action or activity or omit to take any action which would cause the interest on Bonds to be includable in the gross income of the recipients thereof for Federal income tax purposes pursuant to Section 103(a) of the Code.

(f) The City represents and covenants that it will not cause or permit the Bonds to be treated as "federally guaranteed" obligations within the meaning of Section 149(b) of the Code.

(g) The covenants and representations made or required by this Section are for the benefit of the Bondholders and may be relied upon by the Bondholders and bond counsel for the City.

## ARTICLE XI

### DEFAULT AND REMEDIES

Section 11.01. Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Bond Fund or the Reserve Fund as required by the Ordinance, or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in the Ordinance, the holder or holders of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to observe and perform any covenant, condition or obligation prescribed in the Ordinance. No delay or omission to exercise and right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 11.02. Remedies Not Exclusive. No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that

notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

## ARTICLE XII

### DISCHARGE

Section 12.01. Discharge by Payment. When all Bonds have been paid in full as to principal and as to interest and premium, if any, or when all Bonds have become due and payable, whether at maturity or by prior redemption or otherwise, and the City shall have provided for the payment of the whole amount due or to become due on all Bonds then outstanding, including all interest that has accrued thereon or that may accrue to the date of maturity or prior redemption, and any premium due or that may become due at maturity or prior redemption, by depositing with the Paying Agent/Registrar, for payment of the principal of such outstanding Bonds and the interest accrued thereon and any premium due thereon, the entire amount due or to become due thereon, and the City shall also have paid or caused to be paid all sums payable under this Ordinance by the City, including the compensation due or to become due the Paying Agent/Registrar, then the Paying Agent/Registrar, upon receipt of a letter of instructions from the City requesting the same, shall discharge and release the lien of this Ordinance and execute and deliver to the City such releases or other instruments as shall be requisite to release the lien hereof.

Section 12.02. Discharge by Deposit. (a) The City may discharge its obligation to pay the principal of, premium, if any, and interest on the Bonds and its obligation to pay all other sums payable or to become payable under this Ordinance by the City, including the compensation due or to become due the Paying Agent/Registrar, by:

(i) depositing or causing to be deposited with the Paying Agent/Registrar an amount of money that, together with the interest earned on or capital gains or profits to be realized from the investment of such money, will be sufficient to pay the principal of, premium, if any, and accrued interest on such Bonds to maturity or to the date fixed for prior redemption of such Bonds, and to pay such other amounts as may be reasonably estimated by the Paying Agent/Registrar to become payable under this Ordinance, including the compensation due or to become due the Paying Agent/Registrar; and

(ii) providing the Paying Agent/Registrar with an opinion of nationally recognized bond counsel acceptable to the Paying Agent/Registrar to the effect that the deposit specified in subdivision (i) of this subsection (a) will not cause the interest on the Bonds to become subject to federal income taxation.

(b) Subject to subsection (c) of this Section, upon compliance with subsection (a) of this Section, the Bonds shall no longer be regarded as outstanding and unpaid, and the Paying Agent/Registrar, upon receipt of a letter of instructions from the City requesting the same, shall discharge and release the lien of this Ordinance and execute and deliver to the City such releases or other instruments as shall be requisite to release the lien hereof.

(c) Before the discharge and release of the lien of this Ordinance pursuant to this Section, provision shall have been made by the City with the Paying Agent/Registrar for:

(i) the establishment of a separate escrow account fund with the Paying Agent/Registrar for the deposit pursuant to subsection (a)(i) of this Section;

(ii) the payment to the Bondholders at the date of maturity or at the date fixed for prior redemption, as applicable, of the full amount to which the Bondholders would be entitled by way of principal, premium, if any, and interest to the date of such maturity or prior redemption;

(iii) the investment of such moneys by the Paying Agent/Registrar in direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, and which may be in book-entry form, maturing and/or bearing interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of such Bonds in securities or obligations maturing in sufficient time, in the judgment of the Paying Agent/Registrar, to make available the moneys required for such purposes;

(iv) the sending of written notice by registered or certified United States mail to the Owner of each Bond then outstanding within 30 days following the date of such deposit that such moneys are so available for such payment; and

(v) the payment to the City, periodically or following final payment of the principal of, premium, if

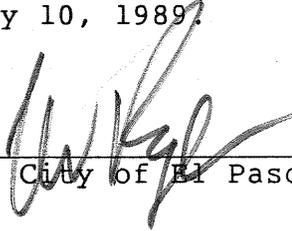
any, and interest on the Bonds, of any moneys, interest earnings, profits or capital gains over and above the amounts necessary for such purposes.

ARTICLE XIII

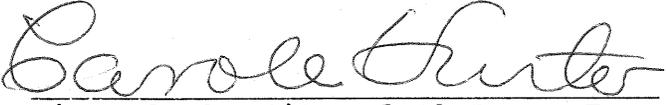
EFFECTIVENESS

Section 13.01. Effectiveness. This Ordinance shall take effect and be in force from and after its passage and approval.

APPROVED AND ADOPTED this January 10, 1989.

  
\_\_\_\_\_  
Mayor, City of El Paso, Texas

ATTEST:

  
\_\_\_\_\_  
City Clerk, City of El Paso, Texas

[SEAL]

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney, City of El Paso, Texas

MINUTES AND CERTIFICATION

STATE OF TEXAS, §  
COUNTY OF EL PASO, §  
CITY OF EL PASO. §

On the 10th day of January, 1989, the City Council of the City of El Paso, Texas, convened in Regular Meeting at the regular meeting place thereof on the second floor of the Municipal Building, 2 Civic Center Plaza, El Paso, Texas, the meeting being open to the public and notice of said meeting, giving the date, place and subject thereof, having been posted as prescribed by Article 6252-17, V.A.T.C.S., and the roll was called of the duly constituted officers and members of the City Council, to-wit:

Jonathan W. Rogers, Mayor Jimmy Goldman )  
Carole Hunter, City Clerk Suzanne S. Azar )  
Tony Ponce )  
Jethro Hills ) Councilmembers  
Robert Candelaria )  
Ed Elsey )

and all of such persons were present, except the following absentees: None, thus constituting a quorum. Whereupon, among other business, the following was transacted, to-wit: A written Ordinance bearing the following caption was introduced pursuant to Section 3.9 of the City's Charter:

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF CITY OF EL PASO, TEXAS, WATER AND SEWER REFUNDING REVENUE BONDS, SERIES 1989, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$21,075,000; AND ENACTING OTHER PROVISIONS RELATING THERETO.

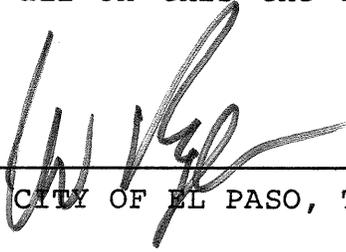
The Ordinance, a full, true and correct copy of which is attached hereto, was read and reviewed by the City Council.

Thereupon, Councilmember Ponce moved that the Ordinance be finally passed. The motion was seconded by Councilmember Elsey and carried by the following vote:

AYES: All members present voted "Aye"  
NOTES: None  
ABSTENTIONS: None

The Mayor then declared the Ordinance passed and adopted, signed and approved the same in the presence of the City Council and declared the Ordinance effective immediately.

MINUTES APPROVED AND CERTIFIED TO BE TRUE AND CORRECT the attached and following copy of said Ordinance is hereby certified to be a true and correct copy of an official copy thereof on file among the official records of the City, and the above listed persons are hereby certified to be the incumbent officers and members of the City Council as stated, all on this the 10th day of January, 1989.

  
\_\_\_\_\_  
MAYOR, CITY OF EL PASO, TEXAS

ATTEST:

  
\_\_\_\_\_  
CITY CLERK, CITY OF EL PASO, TEXAS

(SEAL)