

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

DEPARTMENT: El Paso Water Utilities Public Service Board

AGENDA DATE: Bond Ordinance, Introduction and Passage: Tuesday, January 26, 2010

CONTACT PERSON/PHONE: Robert D. Andron, General Counsel (915) 594-5506
Paul Braden, Fulbright & Jaworski, LLP (214) 855-8189



DISTRICT(S) AFFECTED:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Consider and adopt an ordinance amending Ordinance 017241 adopted December 1, 2009 authorizing the sale and issuance of \$6,425,000.00 of City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds to be purchased by the Texas Water Development Board (TWDB) through the Clean Water Act State Revolving Fund (CWSRF) funded by the American Recovery and Reinvestment Act (ARRA) of 2009, Series 2009A, to finance the construction of stormwater projects.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The American Recovery and Reinvestment Act of 2009 ("ARRA"), enacted by the United States Congress and signed into law February 17, 2009, provided for, among other things, investment in infrastructure throughout the United States. The Texas Water Development Board ("TWDB") is the Texas administrative agency charged with implementing ARRA funding of water projects within the State of Texas.

The El Paso Water Utilities Public Service Board ("EPWU") by Resolution dated June 30, 2009 authorized the President/CEO of EPWU to submit an application on behalf of the EPWU to the TWDB under the Clean Water Act State Revolving Fund ("CWSRF") for El Paso Municipal Drainage Utility System Revenue Bonds ("MDUS") to fund certain eligible stormwater projects and authorized the President/CEO to seek the approval of the City of El Paso to authorize the President/CEO to submit such application on behalf of the City itself.

The City of El Paso, Texas passed and adopted a Resolution July 14, 2009 authorizing the President/CEO of EPWU to make application on behalf of the City to the TWDB under the CWSRF for \$12,036,992.00 in MDUS Revenue Bonds to fund certain eligible stormwater projects. The TWDB confirmed to EPWU it would fund certain stormwater projects in the amount of \$6,425,000.00 out of the applied for funding.

Thus, EPWU by Resolution dated November 19, 2009 requested the City Council approve the issuance and sale of not to exceed \$6,425,000.00 in City of El Paso Municipal Drainage Utility System Revenue bonds to fund the stormwater projects. The City passed Ordinance No. 017241 authorizing the sale and issuance of \$6,425,000.00 in MDUS Revenue Bonds to the TWDB. Since that time, EPWU has been notified that the TWDB has further revised down its loan commitment for financial assistance to \$2,163,000.00 which will require the City to revise its Bond authorization accordingly.

The El Paso Water Utilities Public Service Board finds that it is in the best interest of its ratepayers to pursue this advantageous funding for stormwater projects even at the reduced level and requests the El Paso City Council Amend Ordinance 017241 to authorize the issuance of Municipal Drainage Utility System Revenue bonds in the amount of \$2,163,000.00 to fund the projects approved by TWDB.

PRIOR COUNCIL ACTION:

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

On December 1, 2009, the City Council passed and adopted an Ordinance authorizing the issuance of \$6,425,000.00 in City of El Paso, Texas Municipal Drainage Utility System Revenue Bonds for capital infrastructure stormwater projects.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This item will be funded through a zero per cent interest, twenty-year loan through sale of City of El Paso Municipal Drainage Utility System Revenue Bonds to the Texas Water Development Board.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

El Paso Water Utilities Public Service Board passed and adopted a Resolution, November 19, 2009 authorizing the President/CEO to request the El Paso City Council to authorize the issuance of MDUS Revenue Bonds to the TWDB for the construction of stormwater infrastructure projects.

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 017241 ADOPTED ON DECEMBER 1, 2009 AUTHORIZING THE ISSUANCE OF "CITY OF EL PASO, TEXAS, MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, SERIES 2009A"; AND RESOLVING MATTERS WHICH ARE NECESSARY TO EFFECTUATE SAID ISSUANCE.

WHEREAS, pursuant to an application filed with the Texas Water Development Board (the "Board"), the City of El Paso, Texas (the "City") received a loan commitment at 0% interest from the Board for financial assistance in the amount of \$6,425,000 to finance certain municipal drainage projects (the "Projects"); and

WHEREAS, the City Council of the City previously adopted an ordinance (the "Bond Ordinance") authorizing the issuance of "CITY OF EL PASO, TEXAS, MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, SERIES 2009A" in the aggregate principal amount of \$6,425,000 (the "Bonds"); and

WHEREAS, the City has received more favorable construction bid contracts than originally anticipated significantly reducing the costs of the Projects; and

WHEREAS, because of the constraints of the program pursuant to which the Board buys the Bonds, additional projects cannot be added; and

WHEREAS, the Board has requested that the City revise the Bond Ordinance to reflect the lower cost of the Projects prior to closing on the Bond; and

WHEREAS, the City Council hereby finds and determines it necessary to adopt this Ordinance in order to authorize the issuance of the Bonds as set forth below;

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

SECTION 1. All recitals, findings and definitions contained in the preambles hereof are found to be true and correct and are made a part hereof for all purposes. Unless otherwise defined herein, capitalized terms used herein shall have the same meanings assigned thereto in the Bond Ordinance.

SECTION 2. The aggregate principal amount of the Bonds as stated in the Bond Ordinance, including in Section 3.01 thereof and in the form of bonds located in Exhibit A of the Bond Ordinance, shall be and is hereby amended to be \$2,163,000.

SECTION 3. The maturity schedule of dates and principal amount in subparagraph (b) of Section 3.02 shall be and is hereby amended to read as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2012	\$108,150.00	2022	\$108,150.00
2013	\$108,150.00	2023	\$108,150.00
2014	\$108,150.00	2024	\$108,150.00
2015	\$108,150.00	2025	\$108,150.00
2016	\$108,150.00	2026	\$108,150.00
2017	\$108,150.00	2027	\$108,150.00
2018	\$108,150.00	2028	\$108,150.00
2019	\$108,150.00	2029	\$108,150.00
2020	\$108,150.00	2030	\$108,150.00
2021	\$108,150.00	2031	\$108,150.00

SECTION 4. The Bonds in the amount specified in Section 2 hereof are authorized to be issued in accordance with this Ordinance and the Bond Ordinance as amended hereby. Except as expressly modified by this amendatory Ordinance, all of the provisions of the Bond Ordinance are hereby ratified and confirmed and continue in full force and effect.

SECTION 5. The Mayor, the City Clerk, the Alternate City Clerk, the City Manager of the City, the President/Chief Executive Officer of the EPWU, the Vice President of the EPWU and/or the Chief Financial Officer of the EPWU and all other officers, employees and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the seal of the City and on behalf of the City all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Clerk, the Alternate City Clerk, the City Manager of the City, the President/Chief Executive Officer of the EPWU, the Vice President of the EPWU and/or the Chief Financial Officer of the EPWU and the City's Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance: (i) in order to cure any technical ambiguity, formal defect, or omission in the Ordinance or such other document; (ii) as requested or required by the Board in order to comply with the terms of the loan commitment and the program under which the loan is made, and (iii) as requested by the Attorney General or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 6. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by V.T.C.A., Government Code, Chapter 551, as amended.

SECTION 7. This Ordinance shall be in force and effect from and after its passage on the date shown below.

[Remainder of page left blank intentionally.]

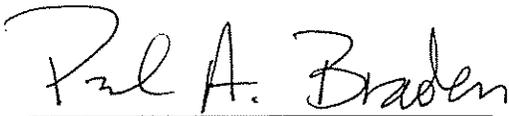
APPROVED AND ADOPTED this _____ day of _____, 2010.

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

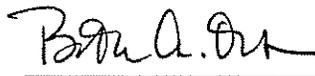
ATTEST:

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

Approved as to Form:



Paul A. Braden
Bond Counsel



Bertha A. Ontiveros
Assistant City Attorney

Approved as to Content:



Marcela Navarrete
Chief Financial Officer
El Paso Water Utilities

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

WWW.FULBRIGHT.COM

MEMORANDUM

TO: Joyce Wilson, City Manager (*via Electronic Mail*)
Richarda Duffy Momsen, City Clerk (*via Hand Delivery*)
Robert Andron, General Counsel, PSB (*via Hand Delivery*)

FROM: Paul A. Braden

DATE: January 15, 2010

RE: An Ordinance amending Ordinance No. 017241 adopted December 1, 2009 authorizing the issuance of "City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A;" and resolving matters which are necessary to effectuate said issuance [Paul A. Braden, Bond Counsel (915) 351-6053] [Public Hearing Date: January 26, 2010]

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE – City Council Meeting, Tuesday, January 26, 2010

At the December 1, 2009 City Council meeting, the City Council authorized the sale of municipal drainage utility system revenue bonds to the Texas Water Development Board (the "Board") at 0% interest rates. Due to the City receiving more favorable construction bid contracts than originally anticipated, which significantly reduced the costs of the construction projects, the Board has requested that the City revise its Ordinance to reflect the lower cost of the construction projects. As a result, the Public Service Board has requested that the City Council authorize a revised par amount and maturity schedule of the Bonds. Please accept the enclosed Ordinance amending Ordinance No. 017241 for introduction and public hearing by the City Council at its regular City Council meeting to be held on January 26, 2010.

Pursuant to Section 1201.028 of the Texas Government Code, this Ordinance is scheduled to be approved at a single meeting of City Council. Section 1201.028 provides that the introduction and adoption of an ordinance authorizing the issuance of bonds is effective immediately and a subsequent meeting is not required. Notice of this public hearing is being published as required by City Charter.

I will attend the City Council meeting to answer questions concerning this item. In the meantime, please do not hesitate to call me at 351-6053 if you need additional information.

Thank you for your attention to this matter.

Enclosures

cc: Edmund G. "Ed" Archuleta, President/CEO, PSB (*via electronic mail*)
Nicholas J. Costanzo, Vice President, PSB (*via electronic mail*)
Marcela Navarrete, Chief Financial Officer, PSB (*via electronic mail*)
Charles McNabb, City Attorney (*via electronic mail*)
Bertha A. Ontiveros, Assistant City Attorney (*via electronic mail*)
Maria Urbina, First Southwest Company (*via electronic mail*)