

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

**DEPARTMENT:** El Paso Water Utilities

**AGENDA DATE:** INTRODUCTION: January 27, 2009;  
PUBLIC HEARING: February 3, 2009

**CONTACT PERSON/PHONE:** Robert D. Andron, General Counsel, EPWU  
Paul Braden, Bond Counsel, Fulbright & Jaworski (915)  
351-6053

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

The introduction of an ordinance relating to the amendment to the credit agreement and as issuing and paying agency agreement with respect to the City of El Paso, Texas, Water and Sewer Commercial Paper notes. Attached is an individual ordinance.

**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?**

Attached is the El Paso Water Utilities Public Service Board Resolution passed and approved January 14, 2009 requesting the City Council to authorize and approve the execution of a credit agreement and an issuing and paying agency agreement.

The \$50,000,000 Water and Sewer Commercial Paper Program was initiated in 1997. The existing credit agreement with JP Morgan Chase has been in place since 2000. The existing Issuing and Paying Agency Agreement (IPA) is the original agreement with The Chase Manhattan Bank. The existing credit agreement and the IPA need updating. EPWU staff, their financial advisor, First Southwest, and their Bond Counsel, Fulbright & Jaworski, have been working together on updating the agreement with JP Morgan Chase. The Bank of New York Mellon Trust Company, N.A. is the successor of the Chase Manhattan Bank, which will be reflected in the new IPA agreement.

The new Credit agreement will result in a reduction of the Commitment by \$10,000,000 during the initial term of the Credit Agreement. This means that the Commercial Paper Program also has to be reduced by \$10,000,000, which will decrease the total program to \$40,000,000.

**PRIOR COUNCIL ACTION:**

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

The City of El Paso Water and Sewer Commercial Paper Notes, Series A, was created on October 14, 1997 by adoption of Ordinance No. 13349. The original ordinance authorized execution of a Revolving Credit Agreement and an Issuing and Paying Agency Agreement relating to the Notes.

CITY CLERK DEPT.  
09 JAN 15 PM 4:18

**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?**

The El Paso Water Utilities includes the costs of the Commercial Paper Program in its' annual budget.

**BOARD / COMMISSION ACTION:**

Resolution approved by the El Paso Water Utilities Public Service Board by Resolution on January 14, 2009.

**\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\***

**LEGAL:** (if required) \_\_\_\_\_

*Howell*

**FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD** \_\_\_\_\_

*Archie J. ... V.P. for El Archuleta*

(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:** \_\_\_\_\_

Attachments

# FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
221 N. KANSAS, SUITE 1208  
EL PASO, TEXAS 79901  
WWW.FULBRIGHT.COM

## MEMORANDUM

**TO:** Richarda Duffy Momsen, City Clerk  
Joyce Wilson, City Manager

**FROM:** Paul A. Braden

**DATE:** January 15, 2009

**RE:** An Ordinance approving and authorizing the execution of a Credit Agreement and an Issuing and Paying Agency Agreement with respect to the City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A, amending the ordinance authorizing the issuance of such notes; and resolve matters which are necessary to effectuate said matters [Paul A. Braden, Bond Counsel (915) 351-6053] [Introduction: January 27, 2009 and Public Hearing Date: February 3, 2009]

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INTRODUCTION OF ORDINANCE – City Council Meeting, Tuesday, January 27, 2009  
PUBLIC HEARING OF ORDINANCE – City Council Meeting, Tuesday, February 3, 2009

At a regular meeting held on January 14, 2009, the El Paso Water Utilities Public Service Board (“PSB”) approved the attached resolution requesting the El Paso City Council to authorize the execution of a Credit Agreement between the City and JPMorgan Chase Bank, National Association, to replace an existing Credit Agreement. In addition, the PSB has requested that City Council authorize the execution of an Issuing and Paying Agency Agreement between the City and The Bank of New York Mellon Trust Company, N.A. and approve certain technical modifications to Ordinance No. 13349 originally adopted on October 14, 1997, authorizing the issuance of such Commercial Paper Notes. This is a renewal and updating of agreements which support an existing, previously approved program. These updates take into account current market conditions.

Please accept the enclosed Ordinance for introduction at the City Council regular meeting to be held January 27, 2009 and for public hearing by the City Council at its regular meeting to be held February 3, 2009. We request that notice of this public hearing be published by the City Clerk as required by City Charter.

I will attend the City Council meeting on February 3, 2009 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: Nicholas Costanzo, Assistant General Manager, PSB *(via electronic mail)*  
Marcela Navarrete, Chief Financial Officer, PSB *(via electronic mail)*  
Charlie McNabb, City Attorney *(via electronic mail)*  
Robert D Andron, General Counsel, PSB *(via electronic mail)*  
Bertha Ontiveros, Assistant City Attorney *(via electronic mail)*  
George Williford, First Southwest Company *(via electronic mail)*

**A RESOLUTION REQUESTING THE EL PASO CITY COUNCIL TO AUTHORIZE AND APPROVE THE EXECUTION OF A CREDIT AGREEMENT AND AN ISSUING AND PAYING AGENCY AGREEMENT FOR THE CITY OF EL PASO, TEXAS, WATER AND SEWER COMMERCIAL PAPER NOTES, SERIES A; APPROVING ALL ACTION PREVIOUSLY TAKEN AND OTHER MATTERS RELATED THERETO.**

\*\*\*\*\*

**WHEREAS**, the Public Service Board (the "PSB") wishes for the City of El Paso, Texas (the "City") to authorize and approve the execution of a Credit Agreement (the "Credit Agreement") between the City and JPMorgan Chase Bank (the "Bank") to replace the existing Revolving Credit Agreement between the City and The Chase Manhattan Bank with respect to City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A (the "Notes"); and

**WHEREAS**, the new Credit Agreement will result in a reduction of the Commitment (as defined in the Credit Agreement) by \$10,000,000 during the initial term of the Credit Agreement; and

**WHEREAS**, the PSB wishes for the City to authorize and approve the execution of an Issuing and Paying Agency Agreement (the "IPA Agreement") between the City and The Bank of New York Trust Company, N.A. (the "Issuing and Paying Agent") to replace the existing Issuing and Paying Agency Agreement between the City and The Chase Manhattan Bank with respect to the Notes; and

**WHEREAS**, the PSB's staff and financial advisors recommend entering into the Credit Agreement and the IPA Agreement; and

**WHEREAS**, the PSB deems it in the public interest that the City Council authorize the execution of the Credit Agreement and the IPA Agreement and make certain technical changes to the existing commercial paper program;

**NOW, THEREFORE, BE IT RESOLVED by the EL PASO WATER UTILITIES PUBLIC SERVICE BOARD of the City of El Paso, Texas:**

**Section 1.** That the findings and recitations set out in the preambles to this Resolution are found to be true and correct and that they are hereby adopted by the PSB and made a part of this Resolution for all purposes.

**Section 2.** That the PSB requests the City Council to approve the execution of the Credit Agreement between the City and the Bank and the IPA Agreement between the City and the Issuing and Paying Agent in substantially the forms reviewed at this meeting. The PSB's Financial Advisor, First Southwest Company, and the PSB's Bond Counsel, Fulbright & Jaworski L.L.P., are authorized to bring a resolution or ordinance before the El Paso City Council to authorize the execution of the Credit Agreement, the IPA Agreement and such other documents that may be required in connection with such Agreements and to approve certain technical changes to the commercial paper program.

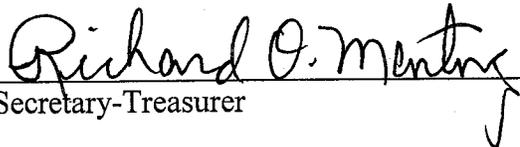
**Section 3.** That all previous actions heretofore taken by the PSB's officers and staff, its Financial Advisor and/or its Bond Counsel with respect to this matter are hereby ratified and approved.

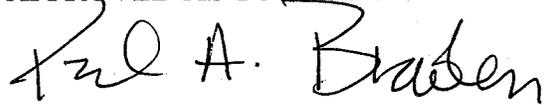
PASSED AND APPROVED at a regular meeting of the PSB, this \_\_\_\_\_ day of January, 2009, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, Sections 551.001, et. seq.

PUBLIC SERVICE BOARD

  
\_\_\_\_\_  
Chair

ATTEST:

  
\_\_\_\_\_  
Secretary-Treasurer

APPROVED AS TO FORM:  
  
\_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A CREDIT AGREEMENT AND AN ISSUING AND PAYING AGENCY AGREEMENT WITH RESPECT TO THE CITY OF EL PASO, TEXAS, WATER AND SEWER COMMERCIAL PAPER NOTES, SERIES A, AMENDING THE ORDINANCE AUTHORIZING THE ISSUANCE OF SUCH NOTES AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

WHEREAS, on October 14, 1997, the City Council of the City of El Paso, Texas (the "City"), duly adopted Ordinance No. 13349 (the "Original Ordinance") authorizing the issuance of "City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A" (the "Notes"); and

WHEREAS, the Original Ordinance authorized the execution of (i) a Revolving Credit Agreement and Alternate Credit Facilities (as defined therein), and (ii) an Issuing and Paying Agency Agreement (the "Original IPA Agreement") relating to the Notes; and

WHEREAS, the existing Revolving Credit Agreement and Original IPA Agreement need to be updated and renewed and certain technical modifications need to be made to the Original Ordinance on a basis consistent with Section 7.01 thereof; and

WHEREAS, the Public Service Board of the City has recommended and requested that the City authorize and approve the execution of (i) a credit agreement (the "Credit Agreement") between the City and JPMorgan Chase Bank, National Association (the "Bank"), and (ii) an Issuing and Paying Agency Agreement (the "IPA Agreement") between the City and the Issuing and Paying Agent designated in Section 4 hereof to replace the Original IPA Agreement; and

WHEREAS, the City Council has found and determined that it is in the best interests of the City to enter into such agreements and authorize the other action set forth below;

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

Section 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Original Ordinance.

Section 2. Amending Provisions. (a) The following definitions in Section 2.01 of the Original Ordinance are hereby amended to read as follows:

" 'Authorized Representative' shall mean each of the Mayor of the City, the President/Chief Executive Officer of the El Paso Water Utilities System, any Vice President of the El Paso Water Utilities System, the Chief Financial Officer of the El Paso Water Utilities System, and such other persons designated as Authorized Representatives by resolution of the City's Public Service Board or the City Council.

'Maximum Interest Rate' shall mean the lesser of 10% per annum or the maximum net effective interest rate permitted by law to be paid on obligations issued or incurred by the City in the exercise of its borrowing powers (currently prescribed by Chapter 1204 of the Texas Government Code, as amended, or any successor provision; provided, however, that Advances, and any promissory note delivered by the City to evidence such Advances, shall not be subject to the 10% per annum limitation described above and shall bear interest at the rates set forth in the Agreement."

(b) Section 2.01 of the Original Ordinance is hereby amended to add the following definitions:

" 'Advance' means each advance made to, or on behalf of, the City pursuant to the terms of the Agreement for the payment of principal of and interest on the Notes in an aggregate principal amount not to exceed the Commitment.

'Business Day' shall have the meaning assigned to such term in the Agreement.

'Commitment' shall have the meaning assigned to such term in the Agreement.

'Dealer' shall mean the entity so designated in Section 4.04 of this Ordinance and/or such other broker-dealer as designated by resolution of the PSB or City Council.

'Dealer Agreement' shall mean the Dealer Agreement approved and authorized to be entered into by Section 4.04 of this Ordinance, as from time to time amended or supplemented, or any subsequent agreement with a successor Dealer as authorized by resolution of the PSB or City Council.

'PSB' shall mean the Public Service Board of the City.

'Substitute Issuing and Paying Agency Agreement' shall mean a substitute agreement for the Issuing and Paying Agency Agreement as contemplated by Section 4.03 hereof."

(c) Section 3.14 of the Original Ordinance is hereby amended to add Section 3.14(c) to read as follows:

"Each Authorized Representative is hereby authorized to act on behalf of the City to enter into and execute, from time to time, any agreements with the Lender or with any successor thereto or substitute thereof in order to extend the term of any Revolving Credit Agreement or Alternate Credit Facility."

(d) Section 4.03 of the Original Ordinance is hereby amended to add a second paragraph to read as follows:

"The City also reserves the right to enter into a Substitute Issuing and Paying Agency Agreement, and each Authorized Representative is hereby authorized to act on behalf of the City to execute such Substitute Issuing and Paying Agency Agreement on such terms that are approved by the officer executing such Substitute Issuing and Paying Agency Agreement. Each Authorized Representative is hereby further authorized to act on behalf of the City to enter into any supplemental agreements with the Issuing and Paying Agent or with any successor thereto or substitute thereof in order to implement the functions of the Issuing and Paying Agent or Registrar with respect to the Notes."

Section 3. Credit Agreement. (a) The Credit Agreement, substantially in the form attached hereto as Exhibit A, is hereby approved, and shall be entered into with the Bank. The form of the Loan Note substantially in the form contained in the Credit Agreement is approved with the interest rate payable thereon to be determined as set forth therein. Each Authorized Representative is hereby authorized to act on behalf of the City to approve all final changes to, and execute and deliver, the Credit Agreement and the Loan Note, and the City Clerk is hereby authorized to attest thereto and affix the City's seal thereon (as required by such agreements). Each Authorized Representative is hereby further authorized to enter into any supplemental agreements with the Bank on behalf of the City or with any successor thereto or substitute thereof in order to implement the functions of the Bank with respect to the Notes.

(b) The Credit Agreement shall not be effective until (i) it is executed by both parties, (ii) approved by the Attorney General of the State of Texas pursuant to Chapter 1371 of the Texas Government Code, (iii) a copy of the Credit Agreement is delivered to the Issuing and Paying Agent and the Dealer, and (iv) the conditions precedent to the effectiveness of the Commitment as set forth in Section 4.1 of the Credit Agreement have been satisfied or waived. Upon its effective date, the Credit Agreement shall replace and terminate the existing credit agreement and all Notes thereafter issued and sold under the Original Ordinance shall be supported by the Credit Agreement. The Credit Agreement is an Alternate Credit Facility as contemplated by Section 3.14 of the Original Ordinance and following the effective date of the Credit Agreement, the term "Agreement" as defined in the Original Ordinance shall be deemed to mean the Credit Agreement herein approved and authorized for execution.

Section 4. Issuing and Paying Agency Agreement. (a) The Bank of New York Mellon Trust Company, N.A. is hereby appointed and confirmed to act as Issuing and Paying Agent/Registrar for the Notes. The IPA Agreement, substantially in the form attached hereto as Exhibit B, is hereby approved. Each Authorized Representative is hereby authorized to act on behalf of the City to approve all final changes to, and execute and deliver, the IPA Agreement. Each Authorized Representative is hereby further authorized to enter into any supplemental agreements with the Issuing and Paying Agent on behalf of the City or with any successor thereto or substitute thereof in order to implement the functions of the Issuing and Paying Agent or Registrar with respect to the Notes.

(b) The IPA Agreement shall replace the Original IPA Agreement and, upon the passage and adoption of this Ordinance and the execution of the IPA Agreement, the Original IPA Agreement shall be terminated and be of no further force or effect.

Section 5. Dealer Agreement. Each Authorized Representative is hereby authorized and directed to act on behalf of the City to execute any new Dealer Agreement and/or to approve, execute and deliver to the Dealer any written instruction, document or other instrument evidencing any changes, additions or amendments to an existing Dealer Agreement as may be necessary and proper to carry out the purpose and intent of this Ordinance, the Credit Agreement or the IPA Agreement. Each Authorized Representative is hereby further authorized to enter into any supplemental agreements with the Dealer (or with any successor Dealer) on behalf of the City as reasonably requested by such Dealer in connection with this Ordinance, the Credit Agreement or the IPA Agreement.

Section 6. Offering Memorandum. Each Authorized Representative is hereby authorized to act on behalf of the City to approve the form of any amendment or supplement to the Offering Memorandum as reasonably requested by the Dealer in connection with this Ordinance, the Credit Agreement or the IPA Agreement, and is further authorized to cooperate with the Dealer on behalf of the City in periodically updating and approving the Offering Memorandum.

Section 7. Commitment Limits Notes. Pursuant to Section 5.04 of the Original Ordinance, no Commercial Paper Notes will be issued which if, after giving effect to the issuance thereof and, if applicable, the immediate application of the proceeds thereof to retire other outstanding Commercial Paper Notes, the aggregate principal amount of all then outstanding Notes exceeds the amount of the then current Commitment under the Credit Agreement and/or any other Alternate Credit Facility.

Section 8. Consequence of Amendments. Nothing in this Ordinance affects or modifies any of the provisions of the Original Ordinance, except as expressly provided herein. The Original Ordinance, as amended by this Ordinance, will continue in full force and effect and is ratified and affirmed by the City.

Section 9. Public Meeting. 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 10. Further Procedures. Each Authorized Representative, the City Clerk, the Alternate City Clerk, the City Manager of the City, and all other officers, employees and agents of the City and/or the System, 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 Credit Agreement, and the IPA Agreement. In addition, prior to the approval of the Credit Agreement by the Texas Attorney General, each Authorized

Representative and the City's bond counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance: (i) in order to cure any technical ambiguity, formal defect, or omission in this Ordinance or such other document; or (ii) as requested by the Attorney General or his representative to obtain the approval of the Credit Agreement by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of this 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 11. Effective Date. This Ordinance shall be in full force and effect from and after its passage on the date shown below and it is so ordained.

*[Remainder of page left blank intentionally]*

PASSED AND ADOPTED, this \_\_\_\_\_, 2009.

CITY OF EL PASO, TEXAS

\_\_\_\_\_  
Mayor

ATTEST:

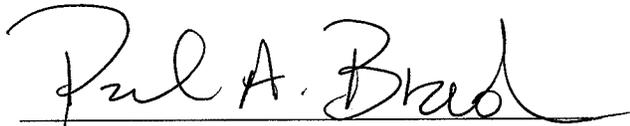
\_\_\_\_\_  
City Clerk

(City Seal)

APPROVED AS TO FORM:



\_\_\_\_\_  
Assistant City Attorney



\_\_\_\_\_  
Bond Counsel

**CREDIT AGREEMENT**

**by and between**

**CITY OF EL PASO, TEXAS**

**(El Paso Water Utilities – Public Service Board)**

**and**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**

**Dated as of January \_\_, 2009**

**City of El Paso, Texas  
Water and Sewer Commercial Paper Notes  
Series A**

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## CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of \_\_\_\_\_, 2009 (the "Agreement"), is entered into by and between the CITY OF EL PASO, TEXAS (the "City") and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association (the "Bank").

### ARTICLE I DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement or by reference to another document or agreement, the following terms used in this Agreement shall have the following respective meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Advance" means each Advance made by the Bank to the City pursuant to Section 3.2 of this Agreement for the payment of principal of and interest on the Notes in an aggregate principal amount not to exceed the Commitment.

"Act" means Chapter 1371, Texas Government Code, as amended.

"Authorized Person" means the President/Chief Executive Officer, any Vice President and/or the Chief Financial Officer of the City's Water Utilities System, each acting singly, or such other persons as may be otherwise designated in writing by the City to the Bank.

"Authorizing Ordinance" means the ordinance of the City dated \_\_\_\_\_, 2009, approving the Agreement, the Issuing and Paying Agency Agreement and making certain other changes to the original Commercial Paper Ordinance.

"Bank Note" means the promissory note of the City delivered to the Bank to evidence Advances from time to time made by the Bank under the Commitment, in the form of Exhibit C attached hereto.

"Bank Rate" means for any day, the highest of (i) Prime Rate plus 1.5%, (ii) the Federal Funds Rate plus 2%, or (iii) 8.5%; *provided however*, under no circumstances shall such rate exceed the Highest Lawful Rate; *provided further, that at no time shall the Bank Rate be less than the applicable rate of interest on the Notes*. Each change in the Bank Rate shall take effect at the time of such change in such Prime Rate or the Federal Funds Rate, as the case may be. Each determination of the Bank Rate by the Bank will be conclusive and binding on the City absent manifest error.

"Bankruptcy Code" means 11 U.S.C. Section 101, *et seq.*, as amended, and any successor statute thereto.

"Bond Ordinance" means, collectively, the ordinances of the City authorizing the issuance of the Bonds.

“Bonds” shall mean any and all of the Senior Lien Bonds or the Junior Lien Bonds, or both as the context may indicate.

“Business Day” means any day other than (i) a Saturday, Sunday, or other day on which commercial banks located in the States of New York or Texas are authorized or required by law or executive order to close or (ii) a day on which the New York Stock Exchange is closed.

“City” means the City of El Paso, Texas.

“Commitment” means the obligation of the Bank to make Advances from time to time under the commitment to fund payment of the principal of and interest on Notes at maturity and includes the amount of any outstanding and unpaid Advances.

“Dealer” means Merrill Lynch, or any successor thereto or substitute thereof.

“Dealer Agreement” means the Tax Exempt Commercial Paper Dealer Agreement, dated as of October 14, 1997 between the City and the Dealer (together with any amendments, supplements or replacements thereto or any successor agreement thereto).

“Debt” means, as applied to the City, at any date all System obligations for borrowed money of, or all obligations of any other Person guaranteed by, the City evidenced by bonds, debentures, notes, or other similar instruments payable from Net Revenues.

“Default Rate” means the Bank Rate plus 3.0%.

“Effective Date” means the date on which this Agreement is approved by the Attorney General of the State of Texas and the other conditions set forth in Section 4.1 hereof have been satisfied or waived.

“Event of Default” means each of the conditions or events described in Section 7.1 hereof.

“Federal Funds Rate” means, for any day, the rate of interest per annum at which overnight federal funds are offered to the Bank from time to time by banks in the interbank market, with any change in the Federal Funds Rate to become effective as of the date of any change in such Federal Funds Rate. Each determination of the Federal Funds Rate shall be conclusive and binding on the City.

“Final Date” means (i) February \_\_, 2010 or (ii) as extended pursuant to Section 3.1(c) hereof.

“Fitch” means Fitch Ratings and its successors and assigns.

“GAAP” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles City and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards City (or agencies with similar functions of comparable stature and authority within the accounting profession), or in such other statements by such other entity as may be in general use

by significant segments of the U.S. accounting profession, which are applicable to the circumstances as of the date of determination and consistently applied.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

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

"Highest Lawful Rate" means the maximum nonusurious interest rate that may, under applicable federal law and applicable state law (including specifically Chapter 1204, Texas Government Code, as amended) be contracted for, charged or received under such laws.

“Issuing and Paying Agency Agreement” means the \_\_\_\_\_ Amended and Restated Issuing and Paying Agency Agreement, dated as of \_\_\_\_\_, 2009, between the City and the Issuing and Paying Agent (together with any amendment or supplements thereto or any successor agreement thereto).

“Issuing and Paying Agent” means The Bank of New York Mellon Trust Company, N.A., or any successor thereto or substitute thereof.

“Junior Lien Bonds” means any outstanding series of bond issues of the City secured by a subordinate lien on the Net Revenues.

“Material Adverse Change” means a material adverse change in , or a material adverse effect upon, any of (a) the operations, business, Properties or financial condition of the System or (b) the legality, validity, binding effect or enforceability of this Agreement, the Note Authorization or the Bond Ordinance.

“Maximum Maturity Date” means, with respect to any Note, March 15, 2017.

“Moody’s” means Moody’s Investors Service, Inc. and its successors and assigns.

“Net Revenues” means all Gross Revenues remaining after deducting the Operation and Maintenance Expenses of the System.

“Non-Issuance Instruction” means the written instruction, in the form attached hereto as Exhibit A, given by the Bank to the City and the Issuing and Paying Agent pursuant to Section 2.2 hereof.

“Note Agreements” means the Notes from time to time issued by the City, the Note Authorization, the Issuing and Paying Agency Agreement and the Dealer Agreement.

“Note Authorization” means the Original CP Ordinance, the Authorizing Ordinance and any written direction to the Issuing and Paying Agent directing the issuance of Notes.

“Notes” means the City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A.

“Operation and Maintenance Expenses” means the reasonable and proper expenses of operating and maintaining the System, including all salaries, labor, materials, repairs and extension 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 Senior Lien Bonds or the Junior Lien Bonds shall be included as Operation and Maintenance Expenses.

“Original CP Ordinance” means Ordinance No. 13349 related to the Notes adopted on October 14, 1997, as amended and supplemented, and including the Authorizing Ordinance.

“Person” means a natural person, corporation (which shall be deemed to include a business trust), unincorporated organization, a government or any department or agency thereof, association, company, partnership, or any other entity.

“Previously Issued Senior Lien Bonds” means the following outstanding bonds of the City:

- (1) Water and Sewer Taxable Revenue Bonds, Series 1990B, authorized by ordinance duly passed and approved December 18, 1990;
- (2) Water and Sewer Revenue Bonds, Series 1999A, authorized by ordinance duly passed and approved August 31, 1999;
- (3) Water and Sewer Revenue Bonds, Series 1999B, authorized by ordinance duly passed and approved August 31, 1999;
- (4) Water and Sewer Revenue Refunding Bonds, Series 1999C, authorized by ordinance duly passed and approved November 2, 1999;
- (5) Water and Sewer Revenue Bonds, Series 1999D, authorized by Ordinance duly passed and approved November 2, 1999;
- (6) Water and Sewer Revenue Refunding Bonds, Series 2000, authorized by ordinance duly passed and approved November 21, 2000;
- (7) Water and Sewer Revenue Bonds, Series 2001, authorized by ordinance duly passed and approved August 14, 2001;
- (8) Water and Sewer Revenue Refunding and Improvement Bonds, Series 2001A, authorized by ordinance duly passed and approved December 18, 2001;
- (9) Water and Sewer Revenue Bonds, Series 2002, authorized by ordinance duly passed and approved January 14, 2002;

(10) Water and Sewer Revenue Refunding and Improvement Bonds, Series 2003, authorized by ordinance duly passed and approved October 7, 2003;

(11) Water and Sewer Revenue Bonds, Series 2003A, authorized by ordinance duly passed and approved August 26, 2003;

(12) Water and Sewer Revenue Bonds, Series 2003B, authorized by ordinance duly passed and approved December 2, 2003;

(13) Water and Sewer Revenue Refunding Bonds, Series 2004, authorized by ordinance duly passed and approved January 27, 2004;

(14) Water and Sewer Revenue Refunding Bonds, Series 2004A, authorized by ordinance duly passed and approved November 30, 2004;

(15) Water and Sewer Revenue Bonds, Series 2005A, authorized by ordinance duly passed and approved March 1, 2005;

(16) Water and Sewer Revenue Refunding Bonds, Series 2005B, authorized by ordinance duly passed and approved March 22, 2005;

(17) Water and Sewer Revenue Bonds, Series 2005C, authorized by ordinance duly passed and approved April 5, 2005;

(18) Water and Sewer Revenue Refunding Bonds, Series 2006, authorized by ordinance duly passed and approved February 14, 2006;

(19) Water and Sewer Revenue Refunding Bonds, Series 2006A, authorized by ordinance duly passed and approved November 15, 2006;

(20) Water and Sewer Revenue Refunding Bonds, Series 2007, authorized by ordinance duly passed and approved July 24, 2007;

(21) Water and Sewer Revenue Refunding Bonds, Series 2008, authorized by ordinance duly passed and approved January 15, 2008;

(22) Water and Sewer Revenue Bonds, Series 2008A, authorized by ordinance duly passed and adopted on September 16, 2008;

(23) Water and Sewer Revenue Bonds, Series 2008B, authorized by ordinance duly passed and adopted on September 16, 2008; and

(24) Water and Sewer Revenue Refunding Bonds, Series 2008C, authorized by ordinance duly passed and adopted on October 7, 2008.

“Prime Rate” means a fluctuating rate of interest per annum equal to the rate of interest most recently announced by the Bank from time to time as its U.S. Dollar prime rate, such rate to change as and when such prime rate changes.

“PSB” shall have the meaning set forth in Section 5.6 hereof.

“Rating Agencies” means Fitch, Moody’s and S&P to the extent such agencies are then rating the Notes.

“Refunding Notes” means any Notes issued by the City the proceeds of which are used solely to pay the maturing principal of and interest on previously issued Notes.

“Request for Advance” means a request for an Advance, in the form attached hereto as Exhibit B, given by the Issuing and Paying Agent on behalf of the City to the Bank pursuant to Section 3.2(c) hereof.

“S&P” means Standard & Poor’s Ratings Services, its successors and assigns.

“Senior Lien Bonds” shall mean the Previously Issued Senior Lien Bonds and each series of Additional Senior Lien Bonds from time to time hereafter issued, but only to the extent such Senior Lien Bonds remain outstanding within the meaning of the Bond Ordinance.

“Series A Notes” means the City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A.

“Special Event of Default” means each of the conditions or events described in Section 7.3 hereof.

“System” shall mean the complete waterworks plant and system of the City as it now exists 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.

“System Revenue Fund” means the Waterworks and Sewer Fund established pursuant to the Bond Ordinance.

“Term Loan” means a term loan made from the Bank to the City in accordance with Section 3.5(d) hereof. Unless the context indicates otherwise, each Term Loan shall be treated as and deemed an Advance for purposes of this Agreement.

“Term Loan Maturity Date” means the date that is three years from the Final Date.

## **ARTICLE II NOTES OPERATIONS**

### **Section 2.1    Issuance of Notes.**

(a) Pursuant to the Act, the Note Authorization, the Issuing and Paying Agency Agreement and the Dealer Agreement, the City has (i) authorized and directed the Issuing and Paying Agent to act as the City's agent in the issuance, authentication, delivery and payment of Notes and in effecting Advances hereunder, (ii) authorized and directed the Dealer to place Notes from time to time issued with the public, and (iii) provided security for the payment of principal of and interest on the Notes, the principal of and interest on the Bank Note and the obligations of the City to the Bank under this Agreement.

(b) Unless each of the City and the Issuing and Paying Agent are in receipt of a Non-Issuance Instruction from the Bank (which Non-Issuance Instruction was given in accordance with Section 2.2 hereof and has not been revoked by the Bank), then the City shall have the right from time to time to issue and sell Notes to which the Commitment has been extended pursuant to the Act, the Note Authorization and the Issuing and Paying Agency Agreement up to the maximum amounts permitted to be outstanding at any time by Section 2.3 hereof.

#### Section 2.2 Non-Issuance Instruction.

(a) Upon the occurrence or continuance of an Event of Default or a Special Event of Default, the Bank shall have the right to deliver to the City and the Issuing and Paying Agent a Non-Issuance Instruction, any such Non-Issuance Instruction to be in the form of Exhibit A attached hereto. Any Non-Issuance Instruction given by the Bank to the City and to the Issuing and Paying Agent in accordance with this Section shall specify the then existing Events of Default as being the reason or reasons to cease issuing, authenticating and delivering Notes (other than Notes permitted to be issued, authenticated and delivered as provided in subsection (b) of this Section). If the Bank shall, as permitted by this Section and as contemplated by the Note Authorization and the Issuing and Paying Agency Agreement, deliver a Non-Issuance Instruction to the City and the Issuing and Paying Agent on or before 8:30 a.m. New York City time on a Business Day, then the City shall not, and shall cause the Issuing and Paying Agent not to, issue, authenticate or deliver any Notes (other than Notes permitted to be issued, authenticated and delivered as provided in subsection (b) of this Section) from and after such Business Day until such time as all previously delivered Non-Issuance Instructions have been revoked by the Bank as provided in subsection (d) of this Section. The City shall not, under any circumstances, so long as any Non-Issuance Instruction remains in effect, request the Dealer to purchase or sell any Notes (other than Notes permitted to be issued, authenticated and delivered as provided in subsection (b) of this Section).

(b) Subsection (a) of this Section notwithstanding, the City and the Issuing and Paying Agent may issue, authenticate and deliver Notes (i) on the date of receipt of a Non-Issuance Instruction, (ii) pursuant to a written agreement between the City and the Dealer to which the Bank has previously consented in writing with respect to agreements for the sale of Notes concluded by the Dealer prior to the Dealer's receipt of notice from the Bank, the Issuing and Paying Agent or the City of a Non-Issuance Instruction, or (iii) which constitute Refunding Notes if the Non-Issuance Instruction permits the issuance of Refunding Notes. For purposes of this subsection, an agreement for the sale of Notes shall be deemed concluded when it has become a final agreement in accordance with the customary practice

of commercial paper dealers or placement agents in New York City. Nothing in this Subsection (b) shall limit the right of the Bank to exercise any other remedies under this Agreement.

(c) Concurrently with the giving of any Non-Issuance Instruction to the City and the Issuing and Paying Agent, the Bank shall give notice thereof to each Dealer and to each Rating Agency which then provides an investment rating with respect to the Notes, but the failure of the Bank to do so shall not impair the effectiveness of any such Non-Issuance Instruction.

(d) Any Non-Issuance Instruction may be revoked by the Bank at any time by written notice delivered to the City and the Issuing and Paying Agent.

### Section 2.3 Terms of Notes.

(a) The City agrees that each Note shall (i) be substantially in the form set forth in the Original CP Ordinance, (ii) be completed in accordance with this Agreement, the Issuing and Paying Agency Agreement and the Note Authorization, (iii) be dated the date of issuance thereof, (iv) be issued in registered form, without coupons, (v) have a stated maturity date which shall be a Business Day not later than the first to occur of (A) the 270th day after the date of such Note's issuance or (B) the third Business Day prior to the Final Date, (vi) be in a principal amount of \$100,000 or any integral multiple of \$1,000 in excess of such amount, and (vii) not be subject to redemption prior to stated maturity.

(b) The City further agrees that the principal amount of and interest on any Notes proposed to be issued, when added to the aggregate principal amount of and interest on all other Notes outstanding (after taking into account any Notes paid or to be paid on such proposed issuance date) on such proposed issuance date and to the principal amount of all outstanding related Advances, shall not exceed the amount of the Commitment in effect on such proposed issuance date. Upon the written request of the Issuing and Paying Agent, the Bank agrees to confirm to the Issuing and Paying Agent the excess of the Commitment in effect on the date of such request over the amount of related Advances outstanding on such date (which amount shall be determined without regard to any payment of related Advances expected to be made on such date with respect to which the Bank has received notice but not the proceeds of such payment).

(c) As contemplated by Section 5 of the Issuing and Paying Agency Agreement, all Notes shall be issued, authenticated and delivered against payment therefor and otherwise in accordance with the terms of this Agreement, the Issuing and Paying Agency Agreement and the Note Authorization, and details of such issuance, if requested in writing by the Bank, shall be transmitted to the Bank as provided in the Issuing and Paying Agency Agreement.

**ARTICLE III  
CONCERNING THE COMMITMENT**

Section 3.1 The Commitment.

(a) The City hereby requests the Bank and the Bank by this Agreement hereby establishes, on the terms and conditions hereinafter set forth, a revolving line of credit for the benefit of the City in an amount not to exceed the Commitment for the purpose of making Advances to fund the payment by the City of the principal of and interest on Notes at stated maturity in accordance with this Agreement, the Note Authorization and the Issuing and Paying Agency Agreement.

(b) On and as of the Effective Date, the amount available for making Advances under the Commitment is \$42,958,905 (representing \$40,000,000 original authorized principal of the Notes plus \$2,958,905 of interest calculated on 270 days at a rate of 10% based on a year of 365 days). The Commitment is subject to permanent reduction as provided in Section 3.6 hereof. The Commitment, and the obligation of the Bank to make Advances thereunder, shall expire on the first to occur of (i) the Final Date, (ii) the date that the amount of the Commitment is permanently reduced to \$-0- pursuant to Section 3.6 hereof, or (iii) the date the Commitment is terminated pursuant to Section 7.2 or Section 7.4 hereof.

(c) No earlier than 90 days prior to the Final Date, the City (acting through an Authorized Person) may submit a written request to the Bank that the Final Date be extended for a time mutually acceptable to the Bank and the City. Any such written request may be accompanied by requests to increase or decrease the amount, or otherwise modify the terms and conditions, of the Commitment. The Bank agrees to consider any such request from the City and deliver the Bank's response in writing to the City within 30 days from the date of receipt of such request. The foregoing notwithstanding, the City (acting through an Authorized Person) may submit a written request to the Bank that the Final Date be extended for such period necessary to accommodate opportunities to market Notes with maturities beyond the then current Final Date, and the Bank agrees to consider any such request from the City and deliver the Bank's response in writing to the City in a timely manner. If the Bank, in its sole discretion, agrees to extend any such request, then the Bank and the City (acting through an Authorized Person) shall enter into an amendment of this Agreement and the City shall deliver a copy of any such amendment, executed by both of the parties thereto, to the Issuing and Paying Agent, the Dealer, and to the Rating Agencies then rating the Notes. Except as may be otherwise expressly provided in a particular amendment to this Agreement providing for an extension of the Final Date or an increase in the total amount of the Commitment, as the case may be, the provision of the Commitment shall be on the same terms and conditions as those set forth in this Agreement. Any request for extension of the Final Date made pursuant to this Section 3.1(c) may be in the form of Exhibit D attached hereto. Failure by the Bank to respond to any request described in this Section 3.1(c) shall be consider a rejection of such request.

Section 3.2 The Advances.

(a) On the terms and subject to the conditions of this Agreement, the Bank shall make Advances under the Commitment to the City from time to time in an aggregate principal amount at any one time outstanding not to exceed the amount of the Commitment less the principal amount of any Advances then outstanding. Within such limit, the City may, while the Commitment is in effect, borrow, prepay, repay, and reborrow Advances under the Commitment pursuant to this Section.

(b) The Advances made by the Bank under the Commitment for the payment of principal of and interest on Notes shall be evidenced by the Bank Note. The Bank Note shall be registered in the name of and payable to the Bank in the amount of the Commitment. The principal amount outstanding of the Bank Note at any time shall equal the amount of the then outstanding and unpaid Advances under the Commitment. The Bank Note shall bear interest during the same periods and at the same rates as are applicable to the Advances under the Commitment evidenced by the Bank Note, determined as provided herein in accordance with the provisions hereof. The principal of the Bank Note, and the interest thereon, shall be payable (and prepayable) at the same times and in the same amounts as are applicable to the related Advances evidenced by the Bank Note, determined as provided herein in accordance with the provisions hereof.

(c) In the event that the Issuing and Paying Agent, on behalf of the City, determines that it is necessary to request an Advance in order to provide for the payment of the principal of and interest on Notes when due at stated maturity, the Issuing and Paying Agent, acting on behalf of the City, shall do so by submitting to the Bank a written request to make such an Advance, such written request to be in the form of the Request for Advance attached hereto as Exhibit B, by not later than 12:30 p.m. New York City time on the same Business Day on which the making of such Advance is requested. Any Request for Advance shall (i) state the date for funding by the Bank of such Advance, which shall be a Business Day, and (ii) specify the aggregate principal amount of such Advance (which aggregate principal amount of such Advance (A) shall not exceed the aggregate principal amount of and interest on the Notes maturing on the date of such Advance and which has not been and will not be paid from the proceeds of the sale of Refunding Notes on such date or from other available funds on deposit in the Note Payment Fund (as defined in Section 6.3) on such date, (B) shall not, after the making of such Advance, exceed the amount available under the Commitment, and (C) shall be in the minimum principal amount of \$100,000). Assuming compliance by the Issuing and Paying Agent with the procedures set forth in this subsection and the conditions set forth in Section 4.2 hereof (*i.e.*, actual receipt by the Bank of a properly completed Request for Advance and no Special Event of Default has occurred and is continuing), then the Bank shall pay the Advance, in immediately available funds, to the Issuing and Paying Agent by not later than 3:00 p.m. New York City time on the date requested. In the event that the Bank determines not to pay a Request for Advance either because such Request for Advance was not properly completed or due to the existence of a Special Event of Default, the Bank shall, to the extent practicable, on the date of receipt of such Request for Advance and, in any event, not later than the Business Day following the date of receipt of such Request for Advance, so notify the Issuing and Paying Agent, such notice to set forth the existing Special Events of Default or the deficiencies in such Request

for Advance, as applicable; *provided, however*, that if the date of receipt of such Request for Advance is the requested date of the Advance, such notice shall be sent not later than 1:00 p.m., New York City time, on the date of receipt of the Request for Advance.

(d) The date and amount of each Advance, and all payments made on account thereof, shall be recorded by the Bank on its books and records, which books and records shall, absent manifest error, be conclusive as to amounts payable by the City hereunder and under the Bank Note. The Bank may, but shall not be required to, complete the schedule attached to the Bank Note to reflect the making and status of Advances thereunder and under the Commitment.

Section 3.3 Payment of Interest on Advances. The City shall pay interest on the unpaid principal amount of each Advance at a rate per annum equal to the Bank Rate; *provided* that the unpaid principal amount of any Advance not paid when due as provided in Section 3.5 hereof shall bear interest from and after the date payment was due until paid in full at the Default Rate. Accrued interest on each Advance shall be payable (i) monthly in arrears on the first Business Day of each month, (ii) on the dates provided in Section 3.5 hereof for the payment of principal of such Advance, and (iii) after the occurrence of any such date provided in Section 3.5 hereof where the principal of such Advance remains outstanding, on demand; *provided, however*, that the City shall not be required to pay interest to the Bank for the portion of any Advance used to pay interest on the Notes, if, in accordance with Section 3.5(a) hereof, the City repays such portion of any Advance used to pay interest prior to 3:00 p.m., New York City time, on the same day such Advance is made.

Section 3.4 Maximum Interest. Anything in this Agreement or the Bank Note to the contrary notwithstanding, the City shall never be required to pay unearned interest on any Advance or the Bank Note and shall never be required to pay interest on any Advance or the Bank Note at a rate in excess of the Highest Lawful Rate. If the effective rate of interest which would otherwise be payable under this Agreement and the Bank Note would exceed the Highest Lawful Rate, or if the Bank shall receive any unearned interest or shall receive monies that are deemed to constitute interest which would increase the effective rate of interest payable by the City on any Advance under this Agreement and the Bank Note to a rate in excess of the Highest Lawful Rate, then (i) the amount of interest which would otherwise be payable by the City on any Advance under this Agreement and the Bank Note shall be reduced to the amount allowed by applicable law, and (ii) any unearned interest paid by the City or any interest paid by the City in excess of the Highest Lawful Rate shall, at the option of the Bank, be either refunded to the City or credited on the principal of the applicable Advance and the Bank Note. It is further agreed that, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received by the Bank on any Advance under the Bank Note, or under this Agreement, are made for the purpose of determining whether such rate exceeds the Highest Lawful Rate applicable to the Bank, and shall be made, to the extent permitted by usury laws applicable to the Bank (now or hereafter enacted), by amortizing, prorating and spreading in equal parts during the period of the full stated term of the applicable Advances, evidenced by the Bank Note, all interest at any time contracted for, charged or received by the Bank in connection therewith. If at any time and from time to time (i) the amount of interest payable to the Bank on any date shall be computed at the Highest Lawful Rate pursuant to this Section 3.4 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable

to the Bank would be less than the amount of interest payable to the Bank computed at the Highest Lawful Rate, then the amount of interest payable to the Bank in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate until the total amount of interest payable to the Bank shall equal the total amount of interest which would have been payable to the Bank if the total amount of interest had been computed without giving effect to this Section 3.4.

Chapter 346, Texas Finance Code, as amended (which regulates certain revolving credit loan accounts and revolving tri-party accounts) shall not apply to this Agreement or the Bank Note.

Section 3.5 Payment of Advances; Conversion to Term Loan.

(a) The City shall repay each Advance on or before 3:30 p.m. New York City time on or before the Final Date, subject to conversion into a Term Loan pursuant to Section 3.5(d) hereof; *provided, however*, the City shall repay any Advance for the payment of interest only on the Notes prior to 3:00 p.m., New York City time, on the same day such Advance is made.

(b) The City may prepay any Advance in whole or in part at any time; *provided* that (i) the City (or the Issuing and Paying Agent on behalf of the City) shall give the Bank not less than one Business Day's prior written notice of each prepayment of an Advance, (ii) any partial prepayment must be in a minimum amount of \$100,000, (iii) after giving effect to such prepayment, the principal amount of any Advance remaining outstanding shall be not less than \$100,000, and (iv) each prepayment must be accompanied by the payment of accrued interest on the principal amount of the Advance prepaid to the date of prepayment. Any prepayment of Advances pursuant to this subsection shall be applied in inverse order of maturity of all then outstanding Advances under the Commitment.

(c) Unless the Bank notifies the City and the Issuing and Paying Agent that the provisions of this subsection shall not apply to any particular issuance of Notes, if the City issues Notes on any date on which a related Advance is outstanding and the proceeds of such issuance exceed the amount (if any) necessary to pay the related Notes maturing on such date, then the City shall (or the City shall cause the Issuing and Paying Agent to) prepay any such related Advances then outstanding by paying to the Bank the aggregate principal amount of such related Advances to the extent of such excess, together with interest accrued thereon to but not including the date of prepayment. Any prepayment of Advances pursuant to this subsection shall be applied in inverse order of maturity of all then outstanding Advances under the Commitment.

(d) If elected by the City, within three Business Days of the Final Date, an Advance for the payment of principal only on the Notes shall be converted into a Term Loan. Each Term Loan will accrue interest at the Bank Rate with interest payable monthly in arrears provided that the unpaid principal amount of any Term Loan not paid when due as provided in this Section 3.5 shall bear interest from and after the date payment was due until paid in full at the Default Rate. The principal of each Term Loan shall be due and payable in twelve (12) substantially equal installments due on the last business Day of each December, March,

June and September, commencing on the first such date to occur after the Final Date; *provided however*, any remaining portion of the Term Loan shall be due and payable on the Term Loan Maturity Date; *provided further*; no Term Loan shall mature after the Maximum Maturity Date. Term Loans made by the Bank under the Commitment shall be evidenced by the Bank Note.

Section 3.6 Reduction and Termination of the Commitment. The City may permanently reduce the Commitment in whole or in part upon at least five Business Days prior written notice to the Bank (a copy of which the City shall provide to the Dealer and to the Rating Agencies then rating the Notes), which written notice shall identify the Commitment and the Bank Note and specify the amount and the effective date of any such reduction; *provided* that (i) any partial reduction must be in the amount of \$1,000,000, or any integral multiple of \$100,000 in excess of such amount and (ii) the amount of the Commitment may not be reduced below an amount equal, as of the date of the proposed permanent reduction in the Commitment, to the sum of (A) the outstanding Advances plus (B) the outstanding principal amount of and interest on the Notes. Upon any reduction in whole or termination of the Commitment pursuant hereto, all outstanding Advances, accrued interest, fees and other obligations of the City hereunder (including fees due pursuant to Section 3.7(b) hereof) and under the Bank Note shall be promptly paid or repaid in full to the Bank.

Section 3.7 Facility Fee; Termination Fee; Draw Fee.(a) The City hereby agrees to pay to the Bank a facility fee (the "Facility Fee") equal to 1.50% per annum on the daily amount of the Commitment (including, for this purpose, any outstanding Advances under the Commitment and any portion of the Commitment not allocated to specific Notes). Such facility fee (i) shall accrue from the Effective Date through the first to occur of the Final Date or the date of earlier expiration or termination in whole of the Commitment and (ii) shall be payable (A) quarterly, in arrears, on each January 1, April 1, July 1, and October 1, commencing April 1, 2009 and (B) on the Final Date or the date of the earlier expiration or termination in whole of the Commitment where the Bank has no further obligation hereunder to fund Advances.

(b) The City shall not terminate this Agreement prior to the Final Date unless the City agrees to pay to the Bank, in addition to all other obligations that may be due and payable at such time, a termination fee (the "Termination Fee") equal to the Facility Fee for the period commencing on the Effective Date through the first anniversary of the Effective Date, less any Facility Fees already paid by the City to the Bank during such period. Notwithstanding the foregoing provisions of this subsection (b), no Termination Fee will be required to be paid by the City if (i) Moody's shall have lowered or withdrawn the short-term rating on the Notes below "VMIG-1" as a result of the reduction by Moody's of the senior, unsecured short-term rating of the Bank; or (ii) S&P shall have lowered or withdrawn the short-term rating on the Notes below "A-1+" as a result of the reduction by S&P of the senior, unsecured short-term rating of the Bank; or (iii) Fitch shall have lowered or withdrawn the short-term rating on the Notes below "F1" as a result of the reduction by Fitch of the senior, unsecured short-term rating of the Bank; *provided, however*, all obligations owed by the City under this Agreement including, without limitation, all principal and interest evidenced by the Bank Note and all amounts payable under Article III hereof, shall be paid by the City to the Bank at or prior to the time of termination.

Section 3.8 Payments. Except as otherwise provided herein, all payments by the City to the Bank under this Agreement and the Bank Note shall be made in United States dollars and immediately available funds by federal funds transfer to an account of the Bank designated by the Bank, so that the same is received not later than 3:30 p.m. New York City time on the due date thereof. Any payment hereunder or under the Bank Note received after such time on such due date shall be deemed received on the next succeeding Business Day and, unless such payment is made in satisfaction of Section 3.7, interest shall accrue at the Default Rate to such succeeding Business Day, as herein provided. Each payment hereunder or under the Bank Note shall be made without condition or qualification and without reduction by reason of set-off, counterclaim or otherwise, and free and clear of and without deduction or withholding for or by reason of any present or future taxes, duties, levies, imposts, deductions, or charges of any nature whatsoever.

Section 3.9 Extension of Payments. If any payment under this Agreement or under the Bank Note shall become due on a day which is not a Business Day then the due date thereof shall be extended to the next following day which is a Business Day, and such extension shall be taken into account in computing the amount of any interest or fees then due and payable hereunder or under the Bank Note.

Section 3.10 Computation of Interest and Fees. All interest and fees payable under this Agreement or under the Bank Note shall be computed on the basis of a year of 360 days and the actual number of days elapsed. Except for any amount due pursuant to Section 3.7, any amount payable by the City to the Bank hereunder or under the Bank Note that is not paid when due shall bear interest at the Default Rate, payable in full on demand.

Section 3.11 Change in Law. If any change in applicable law, treaty, regulation, guideline or directive (including, without limitation, Regulation D promulgated by the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect) or any new law, treaty, regulation, guideline or directive, or any interpretation of any of the foregoing by any governmental authority charged with the administration or interpretation thereof or any central bank or other fiscal, monetary or other authority having jurisdiction over the Bank or any Participant (as defined in Section 8.2(b)) or the transactions contemplated by this Agreement (whether or not having the force of law), or compliance therewith by the Bank or any Participant, shall (i) subject the Bank or any Participant to any tax, duty, charge, stamp tax, fee, deduction, or withholding with respect to the Commitment, the Advances, the Bank Note or this Agreement (other than any tax measured by or based upon the overall net income of the Bank or any Participant imposed by any jurisdiction having control over the Bank's or any Participant's lending branch), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any assets held by, deposits with or for the account of, or loans, advances or commitments by or any other acquisition of funds or disbursements by an office of the Bank nor any Participant, or (iii) change the basis of taxation of payments due the Bank or any Participant under this Agreement or the Bank Note and the result of any of the foregoing is to increase the cost to or impose an additional cost on the Bank or any Participant of making any payment or maintaining any Advance or the Commitment, to reduce the amount of any payment (whether of principal, interest, or otherwise) receivable by the Bank or any Participant, or to require the Bank or any Participant to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case by an amount which the Bank or any

Participant in its sole judgment deems material, then (1) the Bank or such Participant shall promptly notify the City in writing of the happening of such event, (2) the Bank or such Participant shall promptly deliver to the City a certificate stating the change which has occurred or the reserve requirements, tax or other costs or conditions which have been imposed on the Bank or such Participant or the request, direction, or requirement with which the Bank or such Participant has complied, together with the date thereof, the amount of such increased costs, reduction of payment and the way in which such amount has been calculated, and (3) the City shall pay to the Bank or such Participant, from time to time as specified by the Bank (but in no event shall any such payment be required earlier than the 30th day next following the date of such notice of increased costs by the Bank or such Participant), such amount or amounts as will compensate the Bank or such Participant for such additional cost, reduction or payment effective as of the date of the happening of the event. The City agrees that a written statement as to such increased costs or reductions incurred by the Bank or such Participant submitted by the Bank or such Participant to the City in accordance with this Section shall be conclusive as to the amount thereof, absent manifest error.

Section 3.12 Margin Regulations. No portion of the proceeds of any Advances under this Agreement and the Bank Note shall be used by the City (or the issuing and Payment Agent or any other Person on behalf of the City) for the purpose of “purchasing” or “carrying” any margin stock or used in any manner which might cause the borrowing or the application of such proceeds to violate Regulation G, Regulation U, Regulation T, or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of the Board or to violate the Securities Exchange Act of 1934, as amended, in each case as in effect on the date or dates of such Advances and such use of proceeds.

#### **ARTICLE IV CONDITIONS PRECEDENT**

Section 4.1 Conditions Precedent to Commitment. The obligation of the Bank to establish the Commitment and execute and deliver this Agreement is subject to the satisfaction of each of the following conditions precedent on or before the Effective Date, all in form and substance satisfactory to the Bank:

(a) Approvals. The Bank shall have received copies of all action taken by the City approving the execution and delivery by the City of this Agreement, the Bank Note, the Authorizing Ordinance and the Issuing and Paying Agency Agreement in each case certified by an authorized official of the City as complete and correct in all material reports as of the date hereof.

(b) Incumbency of City Officials. The Bank shall have received an incumbency certificate of the City in respect of each of the officials who is authorized to (i) sign this Agreement, the Bank Note, the Authorizing Ordinance and the Issuing and Paying Agency Agreement on behalf of the City and (ii) take actions for the City under this Agreement, the Bank Note, the Authorizing Ordinance and the Issuing and Paying Agency Agreement.

(c) Opinion of Bond Counsel. The Bank shall have received a written opinion of Fulbright & Jaworski L.L.P., addressed to the Bank, dated the Effective Date to the effect that (i) this Agreement, the Bank Note, the Authorizing Ordinance and the Issuing and Paying Agency Agreement have been duly authorized, executed and delivered by the City and are the valid and binding obligations of the City enforceable in accordance with their respective terms, (ii) the execution and delivery by the City of this Agreement, the Bank Note, the Authorizing Ordinance and the Issuing and Paying Agency Agreement and the performance by the City of its obligations thereunder do not and will not violate the Constitution or laws of the State of Texas, (iii) the City has taken all actions, and has obtained any approvals, necessary to the authorization, execution, delivery, and performance by the City of this Agreement, the Bank Note, the Authorizing Ordinance and the Issuing and Paying Agency Agreement.

(d) Opinion of Bond Counsel on Behalf of the City. The Bank shall have received a written opinion of Fulbright & Jaworski L.L.P., addressed to the Bank, dated the Effective Date, (i) to the extent not covered by paragraph (c) above, as to the matters set forth in Sections 5.1, 5.2, 5.3, 5.5, and 5.7, and (ii) as to such other matters as the Bank (or their counsel) may reasonably request; provided, however, that such bond counsel shall not opine to the Original CP Ordinance, the Notes, or the Dealer Agreement.

(e) Attorney General Opinion. The Bank shall have received the approving opinion of the Attorney General of Texas with respect to this Agreement.

(f) Issuing and Paying Agency and Dealer Agreements. The Bank shall have received copies of each of the Issuing and Paying Agency Agreement and the Dealer Agreement, duly executed by the parties thereto, which agreements shall be in full force and effect.

(g) Notes. The Bank shall have received a photocopy of the form of the applicable Notes.

(h) Bank Note. The Bank shall have received the executed Bank Note.

(i) No Default, Etc. (i) No Event of Default or Special Event of Default shall have occurred and be continuing as of the date hereof or will result from the execution and delivery by the City of this Agreement and the Issuing and Paying Agency Agreement and the Dealer Agreement, and the establishment of the Commitment, (ii) the representations and warranties and covenants made by the City in Articles V and VI hereof shall be true and correct in all material respects on and as of the Effective Date, as if made on and as of such date, and (iii) the Bank shall have received a certificate, given and made as of the Effective Date, from the City to the foregoing effect.

(j) Ratings. The Bank shall have received written confirmation that the Notes have been rated A-1+ (or its equivalent) by two of the three Rating Agencies.

(k) Authorizing Ordinance. The Bank shall have received a certified copy of the ordinance approving this Agreement.

(l) Other Documents. The Bank shall have received such other documents, certificates, and opinions as the Bank or its counsel shall have reasonably requested.

(m) Fees and Expenses. Andrews Kurth LLP, legal counsel to the Bank, shall have received all fees and expenses (within the limits specified in Section 8.5 hereof) due and payable related to this Agreement.

Section 4.2 Conditions Precedent to Making Advances. The obligation of the Bank to make an Advance under the Commitment is subject to the following conditions precedent on or before the time on which the Advance is to be made:

(a) Request for Advance. As provided in Section 3.2 hereof, the Bank shall have received, by not later than 12:30 p.m. New York City time on the Business Day on which the making of such Advance is requested, a properly completed Request for Advance.

(b) No Special Event of Default. No Special Event of Default shall have occurred and then be continuing.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

To induce the Bank to enter into this Agreement, extend the Commitment and make Advances, the City represents and warrants to the Bank on the Effective Date and on each Credit Extension Date that:

Section 5.1 Due Existence. The City is a municipal corporation duly organized and validly existing under the constitution and the laws of the State of Texas, and has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform all of its obligation hereunder.

Section 5.2 Authorization; No Conflict. The execution and delivery of this Agreement, the execution and delivery of the Bank Note, the authorization and issuance of the Notes, the execution and delivery of the other applicable Note Agreements, the borrowings represented by the Advances hereunder and the performance by the City of its obligations under this Agreement, the Bank Note and the Note Agreements, are within the City's powers, have been duly authorized by all necessary governmental action, have received all necessary approval (if any shall be required), and do not and will not contravene or conflict with any material provision of law or of the Constitution of the State of Texas or of any agreement binding upon the City.

Section 5.3 Valid and Binding Nature. This Agreement, the Bank Note (to the extent of Advances made thereunder), and the Note Agreements are, and the Notes when issued will be, legal, valid, and binding obligations of the City enforceable against the City in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforceability of the rights of creditors generally.

Section 5.4 Litigation and Contingent Liabilities. No litigation, arbitration proceedings, or governmental proceedings are pending or threatened against the City which question or seek to limit the right, power, or authority of the City to enter into this Agreement, to issue the Bank Note, to issue the Notes, to enter into the other Note Agreements or to perform any of its obligations under this Agreement, the Bank Note or the Note Agreements or that would, if adversely determined, materially and adversely affect the financial condition or operations of the System or the City.

Section 5.5 Governmental Approvals. No approval, permit, consent or authorization of, or registration or filing with, any governmental or public agency, authority or Person not already obtained or made is required on the part of the City in connection with the execution and delivery by the City or the performance of any of its obligations under this Agreement, the Bank Note or the Note Agreements.

Section 5.6 Financial Statements. The balance sheet of the El Paso Water Utilities-Public Service Board ("PSB") dated as of February 29, 2008, and the related statements of income and funds used for construction for the fiscal year then ended, accompanied by the auditors' report of Gibson Ruddock Patterson LLC (which report is subject to the qualifications contained therein), copies of which have been furnished to the Bank, fairly present the financial condition of the System as of such date and the results of the operations of the System for the period ended on such date, all in accordance with GAAP, and since February 29, 2008, there has been no Material Adverse Change in such financial condition.

Section 5.7 No Default. The City is not in default in the performance, observation or fulfillment of any of the obligations, covenants or conditions contained herein or in any other resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the City to operate the System or to perform its obligations hereunder or which would affect the enforceability hereof.

Section 5.8 Environmental Permits. The ongoing operations of the System comply in all respects with all environmental laws, except such noncompliance which would not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Change. The System has obtained all licenses, permits, authorizations and registrations required under any environmental law ("Environmental Permits") and necessary for its ordinary course operations except where the failure to obtain such Environmental Permits would not reasonably be expected to result in a Material Adverse Change. All such Environmental Permits are in good standing and the System is in compliance with all material terms and conditions of such Environmental Permits.

Section 5.9 Environmental Claims. Neither the System nor any of its present property or operations is subject to any outstanding written order from or agreement with any Governmental Authority nor subject to any judicial or docketed administrative proceeding respecting any environmental law or environmental claim which could reasonably be expected to result in a Material Adverse Change. There are no conditions or circumstances existing with respect to any Property, or arising from operations prior to the Closing date, of the System that would reasonably be expected to result in a Material Adverse Change.

Section 5.10 Full Disclosure. To the best of the City's knowledge none of the representations or warranties made by the City in this Agreement as of the date such representations and warranties are made or deemed made, and none of the statements contained in each exhibit or any certificate furnished by or on behalf of the City contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading.

## **ARTICLE VI COVENANTS**

From the Effective Date and so long as the Bank is obligated to make Advances hereunder and under the Bank Note and until the payment in full of all of the obligations of the City under this Agreement and the Bank Note, the PSB shall unless the Bank otherwise consents in writing:

Section 6.1 Reporting Requirements. The PSB will deliver to the Bank:

(a) as soon as available, but not later than 90 days after the close of each of the first three quarters of each fiscal year of the PSB, the balance sheet as of the close of each such quarter for the System Revenue Fund of the PSB, and the statement of income and retained earnings and of changes in financial position for each such quarter and that portion of the fiscal year ending with such quarter for the System Revenue Fund of the PSB certified by an Authorized Person as being complete and correct and fairly presenting the financial condition and results of operations of the System;

(b) as soon as available, but not later than 180 days after the close of each of fiscal year, a complete copy of the PSB Annual Report, which shall include at least the balance sheet as of the close of such fiscal year for the System Revenue Fund, and the statement of income and retained earnings and of changes in financial position for such fiscal year for the System Revenue Fund certified by an independent accountant selected by the PSB. (The current accountants are acceptable to the Bank; the PSB shall notify the Bank of any change in accountants, and such accountants shall be deemed acceptable to the Bank unless the Bank otherwise notifies the PSB after such notification. The Banks' consent shall not be unreasonably withheld.) Such certificate shall not be qualified or limited with respect to the System Revenue Fund because of restricted or limited examination by such accountant of any material portion of the PSB's records with respect to the System Revenue Fund;

(c) concurrently with the delivery of the financial statements referred to in Section 6.1(a) and (b) above, a certificate of an Authorized Person (i) stating that, to the best of such officer's knowledge, the PSB, during such period, has observed and performed all of its covenants and other agreements, and satisfied every condition contained in this Agreement to be observed, performed or satisfied by it, and that such officer has obtained no knowledge of any Special Event of Default or Event of Default except as specified (by applicable Section reference) in such certificate, and (ii) showing in detail the calculations supporting such statement in respect of Section 6.8;

(d) such other statements, lists of property and accounts, budgets, forecasts or reports with respect to the System as the Bank may reasonably request; and

(e) at the request of the Bank, a statement of the amount of Notes outstanding and the interest rates on such Notes.

Section 6.2 Accounting Records. The PSB shall maintain adequate books, accounts and records with respect to the System in accordance with GAAP, and permit employees or agents of the Bank at any reasonable time to inspect System properties, and to examine or audit the books, accounts and records of the System and make copies and memoranda.

Section 6.3 Note Payment Fund. (a) The PSB will create and establish with the Issuing and Paying Agent a separate and special fund to be designated as the City of El Paso, Texas, Water and Sewer Commercial Paper Series A Note Payment Fund (the "Note Payment Fund"). The Note Payment Fund shall contain the following accounts: (i) Interest Payment Account; and (ii) Principal Payment Account (which may contain within it one or more subaccounts for the Term Loans). Moneys on deposit in the Note Payment Fund shall be used to pay principal of and interest on Notes and the Bank Note as the same shall become due and payable as provided herein and in the Original CP Ordinance and to repay any borrowings or other amounts payable pursuant to this Agreement.

(b) All proceeds of borrowings under this Agreement, all remarketing proceeds received by the PSB with respect to any Notes, and all other available funds of the PSB that the PSB may elect at its sole option to deposit therein, shall be deposited into the Note Payment Fund and used to pay the principal of, premium, if any, and interest on the Notes and the Bank Note.

(c) Pending the expenditure of moneys in the Note Payment Fund for authorized purposes, moneys deposited in said Fund may be invested by the Issuing and Paying Agent at the direction of the PSB in Eligible Investments (as defined in the Original CP Ordinance). Any income received from such investments shall be credited to the Note Payment Fund.

Section 6.4 Payments. The Notes and the Bank Note are special obligations of the City payable from and secured solely by the funds pledged therefore pursuant to the Original CP Ordinance. The PSB agrees to make payments into the Note Payment Fund at such times and in such amounts as are necessary to provide for the full payment of the principal of and the interest on the Notes and the Bank Note when due.

Section 6.5 Note Payment Fund. (a) The PSB covenants to deposit all Gross Revenues into the System Revenue Fund (as defined in the Original CP Ordinance). Moneys on deposit in the System 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 System Revenue Fund to the other Funds as set forth in the Original CP Ordinance, in the order of priority, in the manner, and in the amounts set forth therein.

(b) To provide security for the payment of the principal of and interest on the Notes, the Bank Note and any other amounts due under this Agreement as the same shall become due and payable, the City has granted a lien on and pledge of (subject only to the provisions of the Original CP Ordinance and the Bond Ordinance permitting the application thereof for purposes and on the terms and conditions set forth therein): (i) the proceeds from (A) the sale of the Bonds hereafter issued and to be used to pay outstanding Notes or the Bank Note and (B) the sale of Refunding Notes, or the Bank Note, (ii) borrowings under this Agreement (but only for the purpose of paying the principal of the Notes when due), (iii) the amounts held in the Note Payment Fund until the amounts deposited therein are used for authorized purposes; *provided, however*, amounts in the Note Payment Fund attributable to and derived from borrowings under and pursuant to this Agreement shall be used only to pay the principal of and interest on the Notes in full, (iv) the Net Revenues, and (v) the amounts remaining on deposit in the Note Construction Fund (as defined in the Original CP Ordinance) after the payment of all Project Costs (as defined in the Original CP Ordinance.) Such lien and pledge of the Net Revenues is subordinate only to the prior and superior lien on and pledge securing the payment of the Senior Lien Bonds and the Junior Lien Bonds and is on a parity and of equal dignity with the lien and pledge securing the payment of the Notes and the Bank Note. Notwithstanding anything herein to the contrary, any amount payable pursuant to the terms of this Agreement (except for fees payable pursuant Section 3.7 hereof) or the Bank Note is only payable from Net Revenues.

(c) Only amounts remaining in the System Revenue Fund after satisfying the above obligations and remedying all deficiencies accumulated from prior periods shall be paid to the City's General Fund and Improvement Fund and only in accordance and as permitted by the Bond Ordinance.

Section 6.6 Compliance with Bond Ordinance and Original CP Ordinance. The covenants and agreements contained in the Bond Ordinance and the Original CP Ordinance are hereby incorporated herein and shall be deemed to be for the benefit and protection of the Bank and its rights under and pursuant to this Agreement in like manner as applicable to the Previously Issued Senior Lien Bonds and the Junior Lien Bonds; *provided, however*, in the event of any conflict between the terms, covenants and agreements contained in the Original CP Ordinance and the terms, covenants and agreements contained in the Bond Ordinance, the provisions of the Bond Ordinance shall control over the provisions thereof.

Section 6.7 Rate Covenant. The PSB covenants that it will establish rates for water and sewer services supplied by the System which shall provide or yield revenues sufficient to pay Operation and Maintenance Expenses of the System and an additional amount equal to 150% of the sum of (a) the aggregate amount required to be paid in such year for principal and interest on all outstanding Senior Lien Bonds, the Junior Lien Bonds, the Bonds, and any Additional Bonds and (b)(i) until paid in full, the obligations of the City to the Bank pursuant to the Bank Note.

Section 6.8 Punctual Payment. The PSB will punctually pay or cause to be paid (i) the principal and interest due on the Notes and the Bank Note and (ii) the fees owed to the Bank under this Agreement, in strict conformity with the terms hereof, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement.

Section 6.9 Environmental Laws. The PSB will, conduct its operations and keep and maintain its Property in compliance with all environmental laws, the failure with which to comply could reasonably be expected to result in a Material Adverse Change.

Section 6.10 Use of Proceeds. The PSB will expend the proceeds of each Advance solely for the purposes permitted by this Agreement and as stated in the Request for Advance with respect thereto.

Section 6.11 Other Bank Facilities. Except in connection with the issuance of Bonds, the PSB shall not enter into or become liable under any other bank facilities with respect to the System unless such other bank facility are pari passu with the Bank Note and all other obligations to the Bank under this Agreement.

Section 6.12 Notices to Rating Agencies. The PSB will notify the Rating Agencies then rating the Notes in a timely manner of any matter with respect to which the PSB has separately agreed with any such Rating Agencies to provide such notice, and the PSB shall promptly provide the Bank with a copy of such notice.

Section 6.13 Performance of Note Agreements. The PSB will perform all of its obligations under each of the Note Agreements.

Section 6.14 Notice of Certain Events. The PSB will promptly, and in any event within five Business Days of the PSB becoming aware thereof, notify the Bank in writing of the occurrence of (i) any Event of Default or Special Event of Default, or any event which with the passing of time or the giving of notice or both would become an Event of Default or Special Event of Default, describing the nature thereof and the action the PSB proposes to take with respect thereto or (ii) any litigation or administrative proceedings against the PSB of which the PSB has received actual notice and in which there is a reasonable possibility of an adverse determination and which may have a Material Adverse Effect on (A) the financial condition of the PSB or (B) the PSB's ability to perform its obligations under this Agreement, the Bank Note or the Note Agreements.

Section 6.15 Maintenance of Issuing and Paying Agent and Dealer. The PSB will maintain in place an Issuing and Paying Agent under the Issuing and Paying Agency Agreement and a Dealer for the Notes, and obtain the prior written consent of the Bank (which consent shall not be unreasonably withheld) to any change in the Persons acting as Issuing and Paying Agent or Dealer.

Section 6.16 No Conflicting Agreements. The PSB will not enter into any agreement containing any provision which would be violated or breached by the performance of its obligations hereunder, under the Bank Note or under the Note Agreements.

Section 6.17 Amendments to Note Agreements. The PSB will not amend or modify any provision of, or give any consent or grant any waiver under, any Note Agreement without first obtaining the Bank's written consent, such consent not to be unreasonably withheld.

Section 6.18 Total Outstanding. The PSB will not permit the aggregate maturity value of all Notes and Advances outstanding at any time to exceed the Commitment at such time.

Section 6.19 Tax Exemption. The PSB will not take any action, or omit to take any action, under present or future laws, rules, regulations, or official interpretations thereof which, if omitted or taken, would cause interest on the Notes to be includable in the gross income of the owners thereof for federal tax purposes.

Section 6.20 Offering Statement. Other than as expressly consented to in writing by the Bank, the PSB will not refer to the Bank in any offering or reoffering document with respect to the Notes or make any changes in reference to the Bank in any revision of such Offering Statement or any such offering or reoffering document without the Bank's prior written consent thereto, which consent shall not be unreasonably withheld.

Section 6.21 Further Assurance. The PSB will execute and deliver to the Bank all such documents and instruments as may be necessary or reasonably required by the Bank to enable the Bank to exercise and enforce its rights under this Agreement, the Bank Note and the Note Agreements.

## **ARTICLE VII EVENTS OF DEFAULT**

Section 7.1 Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

(a) After receipt of an invoice therefor, the PSB fails to pay any fees, expenses or other amounts (other than an Advance) payable hereunder within five (5) Business Days of the later of (i) the date of receipt of such invoice or (ii) the due date set forth in such invoice provided that the Bank shall have sent written notice thereof to the PSB; or

(b) A breach or failure of performance by the PSB of any covenant contained in Section 6.19 hereof; or

(c) A breach or failure of performance by the PSB of any covenant, condition, or agreement on its part to be observed or performed contained herein (other than a breach or failure covered by another paragraph in this Section 7.1) and any such breach or failure (if capable of remedy) continues for a period of 10 days after written notice thereof from the Bank to the PSB; or

(d) Any of the PSB's representations or warranties made or deemed made herein or in any statement or certificate at any time given pursuant hereto or in connection herewith proves at any time to have been false or misleading in any material respect when made and any such false or misleading statement or certificate (if capable of remedy) continues for a period of 10 days after notice thereof from the Bank to the PSB; or

(e) (i) The principal of or interest on any Debt or the maturity of any such Debt having an aggregate principal amount of more than 5,000,000 has been accelerated or such obligation is otherwise required to be prepaid prior to the stated maturity thereof or (ii) any event shall occur permitting the holder of any Debt to accelerate such Debt or require

repayment thereof prior to stated maturity thereof, but not including as such an event the exercise by the PSB of an option to prepay any Debt prior to the stated maturity thereof.

Section 7.2 Actions Taken in Respect of Events of Default. Upon the occurrence and continuance of an Event of Default, the Bank may take one or more of the following actions after giving a Non-Issuance Instruction to the City and the Issuing and Paying Agent as provided in Section 2.2 hereof: By written notice delivered to the City and the Issuing and Paying Agent, (i) terminate the Commitment in whole (except for the obligation of the Bank, existing as of the time of the written notice to terminate the Commitment in whole, to make Advances to fund then outstanding Notes) or (ii) to the extent permitted by law, declare all amounts payable by the City to the Bank hereunder and under the Bank Note, including, without limitation, all outstanding Advances, to be forthwith due and payable without presentment, demand, protest, all of which are expressly waived by the City; *provided, however*, notwithstanding anything to the contrary stated herein, upon the occurrence of an Event of Default described in Section 7.1 hereof, the Bank shall not declare any amounts payable (except for fees due to the Bank pursuant to Section 3.7 hereof) by the City to the Bank hereunder and under the Bank Note, including, without limitation, all outstanding Advances, to be due and payable prior to \_\_\_\_\_ of the calendar year immediately following the date the PSB next sets rates for water and sewer services under the System; *provided, further*, nothing in this Section 7.2 shall extend the final due date of any Term Loan hereunder.

Section 7.3 Special Events of Default. Each of the following shall constitute a Special Event of Default under this Agreement:

(a) The City fails to pay the principal amount of any Advance on the scheduled due date or the interest on any Advance within five (5) Business Days of the scheduled due date; or

(b) The City (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or of a substantial part of its property or assets, (ii) admits in writing its inability, or is generally unable, to pay its Debt as such Debt become due, (iii) makes a general assignment for the benefit of creditors or declares a moratorium with respect to its Debt, (iv) commences a voluntary case under the Bankruptcy Code, (v) files a petition seeking to take advantage of any other laws relating to bankruptcy, insolvency, reorganization, liquidation, winding-up or composition or adjustment of Debts, or (vi) acquiesces in writing to, or fails to controvert in a timely and appropriate manner, any petition filed against it in an involuntary case filed under the Bankruptcy Code (as now or hereafter in effect) seeking liquidation or reorganization with respect to a substantial part of its assets, and such case or proceeding is not stayed or dismissed within 60 days of the filing of such petition; or

(c) Without the application or consent of the City, a case or other proceeding is commenced in any court of competent jurisdiction seeking (i) the reorganization, dissolution, winding liquidation or composition or readjustment of Debt of the City or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of the City or any substantial part of the assets thereof, and such case or proceeding continues undismissed, or an order, judgment or decree approving or ordering any of the foregoing is entered and

continues unstayed and in effect, for a period of 60 consecutive days, or an order for relief in respect of the City is entered in an involuntary case under the Bankruptcy Code (as now or hereafter in effect); or

(d) The State of Texas or any other governmental authority having jurisdiction over the City imposes a debt moratorium, debt restructuring or comparable restriction on repayment when due and payable of the principal of or interest on any of the City's Debt; or

(e) The authority of the City under the Original CP Ordinance is limited as a result of federal, state, or municipal legislative or administration action or a final non-appealable judgment by any court having jurisdiction over the City, so that the City or the PSB is unable set rates or collect System revenues in a timely manner sufficient in amount to pay the principal of and interest on any Advance or any Note when due; or

(f) (i) This Agreement in its entirety, (ii) any provision hereof relating to the City's ability (A) to make payments to the Bank for principal and interest on the Bank Notes, (B) to make payments of principal and interest on the Notes or (C) to raise necessary funds to meet such payment obligations, or (iii) any other material provision hereof relating to the payment of principal and interest, as a result of federal, state, or municipal legislative or administration action or a final non-appealable judgment by any court having jurisdiction over the City ceases to be valid and binding on the City in accordance with its terms, or is declared to be null and void in a final non-appealable judgment by a court of competent jurisdiction, or the validity or enforceability thereof is contested by the City or a proceeding is commenced by the City seeking to establish the invalidity or unenforceability thereof; or

(g) The City fails to pay when due and payable, after giving effect to any applicable grace period, the principal of and interest on the Notes (other than the principal of and interest on the Notes for which an Advance has been requested) or any of its Debt; provided, however, the failure to make payment of Debt in the form of a guaranty by reason of the guarantor successfully interposing a valid defense to payment or by successfully asserting a right to setoff, counterclaim, or recoupment with respect to such payment shall not constitute a failure of payment for purposes of this Section 7.3(g).

Section 7.4 Actions Taken in Respect of Special Events of Default. Upon the occurrence and continuance of a Special Event of Default, the Bank may take one or more of the following actions: (i) those actions set forth in Section 7.2 above, (ii) by written notice delivered to the City and the Issuing and Paying Agent, (A) terminate the Commitment in whole or (B), to the extent permitted by law, declare all amounts payable by the City to the Bank hereunder and under the Bank Note, including, without limitation, all outstanding Advances, to be forthwith due and payable, whereupon such amounts shall immediately become due and payable, without presentment, demand, protest, all of which are expressly waived by the City, and/or (iii) pursue any other remedy available to the Bank at law or in equity; *provided, however* the failure of the Bank to provide the written notice provided for in clause (ii) above of this Section shall not preclude the Bank from exercising the remedies provided to the Bank in such clause (ii); and *provided, further* that, to the extent that the Bank pursues the rights granted to it under Section 7.4(ii)(B) above, the City shall pay to the Bank such amounts from any unrestricted funds legally available, and following the default appropriated by the City, for such purpose as described

above and to the extent that the City's legally available and appropriated funds are insufficient to pay such amounts upon demand, the amount of such deficiency (except for fees due to the Bank pursuant to Section 3.7) shall not become due and payable prior to the earlier to occur of (x) the date on which the City has appropriated unrestricted legally available funds to pay all or a portion of the deficiency or (y) \_\_\_\_\_ of the calendar year immediately following the date the PSB next sets rates for water and sewer services under the system; and *provided, further*, that interest on any unpaid amounts due under this Section 7.4 shall bear interest at the Default Rate until such principal amounts are paid in full. Nothing in this Section 7.4 shall extend the final due date of any Term Loan hereunder. The foregoing provisions of this Section notwithstanding, upon the occurrence of a Special Event of Default described in Section 7.3(b), (c), or (d) hereof, the Commitment shall automatically terminate and the Bank Note and all then outstanding Advances shall be deemed to be immediately and automatically tendered for payment in full by the City, and, to the extent permitted by law, all amounts payable by the City to the Bank hereunder and under the Bank Note, including, without limitation, all outstanding Advances, shall become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the City.

Section 7.5 No Remedy Exclusive. The rights and remedies of the Bank under this Agreement shall be cumulative and not exclusive of any rights or remedies which it would otherwise have, and no failure or delay by the Bank in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

## ARTICLE VIII GENERAL

Section 8.1 Notices. All notices and other communications provided for hereunder shall be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), telex, telecopy, facsimile transmission, or regular mail, as follows:

- (a) if to the City: El Paso Public Service Board  
1154 Hawkins Boulevard  
El Paso, Texas 79925  
Attention: President/CEO  
Telephone: (915) 594-5625  
Telecopy: (915) 594-5699
  
- (b) if to the Bank: JPMorgan Chase Bank, National Association  
270 Park Avenue  
6th Fl. Mail Code NY1-K934  
New York, New York 10017  
Attention: Jay Saakvitne  
Managing Director

Telephone: (212) 270-4186  
Telecopy: (917) 464-5896

(Notices regarding  
Advances):

JPMorgan Chase Bank, National Association  
Loan & Agency  
Municipal Credit Area  
1111 Fannin Street, Floor 10  
Houston, Texas 77002-6925  
Telephone: (713) 750- 2503  
Facsimile : (713) 750-2956

(c) if to the Issuing  
and Paying Agent:

\_\_\_\_\_

Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

(d) if to the Dealer:

\_\_\_\_\_

Attention:  
Telephone:  
Facsimile:

or, as to each Person named above, at such other address as shall be designated by such Person in a written notice to the parties hereto. All such notices and communications shall, when delivered or telexed, telecopied, sent by facsimile transmission or mailed, be effective when deposited with the courier, telexed, telecopied, sent by facsimile transmission or mailed respectively, addressed as aforesaid, except that Requests for Advances submitted to the Bank shall not be effective until received by the Bank.

Section 8.2 Survival of Covenants; Successors and Assigns.

(a) All covenants, agreements, representations, and warranties made herein and in the certificates delivered pursuant hereto shall survive the making of any Advance hereunder and shall continue in full force and effect so long as the Commitment is in effect and until all obligations of the City hereunder and under the Bank Note shall have been paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference shall, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the City which are contained in this Agreement and the Bank Note shall inure to the benefit of the successors and assigns of the Bank. The City may not transfer its rights or obligations under this Agreement and the Bank Note without the prior written consent of the Bank, which consent shall not be unreasonably withheld. The Bank may transfer some or all of its rights

and obligations under this Agreement with the prior written consent of the City (which consent will not be withheld unreasonably), provided that (i) the Bank, at its sole expense, obtains written evidence that the transfer will not cause the lowering, withdrawal or suspension of any ratings then existing on the Notes, and (ii) the Bank shall be responsible for all costs resulting from the transfer. This Agreement and the Bank Note are made solely for the benefit of the City and the Bank, and no other person or entity (including, without limitation, the Issuing and Paying Agent, the Dealer or any holder of Notes) shall have any right, benefit or interest under or because of the existence of this Agreement and the Bank Note.

(b) Notwithstanding the foregoing, the Bank shall be permitted to grant to one or more financial institutions (each a "Participant") a participation or participations in all or any part of the Bank's rights and benefits under this Agreement and the Bank Note on a participating basis but not as a party to this Agreement and the Bank Note (a "Participation"), without the consent of the City; *provided* that the Bank agrees to give the City notice of the grant of any Participation upon the effectiveness thereof. In the event of any such grant by the Bank of a Participation to a Participant, whether or not upon notice to the City, the Bank shall remain solely responsible for the performance of its obligations hereunder, and the City shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement and the Bank Note. The City agrees that each Participant shall, to the extent of its Participation, be entitled to the benefits of this Agreement and the Bank Note as if such Participant were the Bank; *provided* that no Participant shall have the right to declare, or to take actions in response to, an Event of Default under Section 7.1 hereof.

Section 8.3 Unconditional Obligations. The obligations of the City under this Agreement and the Bank Note shall be absolute, unconditional, irrevocable and payable strictly in accordance with the terms of this Agreement and the Bank Note, under all circumstances whatsoever, including, without limitation, the following:

(a) any lack of validity or enforceability of this Agreement, the Bank Note or, to the extent permitted by law, the Notes or any other Note Agreement;

(b) any amendment or waiver of or any consent to departure from the terms of all or any of the Note Agreements to which the Bank has not consented in writing;

(c) the existence of any claim, counterclaim, set-off, recoupment, defense, or other right which any Person may have at any time against the Bank, the City, the Issuing and Paying Agent, the Dealer, or any other Person, whether in connection with this Agreement, the Bank Note, the Note Agreements, or any other transaction;

(d) any statement or any other document presented pursuant hereto proves to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(e) payment by the Bank of an Advance hereunder against presentation of a Request for Advance which does not comply with the terms of this Agreement; *provided* that such payment shall not have constituted gross negligence of the Bank; and

(f) any other circumstance or happening whatsoever whether or not similar to any of the foregoing.

Section 8.4 **LIABILITY OF BANK; INDEMNIFICATION.**

(a) **TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS, THE CITY ASSUMES ALL RISKS OF THE ACTS OR OMISSIONS OF THE ISSUING AND PAYING AGENT WITH RESPECT TO THE USE OF THE COMMITMENT AND THE ADVANCES MADE PURSUANT THERETO; PROVIDED THAT THIS ASSUMPTION WITH RESPECT TO THE BANK IS NOT INTENDED TO AND SHALL NOT PRECLUDE THE CITY FROM PURSUING SUCH RIGHT AND REMEDIES AS IT MAY HAVE AGAINST THE ISSUING AND PAYING AGENT UNDER ANY OTHER AGREEMENTS. NEITHER THE BANK NOR ITS OFFICERS OR DIRECTORS SHALL BE LIABLE OR RESPONSIBLE FOR (I) THE USE OF THE PROCEEDS OF THE ADVANCES OR THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY AND BY THE NOTE AGREEMENTS OR FOR ANY ACTS OR OMISSIONS OF THE ISSUING AND PAYING AGENT OR THE DEALER, (II) THE VALIDITY, SUFFICIENCY, OR GENUINENESS OF ANY DOCUMENTS, EVEN IF SUCH DOCUMENTS SHALL, IN FACT, PROVE TO BE IN ANY OR ALL RESPECTS INVALID, FRAUDULENT, FORGED OR INSUFFICIENT, (III) PAYMENTS BY THE BANK AGAINST PRESENTATION OF DOCUMENTS WHICH DO NOT COMPLY WITH THE TERMS OF THIS AGREEMENT, OR (IV) ANY OTHER CIRCUMSTANCES WHATSOEVER IN MAKING OR FAILING TO MAKE PAYMENT HEREUNDER; PROVIDED THAT THE CITY SHALL HAVE A CLAIM AGAINST THE BANK TO THE EXTENT OF ANY DIRECT, AS OPPOSED TO CONSEQUENTIAL DAMAGES, BUT ONLY TO THE EXTENT CAUSED BY THE WILLFUL FAILURE OR NEGLIGENCE OF THE BANK IN FAILING TO MAKE AN ADVANCE REQUIRED TO BE MADE BY THE BANK HEREUNDER AFTER STRICT COMPLIANCE BY THE CITY WITH ALL CONDITIONS PRECEDENT TO SUCH ADVANCE, UNLESS THE MAKING OF SUCH ADVANCE WAS NOT OTHERWISE PERMITTED BY LAW.**

(b) **TO THE EXTENT PERMITTED BY THE LAWS OF THE STATE OF TEXAS AND PAYABLE SOLELY FROM THE NET REVENUES OF THE SYSTEM, THE CITY HEREBY INDEMNIFIES AND HOLDS HARMLESS THE BANK AND ITS PARTICIPANTS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, REASONABLE COSTS OR EXPENSES WHATSOEVER WHICH THE BANK OR ANY PARTICIPANT MAY INCUR (OR WHICH MAY BE CLAIMED AGAINST THE BANK OR ANY PARTICIPANT BY ANY PERSON WHATSOEVER) BY REASON OF OR IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY OR PAYMENT OR FAILURE TO**

**PAY UNDER THE COMMITMENT; *PROVIDED THAT THE CITY SHALL NOT BE REQUIRED TO INDEMNIFY THE BANK OR ANY PARTICIPANT FOR ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, OR EXPENSES TO THE EXTENT, BUT ONLY TO THE EXTENT, CAUSED BY THE WILLFUL MISCONDUCT OR NEGLIGENCE OF THE BANK.***

Section 8.5 Expenses and Taxes. The City will promptly pay (i) the reasonable costs and expenses of the Bank in connection with the negotiation, preparation, execution, and delivery of this Agreement and any other documents which may be delivered in connection with this Agreement up to the amount of \$\_\_\_\_\_ plus the reasonable fees and disbursements of counsel to the Bank up to the amount of \$\_\_\_\_\_, (ii) the fees and disbursements of counsel to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement after the occurrence of an Event of Default or Special Event of Default, and (iii) all costs and expenses, if any, in connection with the enforcement of this Agreement and any other documents which may be delivered in connection herewith or therewith, including in each case the fees and disbursements of counsel to the Bank. In addition, the City shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the security contemplated by the Note Agreements and any related documents and agrees to save the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. In addition, the City agrees to pay, after the occurrence of an Event of Default or Special Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the City hereunder by reason of such Event of Default or Special Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings.

Section 8.6 No Waiver; Conflict. Neither any failure nor any delay on the part of the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, shall operate as a waiver thereof, preclude any other or further exercise thereof nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The remedies herein provided are cumulative, and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and the Note Agreements, this Agreement shall control as between the City and the Bank.

Section 8.7 Modification, Amendment, Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement or the Bank Note shall be effective unless the same shall be in writing and signed by the party against whom such amendment, modification or waiver is to be enforced.

Section 8.8 Dealing with the City, the Issuing and Paying Agent, and/or the Dealer. The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the City, the Issuing and Paying Agent, and/or the Dealer regardless of the capacity of the Bank hereunder.

Section 8.9 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law.

Section 8.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together shall constitute but one agreement and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 8.11 Table of Contents; Headings. The table of contents and the Section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 8.12 Consent to Authorizing Ordinance. The Bank hereby consents to the City's approval of the Authorizing Ordinance and the City's amendment of the Original CP Ordinance.

Section 8.13 **NO IMMUNITY. TO THE EXTENT AUTHORIZED BY TEXAS GOVERNMENT CODE SECTION 1371.059(C), THE CITY WAIVES SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY FOR THE PURPOSES OF ADJUDICATING A CLAIM TO ENFORCE THIS AGREEMENT OR FOR DAMAGES FROM BREACH OF THIS AGREEMENT.**

Section 8.14 **WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, BOTH THE CITY AND THE BANK HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE BANK NOTE, ANY OF THE NOTE AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

Section 8.15 **ENTIRE AGREEMENT. THIS AGREEMENT TOGETHER WITH THE BANK NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES HERETO.**

**THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES HERETO.**

Section 8.16 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the City and the Bank have duly executed this Credit Agreement as of the date first above written.

CITY OF EL PASO, TEXAS

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Attorney for the City

By: \_\_\_\_\_  
Bond Counsel

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

FORM OF NON-ISSUANCE INSTRUCTION

[Dated Date]

City of El Paso  
Attention: Debt Management

\_\_\_\_\_  
as Issuing and Paying Agent

Re: City of El Paso, Texas  
Water and Sewer Commercial Paper Notes, Series A

Dear \_\_\_\_\_:

Pursuant to Section 2.2 of that certain Credit Agreement, dated as of January \_\_, 2009 (the "Credit Agreement"), between the City of El Paso, Texas and the undersigned, the undersigned hereby notifies you that (i) an "Event of Default" under Section 7.1 [or a "**Special Event of Default**" under Section 7.3] of the Credit Agreement has occurred and is now continuing and (ii) upon receipt of this notice, no new Notes (as defined in the Credit Agreement) [other than Refunding Notes (as defined in the Credit Agreement)] shall be issued or authenticated. This Non-Issuance Instruction shall remain in effect unless you have received written notification from us that this Non-Issuance Instruction has been rescinded.

Very truly yours,

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

cc: [Dealer]  
[Rating Agencies]

EXHIBIT B

FORM OF REQUEST FOR ADVANCE

[Dated Date]

JPMorgan Chase Bank, National Association.

Attention:

Re: City of El Paso, Texas  
Commercial Paper Notes, Series A - Notice of Borrowing

Dear \_\_\_\_\_:

Pursuant to Section 3.2 of that certain Credit Agreement, dated as of January \_\_, 2009 (the "Credit Agreement"), between the City of El Paso, Texas (the "City") and you (the "Bank"), the City (or the Issuing and Paying Agent on behalf of the City) hereby gives the Bank notice that the (or the Issuing and Paying Agent on behalf of the City) requests an Advance be made by the City as follows (capitalized terms used in this Request for Advance shall have the respective meanings assigned to such terms under the Credit Agreement):

1. The amount of the Advance hereby requested is \$\_\_\_\_\_.
2. The Advance hereby requested is to be made, and will not exceed the amount presently available, under the Commitment.
3. Payment of the Advance hereby requested is to be made by not later than 3:00 p.m. New York City time on \_\_\_\_\_, \_\_\_\_\_. Such date is a "Business Day" within the meaning of the Credit Agreement. All of the proceeds received from the Advance shall be used to pay \$\_\_\_\_\_ aggregate principal amount of and interest on the City's Water and Sewer Commercial Paper Notes, Series A maturing on such date. The Advance hereby requested is necessary due to the inability or failure of the Dealer to secure purchasers for Notes on the aforesaid date or the City's to use its own funds to purchase the Notes.
4. On the date of making of the Advance hereby requested, no Special Event of Default under Section 7.3 of the Credit Agreement has occurred and is continuing.
5. Payment of the Advance hereby requested shall be made in immediately available funds to account no. \_\_\_\_\_ at \_\_\_\_\_.

Very truly yours,

[EL PASO WATER UTILITIES ISSUING AND  
PAYING AGENT]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT C

FORM OF BANK NOTE

CITY OF EL PASO, TEXAS  
WATER AND SEWER BANK NOTE, SERIES A

THE CITY OF EL PASO, TEXAS, acknowledges itself indebted and for value received promises to pay to JPMorgan Chase Bank, National Association (the "Bank") in lawful money of the United States of America, the lesser of (i) \$42,958,905, as such amount may be permanently reduced pursuant to Section 3.6 of that certain Credit Agreement, dated as of January \_\_, 2009 (the "Credit Agreement"), between the City of El Paso, Texas and the Bank and (ii) the unpaid principal balance of each Advance and Term Loan under the Commitment made by the Bank to the City of El Paso, Texas under the Credit Agreement, in accordance with Section 3.5 of the Credit Agreement, subject to prepayment and acceleration as provided in Section 3.5 of the Credit Agreement. The El Paso Water Utilities promises to pay interest on the unpaid principal amount of each such Advance or Term Loan on the dates and at the rate or rates provided for in the Credit Agreement. Within the limits of and to the extent permitted by the Credit Agreement, the City of El Paso, Texas may borrow, repay and reborrow under the Credit Agreement with respect to Advances under the Commitment. All such payments of principal and interest shall be made in immediately available funds at the office of the Bank specified in Section 3.8 of the Credit Agreement and shall be computed in accordance with and subject to the terms and conditions of the Credit Agreement.

This Note is being issued pursuant to the Credit Agreement to provide a revolving liquidity line of credit to the El Paso Water Utilities to fund the payment, at stated maturity, of the principal of and interest on the City of El Paso's Water and Sewer Commercial Paper Notes, Series A.

Provision has been made for the payment of principal of and interest on this Note from the payment of Net Revenues sufficient to provide for the payment of the interest hereon and principal hereof, as such interest comes due and as such principal matures, and such Net Revenues have been irrevocably pledged for such payment. It is hereby certified that every requirement of law relating to the issue hereof has been duly complied with and that this Note is within every applicable debt or other limit.

IN WITNESS WHEREOF, the CITY OF EL PASO TEXAS has caused this Note to be signed in its name by its Mayor, and attested to by its Secretary, and be sealed with the seal of the City, and this Note to be dated the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF EL PASO, TEXAS

(SEAL)

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By \_\_\_\_\_  
City Clerk



EXHIBIT D

FORM OF FINAL DATE EXTENSION REQUEST

[Dated Date]

JPMorgan Chase Bank, National Association

\_\_\_\_\_  
Attention:

Re: City of El Paso, Texas  
Commercial Paper Notes, Series A  
Final Date Extension Request

Dear \_\_\_\_\_:

Pursuant to Section 3.1(c) of that certain Credit Agreement, dated as of January \_\_, 2009 (the "Credit Agreement"), between the City of El Paso, Texas (the "City") and you (the "Bank"), the City requests that the Final Date (as defined in the Credit Agreement) be extended to \_\_\_\_\_. [Such request is being made to accommodate the City's opportunity to market Notes (as defined in the Credit Agreement) with maturities beyond the current Final Date.]

Very truly yours,

CITY OF EL PASO, TEXAS/EL PASO WATER  
UTILITIES

By: \_\_\_\_\_  
Title: \_\_\_\_\_ r

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## AMENDED AND RESTATED ISSUING AND PAYING AGENCY AGREEMENT

This Amended and Restated Issuing and Paying Agency Agreement is entered into as of \_\_\_\_\_, 2009 (together with any amendments hereto, this "Agreement"), by and between the City of El Paso, Texas, a municipal corporation duly organized and existing under the laws of the State of Texas (the "City") and The Bank of New York Mellon Trust Company, N.A., Dallas, Texas, a national banking association duly organized and existing under the laws of the United States of America (the "Bank").

### RECITALS

WHEREAS, the City has duly authorized and provided for the issuance and sale of the "City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A" in an aggregate principal amount not to exceed \$50,000,000 (the "Commercial Paper Notes") pursuant to Ordinance No. 13349 adopted by City Council on October 14, 1997 (the "Original Ordinance") with any amendments thereto, including Ordinance No. \_\_\_\_\_ adopted by the City Council on \_\_\_\_\_, 2009 (together with the Original Ordinance, the "Ordinance"), and in conjunction with the issuance and sale of such Commercial Paper Notes for and on behalf of the City by Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Dealer"), the Bank has agreed to act (i) as depository for the safekeeping of such Commercial Paper Notes, (ii) as issuing agent on behalf of the City in connection with the issuance of such Commercial Paper Notes and (iii) as paying agent to undertake certain obligations to make payments in respect of the Commercial Paper Notes and in respect of the repayment of "Advances" made to the City by the Lender pursuant to the credit agreement between the City and JPMorgan Chase Bank, National Association (the "Credit Agreement") as approved and authorized to be executed by the Ordinance;

Now, therefore, the City and the Bank hereby mutually agree as follows:

Section 1. Appointment of Agent. The City hereby appoints the Bank and the Bank hereby agrees to act, on the terms and conditions specified herein and in the Ordinance, as custodian and issuing and paying agent for the Commercial Paper Notes. The Commercial Paper Notes will initially be issued in book-entry form (the "Book-Entry Notes") with the aggregate of all such obligations evidenced by Master Notes ("Master Notes") in substantially the form set forth in the Ordinance. Pursuant to the Ordinance, the City may elect to terminate issuing the Commercial Paper Notes in book-entry form, in which case they shall be issued in certificated form evidenced by individual certificates (the "Certificated Notes"). The Commercial Paper Notes will be sold through the Dealer, and the City shall provide concurrent notification to the Bank when additional or substitute commercial paper dealers are appointed by the City pursuant to section 4.04 of the Original Ordinance.

Section 2. Book-Entry-Only System. Pursuant to section 3.03 of the Original Ordinance, the City has determined initially to issue the Commercial Paper Notes in book-entry-only form through the Depository Trust Company ("DTC") for delivery and settlement of the Commercial Paper Notes. The City has provided the Bank and DTC an executed "Letter of Representations", or other appropriate agreements, that establish or will establish, among other things, the procedures to be followed by the Bank in connection with the issuance and custody of the Book-Entry Notes. The City's obligations under the Book-Entry Notes shall be evidenced by

Master Notes in substantially the form attached to the Letter of Representations or other such agreement with DTC.

Section 3. Supply of Commercial Paper Notes. The City will from time to time furnish the Bank with an adequate supply of Commercial Paper Notes which shall be Master Notes and/or Certificated Notes as the City in its sole and absolute discretion considers appropriate. The City's obligation under the Book-Entry Notes shall be represented by one or more Master Notes which shall be executed by manual or facsimile signatures by one or more Authorized Representatives in accordance with the Letter of Representations. Certificated Notes shall be serially numbered and shall be executed by manual or facsimile signatures of one or more Authorized Representatives, with the principal amount, payee, date of issue, maturity date, number of days, rate and amount of interest and maturity value left blank. The Certificated Notes shall be on a manifold that will produce one original and three non-negotiable copies. The Bank will hold the Commercial Paper Notes in safekeeping for the account of DTC in accordance with the requirements of the Letter of Representations or other such agreement prescribed by DTC.

Section 4. Authorized Representatives. From time to time and as requested by the Bank, the PSB on behalf of the City will furnish the Bank with a certificate certifying the incumbency of the Authorized Representatives. Until the Bank receives the first of any such certificates, it shall be entitled to rely on the identification of the Authorized Representatives specified in the Ordinance. After receipt of an incumbency certificate, the Bank shall be entitled to rely on such certificate for purposes of determining the Authorized Representatives until it receives a subsequent certificate. The Bank shall not have any responsibility to the City to determine by whom or by what means a facsimile signature may have been affixed on the Commercial Paper Notes, or to determine whether any facsimile or manual signature resembles the specimen signature(s) filed with the Bank by a duly authorized officer of the City. Any Commercial Paper Notes bearing the manual or facsimile signatures of persons who are Authorized Representatives on the date such signature is affixed shall be binding on the City after the authentication thereof by the Bank notwithstanding that such person shall have died or shall have otherwise ceased to hold his or her office on the date such Commercial Paper Note is countersigned or delivered to the Bank.

Section 5. Completion; Authentication and Delivery of Commercial Paper Notes.

- (a) Instructions for the issuance of Commercial Paper Notes (the "Instructions") will be given via an issuance system (the "System"), if available, or by telephone, promptly confirmed in writing (which may be by facsimile) either by an Authorized Representative, or by any officer or employee of a Dealer who has been designated by an Authorized Representative in writing to the Bank as a person authorized to give such Instructions hereunder (each an "Authorized Dealer Representative"), provided that Instructions may be given in writing if the System is unavailable or is inoperative. Upon receipt of Instructions as described in the preceding sentence, the Bank shall (i) cause the issuance of such Book-Entry Notes in the manner set forth in, and take such other actions as are required by, the Letter of Representations or other such agreement provided by DTC, or (ii) in the case of Certificated Notes:

- (1) complete each Certificated Note as to principal amount (which shall not be less than \$100,000 or which, collectively with the outstanding Notes will not exceed the Commitment), payee, date of issue, maturity date (which shall be a Business Day not later than the first to occur of (a) the 270<sup>th</sup> day after the date of such Commercial Paper Note's issue or (b) the third Business Day prior to the "Final Date" (as defined in the Credit Agreement), number of days, rate and amount of interest, and maturity value; and
  - (2) manually countersign each Certificated Note by any one of the Bank's officers or employees who are duly authorized and designated for such purpose; and
  - (3) deliver the Certificated Notes to the appropriate Dealer or its agent within the Borough of Manhattan, City and State of New York, which delivery shall be against receipt for payment as herein provided or as otherwise provided in such Instructions (if such Instructions do not provide for such receipt, such Dealer shall nevertheless pay the purchase price for the Certificated Notes in accordance with Paragraph 7 hereof). Of the three nonnegotiable copies of each Commercial Paper Note, two shall be retained by the Bank and one shall be sent promptly to the City.
- (b) Instructions given via the System must be entered by 12:30 p.m. for physical issuance and 2:00 p.m. for book-entry issuance, New York City time, and Instructions delivered by telephone or in writing must be received by the Bank by 1:00 p.m., New York City time, if the Commercial Paper Notes are to be delivered the same day. Telephone Instructions shall be confirmed in writing the same day.
- (c) With respect to Certificated Notes, the City understands that although the Bank has been instructed to deliver Commercial Paper Notes against payment, delivery of Certificated Notes will, in accordance with the custom prevailing in the commercial paper market, be made before receipt of payment in immediately available funds. Therefore, in the event the Bank delivers a Certificated Note to a Dealer or its agent as provided in Paragraph 5(a)(3) hereof, the City shall bear the risk that a Dealer or its agent fails to remit payment for the Certificated Notes to the Bank. It is understood that each delivery of Commercial Paper Notes hereunder shall be subject to the rules of the New York Clearing House in effect at the time of such delivery.
- (d) If the Bank, at its option, acts upon Instructions transmitted after the times specified in Section 5(b) hereof on the day on which the Instructions are to be operative, the City understands and agrees that (i) such Instructions shall be acted upon, on a best efforts basis, by the Bank pursuant to the custom and practice of the commercial paper market, and (ii) the Bank makes no representations or warranties that the issuance and delivery of any Commercial Paper Notes pursuant to Section 5 hereof shall be completed prior to the close of business on the issue date specified in the Instructions.

- (e) The Bank agrees that the principal amount of and interest on any Notes proposed to be issued, when added to the aggregate principal amount of and interest on all other Notes outstanding (after taking into account any Notes paid or to be paid on such proposed issuance date) on such proposed issuance date and to the principal amount of all outstanding related Advances, shall not exceed the amount of the Commitment in effect on such proposed issuance date. Pursuant to Section 2.3(b) of the Credit Agreement, upon the written request of the Bank, the Lender shall confirm to the Bank the excess of the Commitment in effect on the date of such request over the amount of related Advances outstanding on such date (which amount shall be determined without regard to any payment of related Advances expected to be made on such date with respect to which the Lender has received notice but not the proceeds of such payment).

Section 6. Non-Issuance Instruction. In the event the Bank receives a "Non-Issuance Instruction" (defined in the Credit Agreement and attached in form as Exhibit A to the Credit Agreement) on or before 8:30 a.m., New York City time, on a Business Day, then the Bank shall not issue, authenticate or deliver any Commercial Paper Notes (other than Commercial Paper Notes permitted to be issued, authenticated and delivered as provided in the Credit Agreement) from and after such Business Day until such time as all previously delivered Non-Issuance Instructions have been revoked by the Lender as provided in the Credit Agreement.

Section 7. Accounts and Funds; Proceeds of Sale of the Commercial Paper Notes.

- (a) In accordance with the Dealer Agreement (currently between the Dealer and the City and dated as of October 17, 1997, but meaning any Dealer Agreement as may be entered into from time to time by the City and a substitute Dealer with respect to the Commercial Paper Notes), as well as the written instructions provided by the City to the Dealer dated \_\_\_\_\_, 2009, by 11:30 a.m., New York City time, on the date that Commercial Paper Notes are maturing and new Commercial Paper Notes are to be issued to pay the principal of and, to the extent necessary, interest on the maturing Commercial Paper Notes (if such date is a Business Day and if not then on the next corresponding Business Day), the Dealer or its agent shall either (i) confirm in writing to the Bank and the City the sale of Commercial Paper Notes (to an investor other than the Dealer or to the Dealer) and shall cause the Bank's account with DTC (or the Bank's agent's account, if the Bank does not have or ceases to have an account with DTC) to be credited in an amount equal to the proceeds of the sale of the Commercial Paper Notes, or (ii) provide written notice to the Bank and the City of the Dealer's inability to sell any or all of the Commercial Paper Notes intended to be issued, sold and delivered that day.
- (b) The Bank shall, in response to the confirmation in (i) of the preceding paragraph of this Section 7 and the Instructions, issue Commercial Paper Notes as set forth in Section 5 hereof (or pursuant to any succeeding procedures which may be developed and agreed to by the parties) or shall, under the circumstances described in (ii) of the preceding paragraph of this Section 7, above, submit a "Request for Advance" (as defined in the Credit Agreement) to the Lender as set forth in the Credit Agreement and in Section 8(b) hereof; provided, however, that

nothing in this Section 7(b) shall prevent the Bank from exercising its authority to act on behalf of the City pursuant to Section 9(a) of this Agreement or limit the Bank's authority under such Section.

- (c) Contemporaneously with the execution and delivery of this Agreement and for the purposes of this Agreement, the Bank hereby confirms the establishment of a clearing account designated as the "City of El Paso, Texas, Water and Sewer Series A Note Clearing Account" (the "Note Clearing Account"). On each day on which a Dealer or its agent receives Commercial Paper Notes (whether through the facilities of DTC in the manner set forth in the Letter of Representations, or other agreement relating to the book-entry-only system, or by delivery in accordance with Section 5(a)(3) hereof), the Bank, upon receipt of funds from the Dealer, shall the deposit proceeds of sale of the Commercial Paper Notes (the "Proceeds") in immediately available funds to the credit of the Note Clearing Account. From time to time upon telephonic or written instructions received by the Bank from an Authorized Representative, the Bank shall transfer immediately available funds from the Note Clearing Account to the "City of El Paso, Texas, Water and Sewer Commercial Paper Series A Note Payment Fund" (the "Note Payment Fund"). The Note Payment Fund shall contain an Interest Payment Account and a Principal Payment Account and is to be maintained for the payment of the Commercial Paper Notes and the repayment of Advances due under the Credit Agreement.
- (d) As set forth in Section 4.02 of the Ordinance, the Proceeds (net of all expenses and costs of sale and issuance) shall be applied by the Bank for either or both of the following purposes: (i) for the payment and redemption of outstanding Commercial Paper Notes at or before maturity and (ii) for the repayment of any borrowing (evidenced by the Loan Note) or other amounts due under the Credit Agreement. Proceeds not withdrawn from the Note Payment Fund and expended as provided in (i) and (ii) above minus any moneys remaining in the Note Payment Fund as a result of an owner's failure to present a Commercial Paper Note for payment at maturity shall, on the next Business Day following the Payment Date (as defined herein), be transferred and deposited to the "City of El Paso, Texas Water and Sewer Commercial Paper Series A Construction Fund" (the "Note Construction Fund") (created and established pursuant to Section 3.11 of the Ordinance) and used and applied by the City in accordance with the provisions of the Ordinance.

Section 8. Payment of Matured Commercial Paper Notes.

- (a) By 10:30 a.m., New York City time, on the date that any Commercial Paper Notes are scheduled to mature (or the corresponding next Business Day if the date of maturity is not a Business Day), the City shall have transferred to the Bank for deposit in the Note Clearing Account in immediately available funds an amount at least equal to the amount of accrued interest due on the Commercial Paper Notes maturing on such date and any amount of City funds that the City directs the Bank in writing to apply to the payment of principal of Commercial Paper Notes maturing on such date. By 11:30 a.m., New York City time, on the date that any

Commercial Paper Notes are scheduled to mature (or the corresponding next Business Day if the date of maturity is not a Business Day), the Dealer shall have confirmed in writing to the Bank and the City the amount of Proceeds that shall be credited to the account of the Bank, on behalf of the City, on the books of DTC (or to the account of the Bank's agent, if the Bank does not have or ceases to have an account on the books of DTC), which Proceeds shall be used to pay, to the extent necessary, principal of and interest on the Commercial Paper Notes maturing on such date as provided in the preceding paragraph. Pursuant to a timely transmitted Request for Advance (as described in the Credit Agreement and in Section 8(b) hereof), to the extent necessary, and by 3:00 P.M., New York City time, on the date that any Commercial Paper Notes are scheduled to mature, the Lender shall have transferred to the Bank for deposit in the Note Payment Fund in immediately available funds an amount together with the amount of funds received from the City as set forth above, if any, and the anticipated Proceeds from the sale of Commercial Paper Notes on such date as set forth above, if any, at least equal to the principal amount of and accrued interest on the Commercial Paper Notes maturing on such date. When any matured Commercial Paper Note is presented to the Bank for payment by DTC or a nominee of DTC pursuant to the Letter of Representations, (i) the principal thereof shall be paid from and charged to the Principal Payment Account of the Note Payment Fund to the extent funds sufficient to effect such payment are available in said account and (ii) the interest thereon shall be paid from and charged to the Interest Payment Account of the Notes Payment Account to the extent funds sufficient to effect such payment are available in said account.

- (b) The City shall make deposits to the Interest Payment Account from funds specified in the Ordinance on such dates and in such amounts, after taking into account funds on deposit in the Interest Payment Account, sufficient to pay all interest on the Commercial Paper Notes maturing in each month and all interest on the Loan Notes payable in each month, which amounts shall be used for the purpose of paying interest on maturing Commercial Paper Notes and interest on any Loan Notes.
- (c) Amounts deposited by the City in the Note Payment Fund shall be invested pending their disbursement at the direction of an Authorized Representative in Eligible Investments; provided, however, that if for any reason such funds are not disbursed on a scheduled payment date (e.g. as a result of an owner's failure to present a Note for payment at maturity), any continued investment of such funds pending disbursement shall be limited to short term direct obligations of the United States of America.

Section 9. Advances Under Credit Agreement.

- (a) The City hereby appoints the Bank as its agent for the City for the purpose of exercising, on behalf of the City, the City's right to request an Advance under the Credit Agreement for the purpose of paying the principal of or interest on the Commercial Paper Notes maturing on the date of such Advance and which have not been and will not be paid from the proceeds of the sale of other Commercial

Paper Notes on such date or from other funds on deposit in the Note Payment Fund. On any date on which the Commercial Paper Notes shall mature, if there shall not be on deposit in the Note Payment Fund sufficient funds, together with the proceeds of the Commercial Paper Notes to be issued on such date, to pay the principal of or interest on the Commercial Paper Notes maturing on such date, the Bank, not later than 12:30 p.m., New York City time, on such date, shall give to the Lender a Request for Advance in the name of the City (which Request for Advance shall comply with the provisions of Section 3.2(c) of the Credit Agreement), requesting an Advance in the amount of such insufficiency. Such Request for Advance shall be in writing and shall be in the form of Exhibit B to the Credit Agreement, executed by the Bank on behalf of the City. A copy of any Request for Advance delivered by the Bank on behalf of the City shall be sent to the City.

- (b) The appointment of the Bank as the City's agent for the purpose of giving a Request for Advance under the Credit Agreement shall not be revocable by the City unless and until the City has appointed a Substitute Issuing and Paying Agent to act as the City's agent for such purpose pursuant to Section 4.03 of the Original Ordinance and such Substitute Issuing and Paying Agent has assumed such agency role by written agreement. Such revocation shall be in a written instrument executed by an Authorized Representative and shall not be effective until actually received by the Bank and by the Lender and the Lender acknowledges receipt of the same. To the extent permitted by the terms of the Ordinance and in the event multiple credit facilities supporting the Notes are in place for some simultaneous period of time, the Bank shall take steps to ensure that the Notes are issued with the support, and pursuant to the terms, of the respective credit facility.
- (c) Unless otherwise instructed in writing by an Authorized Representative, the Bank is hereby authorized, on behalf of the City, to repay or prepay, as the case may be, any Advances in accordance with the provisions of the Credit Agreement including, without limitation, Section 3.5 of the Credit Agreement which authorizes the Bank to pay Advances from excess funds on deposit in the Note Payment Fund unless the Lender notifies the Bank that said Section 3.5 is not applicable.

Section 10. Reliance on Instructions. Except as otherwise set forth herein, the Bank shall incur no liability to the City in acting hereunder upon telephonic or other instructions described herein which the recipient thereof reasonably believed in good faith to have been given by an Authorized Representative or an Authorized Dealer Representative, as the case may be. In the event a discrepancy exists with respect to such instructions, the telephonic instructions as recorded by the Bank will be deemed the controlling and proper instructions, unless such instructions are required by this Agreement to be in writing or have not been recorded by the Bank as described in the next sentence. It is understood that all telephonic instructions will be recorded by the Bank and the City hereby consents to such recording.

Section 11. Cancellation of Commercial Paper Notes. After payment of any matured Book-Entry Note, the Bank shall annotate its records to reflect the face amount of Book-Entry

Notes outstanding in accordance with the Letter of Representations. Promptly upon the written request of the City, the Bank agrees to cancel and return to the City all unissued Commercial Paper Notes in its possession at the time of such request.

Section 12. Notices; Addresses.

- (a) All communications by or on behalf of the City or a Dealer, by telephone or otherwise, relating to the completion, delivery or payment of the Commercial Paper Notes are to be directed to the Bank's Commercial Paper Issuance Unit of the Corporate Trust Division (or such other department or division which the Bank shall specify in writing to the City and the Dealer). The City will send all Commercial Paper Notes to be completed and delivered by the Bank to its Commercial Paper Issuance Unit of the Corporate Trust Division (or such other department or division the Bank shall specify in writing to the City). The Bank will advise the City and the Dealer from time to time in writing of the individuals generally responsible for the administration of this Agreement and will from time to time certify incumbency and specimen signatures of officers or employees authorized to countersign Commercial Paper Notes.
- (b) The City shall give the Bank at least fifteen (15) days' prior written notice of any proposed substitution or replacement of a Credit Agreement and, if applicable, the identity of any substitute or replacement Lender thereunder. The City shall cause the Bank, following its receipt of such notice, to promptly give a copy of such notice to DTC and, if the Bank is provided with the names and addresses of the beneficial owners of the Notes, to such beneficial owners.
- (c) Notices and other communications hereunder shall (except to the extent otherwise expressly provided) be in writing (which may be by facsimile) and shall be addressed as follows, or to such other address as the party receiving such notice shall have previously specified to the party sending such notice:

To the City:

- (1) concerning daily issuance of Commercial Paper Notes:

El Paso Water Utilities  
1154 Hawkins Blvd.  
El Paso, Texas 79961  
Attention: Chief Financial Officer  
El Paso Water Utilities  
Facsimile Transmission Number: (915) 594-5699

(2) concerning all other matters:

El Paso Water Utilities  
1154 Hawkins Blvd.  
El Paso, Texas 79961  
Attention: Chief Financial Officer  
El Paso Water Utilities  
General Counsel  
El Paso Water Utilities  
Facsimile Transmission Number: (915) 594-5699

To the Bank:

concerning daily issuance of Commercial Paper Notes and all other matters:

The Bank of New York Mellon Trust Company, N.A.  
2001 Bryan Street, 10th Floor  
Dallas, Texas 75201  
Attention: Mei Shan (Rachel) Li  
Telephone: (214) 468-5123  
Facsimile: (214) 468-6177  
E-Mail: rachel.m.li@bnymellon.com

The Bank of New York Mellon Trust Company, N.A.  
919 Congress Avenue, Suite 500  
Austin, Texas 78701  
Attention: Saúl E. Ramirez, Vice President  
Telephone: (512) 236-6518  
Facsimile: (512) 236-9275  
E-Mail: saul.e.ramirez@bnymellon.com

To the Rating Agencies then rating the Commercial Paper Notes:

as designated by the City.

Notices shall be deemed delivered when received at the address specified above. For purposes of this paragraph, "when received" shall mean actual receipt of (i) an electronic communication by a telex machine, telecopier or issuance system specified in or pursuant to this Agreement, (ii) an oral communication by any person answering the telephone at the Bank's office specified in subparagraph 11(a) hereof and otherwise at the office of the individual or department specified in or pursuant to this Agreement or (iii) a written communication hand-delivered at the office specified in or pursuant to this Agreement.

Section 13. Notice to Rating Agencies. The Bank shall provide notice to any Rating Agency then rating the Commercial Paper Notes promptly following the occurrence of any of the following events: (i) amendments to this Agreement, the Credit Agreement or the Ordinance,

(ii) changes in identity of the Issuing and Paying Agent and/or (iii) substitutions of the Lender or termination of the Credit Agreement.

Section 14. Additional Information. Upon the request of the City given at the time and from time to time, the Bank shall promptly provide the City with information with respect to the Commercial Paper Notes issued and paid hereunder. Such request shall be in written form and, to the extent known by the City, shall include the serial number, principal amount, date of issuance, maturity date and amount of interest, if any, of each Commercial Paper Note which has been issued or paid by the Bank and for which the request is being made.

Section 15. Liability. Neither the Bank nor any of the Bank's officers, employees or agents shall be liable for any act or omission hereunder, except in the case of negligence or willful misconduct. The Bank's duties and obligations and those of its officers and employees shall be determined by the express provisions of this Agreement, the Letter of Representations or other agreement executed in connection with the book-entry-only system, including the documents referred to in such agreements, and they shall not be liable except for the performance of such duties and obligations as are specifically set forth herein and therein, and no implied covenants shall be read into any such documents against them. Neither the Bank nor any of its officers or employees shall be required to ascertain whether any issuance or sale of Commercial Paper Notes (or any amendment or termination of this Agreement) has been duly authorized or is in compliance with any other agreement to which the City is a party (whether or not the Bank is a party to such other agreement).

Section 16. Indemnification. To the extent permitted by law, the City agrees to indemnify and hold the Bank and its officers, employees and agents harmless from and against all liabilities, claims, damages, cost and expenses (including reasonable legal fees and expenses) relating to or arising out of their actions or inactions in connection with this Agreement, except to the extent they are caused by the Bank or its officers, agents, or employees, or their negligence or willful misconduct. This indemnity shall survive termination of this Agreement.

Section 17. Capitalized Terms. Capitalized terms used herein and not otherwise defined shall have the meanings assigned in the Ordinance.

Section 18. Benefit of Agreement. This Agreement is solely for the benefit of the parties hereto, and no other person shall acquire or have any right under or by virtue hereof.

Section 19. Termination. This Agreement may be terminated at any time by either the Bank or the City by fifteen (15) days' prior written notice to the other, provided that the Bank agrees to continue acting as issuing and paying agent hereunder until such time as a successor has been selected and has entered into an agreement with the City to that effect. Such termination shall not affect the respective liabilities of the parties hereunder arising prior to such termination.

Section 20. Governing Law. This Agreement is to be delivered and performed in, and shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Texas.

Section 21. Fees. The Bank shall receive fees from the City for acting as issuing and paying agent hereunder in such amounts as the Bank and the City shall agree from time to time in writing. Payment of such fees shall be made by the City upon receipt of an invoice therefor from the Bank.

Section 22. Amendments. This Agreement may be amended only by an agreement in writing signed by both of the parties hereto.

Section 23. Assignment. This Agreement may not be assigned by either party without the prior written consent of the other.

Section 24. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction hereof.

Section 25. Severability. In case any provision herein shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 26. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 27. Entire Agreement. This Agreement embodies the entire agreement and understanding between the City and the Bank with respect to its subject matter and supersedes all prior agreements and understandings, written or oral, between the City and the Bank related to such subject matter.

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

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

CITY OF EL PASO, TEXAS

By: \_\_\_\_\_

Ed Archuleta  
President/Chief Executive Officer  
El Paso Water Utilities

Address: El Paso Water Utilities  
1154 Hawkins Blvd.  
El Paso, Texas 79961

**Approved as to form:**

\_\_\_\_\_  
Lowell M. Stokes  
Assistant General Counsel  
El Paso Water Utilities

**Approved as to content:**

\_\_\_\_\_  
Marcela Navarrete  
Chief Financial Officer  
El Paso Water Utilities

EXECUTION PAGE TO ISSUING AND PAYING AGENCY AGREEMENT

## **NOTICE OF INTRODUCTION AND PUBLIC HEARING**

Pursuant to section 3.9A of the El Paso City Charter, the following Ordinance will be introduced at a Regular City Council Meeting on January 27, 2009:

- A.** An Ordinance approving and authorizing the execution of a Credit Agreement and an Issuing and Paying Agency Agreement with respect to the City of El Paso, Texas, Water and Sewer Commercial Paper Notes, Series A, amending the ordinance authorizing the issuance of such notes and resolving other matters incident and related thereto.

### **PUBLIC HEARING WILL BE HELD ON FEBRUARY 3, 2009 FOR ITEM A**

Public hearing will be held as part of the Regular City Council Meeting which begins at approximately 9:00 a.m. All interested persons present shall have an opportunity to be heard at that time. After the Public Hearing, Council may take immediate action to approve the Ordinance or may delay taking action on the Ordinance. No requirement is made by Section 3.9B of the El Paso City Charter to publish any further notice of this introduction and public hearing. A copy of the Ordinance is available for review in the City Clerk's office, 2 Civic Center Plaza, Monday through Friday, 8AM to 5PM.

**PLEASE PUBLISH IN THE EL PASO TIMES BY WEDNESDAY, JANUARY 21, 2009, WITHOUT SPACES IN BETWEEN THE LINES.**