13B

CITY CLERK DEPT.

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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

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]

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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

Doc. No.: 50131 v3
Doc. Name: Reso PSB Selection Committee
Doc. Author: SFIR