

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

DEPARTMENT: El Paso Water Utilities

AGENDA DATE: March 23, 2010

CONTACT PERSON/PHONE: Robert D. Andron, General Counsel, (915) 594-5506 

DISTRICT(S) AFFECTED: All

SUBJECT:

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE RIO GRANDE PROJECT IMPLEMENTING THIRD-PARTY CONTRACT AMONG THE UNITED STATES OF AMERICA DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION, THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1, AND THE CITY OF EL PASO JOINED BY ITS PUBLIC SERVICE BOARD FOR CONVERSION OF RIO GRANDE PROJECT WATER TO MUNICIPAL USE; DELIVERY OF DISTRICT WATER TO THE JONATHAN ROGERS WATER TREATMENT PLANT; AND DELIVERY BY THE CITY OF EL PASO OF USABLE SEWAGE EFFLUENT TO THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1. **(All Districts)** [El Paso Water Utilities, Robert Andron, (915) 594-5607]

BACKGROUND / DISCUSSION:

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

The El Paso Water Utilities Public Service Board, the City of El Paso, the United States of America Department of the Interior Bureau of Reclamation and the El Paso County Water Improvement District No. 1 (the "EPCWID#1") entered into a "Conversion Contract" (the "Contract") in 2001 whereby federal Rio Grande Project river surface water could be purchased by the City and converted to municipal use. The Contract supplied the original 20 MGD (million gallons per day) of water for the Jonathan Rogers Water Treatment Plant (the "Plant"). When the Plant was expanded from 20 MGD to 60 MGD in 2001, the parties entered into a "Third-Party Implementing Contract" to purchase additional surface water from EPCWID#1. The annual rate to purchase an acre-foot of water was included in the Contract and set to escalate each year. The negotiated rate started at \$193.40 per acre-foot effective January 1, 2001 and is currently set at \$260.00 per acre-foot effective January 1, 2010. An acre-foot is the amount of water required to cover one acre of land with one foot of water or 325,851 gallons.

EPCWID#1 and the El Paso Water Utilities Public Service Board have negotiated and agreed to amend the Contract to set the surface water fee at \$260.00 per acre-foot per year for the next two years. The current Contract also provides for an escalation in the cost of water at 8% per year. The parties have agreed that the escalation will be capped at 4% going forward from December 12, 2012.

Attached is an original of the El Paso Water Utilities Public Service Board Resolution passed and approved March 10, 2010, approving the necessary First Amendment to the Rio Grande Project Implementing Third-Party Contract Among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District No. 1, and the City of El Paso joined by its Public Service Board for Conversion of Rio Grande Project Water to Municipal Use; Delivery of District Water to the Jonathan Rogers Water Treatment Plant; and Delivery by the City of El Paso of Usable Sewage Effluent to the El Paso County Water Improvement District No. 1 (the "Contract").

The Resolution also requested that the City authorize the Mayor to execute the Contract Amendment. The El Paso Water Utilities Public Service Board affirmed and confirmed to continue in all respects the remaining terms, provisions and conditions of the Contract.

Included in the Request to Place Item on City Council Agenda March 23, 2010 are three originals of the First Amendment to the Contract and three originals of the proposed City Council Resolution authorizing the Mayor to sign same.

PRIOR COUNCIL ACTION:

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

In 2001, the City Council approved and authorized the Mayor to sign the Rio Grande Implementing Third-Party Contract among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District #1, and the City of El Paso joined by its Public Service Board for conversion of Rio Grande Project water to municipal use, delivery of District Water to the PSB Jonathan Rogers Water Treatment Plant and Delivery by the PSB of Usable Effluent to the District.

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 will budget and fund the purchase of the water from the District.

BOARD / COMMISSION ACTION:

Resolution Approved by the El Paso Water Utilities Public Service Board by Resolution March 10, 2010.

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

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager



TO: **Joyce Wilson, City Manager**
City of El Paso, Texas

FROM: **Robert D. Andron, General Counsel, EPWU (915) 594-5607** 

DATE: **March 15, 2010**

SUBJECT: **Request to place Item on City Council Agenda – March 23, 2010**

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE RIO GRANDE PROJECT IMPLEMENTING THIRD-PARTY CONTRACT AMONG THE UNITED STATES OF AMERICA DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION, THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1, AND THE CITY OF EL PASO JOINED BY ITS PUBLIC SERVICE BOARD FOR CONVERSION OF RIO GRANDE PROJECT WATER TO MUNICIPAL USE; DELIVERY OF DISTRICT WATER TO THE JONATHAN ROGERS WATER TREATMENT PLANT; AND DELIVERY BY THE CITY OF EL PASO OF USABLE SEWAGE EFFLUENT TO THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1. **(All Districts)** [El Paso Water Utilities, Robert Andron, (915) 594-5607]

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**Background**

The El Paso Water Utilities Public Service Board, the City of El Paso, the United States of America Department of the Interior Bureau of Reclamation and the El Paso County Water Improvement District No. 1 (the "EPCWID#1") entered into a "Conversion Contract" (the "Contract") in 2001 whereby federal Rio Grande Project river surface water could be purchased by the City and converted to municipal use. The Contract supplied the original 20 MGD (million gallons per day) of water for the Jonathan Rogers Water Treatment Plant (the "Plant"). When the Plant was expanded from 20 MGD to 60 MGD in 2001, the parties entered into a "Third-Party Implementing Contract" to purchase additional surface water from EPCWID#1. The annual rate to purchase an acre-foot of water was included in the Contract and set to escalate each year. The negotiated rate started at \$193.40 per acre-foot effective January 1, 2001 and is currently set at \$260.00 per acre-foot effective January 1, 2010. An acre-foot is the amount of water required to cover one acre of land with one foot of water or 325,851 gallons.

EPCWID#1 and the El Paso Water Utilities Public Service Board have negotiated and agreed to amend the Contract to set the surface water fee at \$260.00 per acre-foot per year for the next two years. The current Contract also provides for an escalation in the cost of water at 8% per year. The parties have agreed that the escalation will be capped at 4% going forward from December 12, 2012.

Attached is the El Paso Water Utilities Public Service Board Resolution passed and approved March 10, 2010, approving the necessary First Amendment to the Rio Grande Project Implementing Third-Party Contract Among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District No. 1, and the City of El Paso joined by its Public Service Board for Conversion of Rio Grande Project Water to Municipal Use; Delivery of District Water to the Jonathan Rogers Water Treatment Plant; and Delivery by the City of El Paso of Usable Sewage Effluent to the El Paso County Water Improvement District No. 1 (the "Contract").

City Manager Joyce Wilson  
Department Memo, March 15, 2010  
Request for Items for City Council Agenda, Page 2.

The Resolution also requested that the City authorize the Mayor to execute the Contract Amendment. The El Paso Water Utilities Public Service Board affirmed and confirmed to continue in all respects the remaining terms, provisions and conditions of the Contract.

### **ACTION REQUESTED**

That the Mayor be authorized to sign the First Amendment to the Rio Grande Project Implementing Third-Party Contract among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District #1, and the City of El Paso joined by its Public Service Board for conversion of Rio Grande Project Water to Municipal Use, delivery of District Water to the Jonathan Rogers Water Treatment Plant and delivery by the City of El Paso of usable effluent to the El Paso County Water Improvement District #1.

### **REQUEST TO PLACE ITEM ON THE CITY COUNCIL AGENDA**

Attached is an original of the El Paso Water Utilities Public Service Board Resolution dated March 10, 2010 approving the First Amendment to the Contract and requesting the City Council authorize the Mayor to execute the Contract on behalf of the City. Also enclosed are three originals of the First Amendment to the Contract executed by the El Paso Water Utilities Public Service Board and the El Paso County Water Improvement District #1.

Also, enclosed are three originals of the proposed Resolution for City Council action authorizing the Mayor to execute the amendment to the Contract. After City Council approval and execution by the Mayor, it is expected that the City Clerk's Office will keep one original of the City Council Resolution, one original of the El Paso Water Utilities Public Service Board Resolution and route the three original signed First Amendment documents to the El Paso Water Utilities Public Service Board Legal Section for further action. Once the Contract Amendment has been executed by the United States of America Department of the Interior Bureau of Reclamation, an original will be delivered to the City Clerk.

Please advise this office of the placement of this item on the City Council Agenda and my Secretary will contact the City Clerk and make arrangements to have document packets hand-delivered to the City Clerk's Office and email backup documents as noted to those listed below. If there are any questions, please call me at 594-5607 or email [bandron@epwu.org](mailto:bandron@epwu.org) or Jim Shelton at 594-5511 or email [jshelton@epwu.org](mailto:jshelton@epwu.org).

An EPWU representative will plan to attend the March 23, 2010 City Council meeting. Thank you for your kind attention to this matter.

#### Attachments and enclosures

Cc: The Honorable Mayor John Cook (email)  
City Council Representatives (email)  
Charlie McNabb, City Attorney (email)  
Richarda Duffy-Momsen, City Clerk (hard copies & email)  
Sylvia Firth, Chief of Staff, Mayor Cook (e-mail)  
Nicholas J. Costanzo, Vice President of Strategic, Financial & Management Services (email)  
Marcela Navarrete, Chief Finance Officer, PSB (email)

## RESOLUTION

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN THE FIRST AMENDMENT TO THE RIO GRANDE PROJECT IMPLEMENTING THIRD-PARTY CONTRACT AMONG THE UNITED STATES OF AMERICA DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION, THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1, AND THE CITY OF EL PASO JOINED BY ITS PUBLIC SERVICE BOARD FOR CONVERSION OF RIO GRANDE PROJECT WATER TO MUNICIPAL USE; DELIVERY OF DISTRICT WATER TO THE JONATHAN ROGERS WATER TREATMENT PLANT; AND DELIVERY BY THE CITY OF EL PASO OF USABLE SEWAGE EFFLUENT TO THE EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1.

WHEREAS, the El Paso Water Utilities Public Service Board at its regular meeting of March 10, 2010 passed a resolution approving the First Amendment to the Rio Grande Project Implementing Third-Party Contract among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District No. 1, and the City of El Paso joined by its Public Service Board for conversion of Rio Grande Project water to municipal use; Delivery of District Water to the Jonathan Rogers Water Treatment Plant; and Delivery by the City of El Paso of Usable Sewage Effluent to the El Paso County Water Improvement District No. 1, and requested that the City Council authorize the Mayor to execute the Contract Amendment. All other provisions, terms and conditions of the Contract were affirmed and confirmed to continue in all respects; and,

WHEREAS, the City Council of the City of El Paso, Texas finds that it is in the public interest of the citizens of El Paso for the City to sign the First Amendment to the Rio Grande Project Implementing Third-Party Contract among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District No. 1, and the City of El Paso joined by its Public Service Board for conversion of Rio Grande Project water to municipal use; Delivery of District Water to the Jonathan Rogers Water Treatment Plant; and Delivery by the City of El Paso of Usable Sewage Effluent to the El Paso County Water Improvement District No. 1, NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:

The Mayor is hereby authorized to sign on behalf of the City of El Paso, the First Amendment to the Rio Grande Project Implementing Third-Party Contract among the United States of America Department of the Interior Bureau of Reclamation, the El Paso County Water Improvement District No. 1, and the City of El Paso joined by its Public Service Board for conversion of Rio Grande Project water to municipal use; Delivery of District Water to the Jonathan Rogers Water Treatment Plant; and Delivery by the City of El Paso of Usable Sewage Effluent to the El Paso County Water Improvement District No. 1.

ADOPTED AND EFFECTIVE this the 23<sup>rd</sup> day of March, 2010.

THE CITY OF EL PASO, TEXAS

ATTEST:

\_\_\_\_\_  
Richarda Momsen, City Clerk

\_\_\_\_\_  
John F. Cook, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Charlie McNabb, City Attorney

**1<sup>st</sup> AMENDMENT TO  
RIO GRANDE PROJECT  
IMPLEMENTING THIRD-PARTY CONTRACT  
among the  
UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION,  
the  
EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1,  
and the  
CITY OF EL PASO  
JOINED BY ITS PUBLIC SERVICE BOARD**

**WITNESSETH:**

**THIS AMENDMENT** is to the RIO GRANDE PROJECT IMPLEMENTING THIRD-PARTY CONTRACT (Contract No. O1-WC-40-6760) dated June 11, 2001 among the EL PASO COUNTY WATER IMPROVEMENT DISTRICT NO. 1, a political subdivision of the State of Texas, organized and existing under and by virtue of Article XVI, Section 59 of the Constitution of the State of Texas, hereinafter referred to as "the District," the CITY OF EL PASO, a municipal corporation organized and existing under and by virtue of the laws of the State of Texas, joined by its Public Service Board acting through its duly authorized Chairman, hereinafter referred to collectively as "the City," and the UNITED STATES OF AMERICA, hereinafter referred to as "the United States," through the Secretary of the Interior, hereinafter referred to as "the Secretary," pursuant to the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, particularly the Act of February 25, 1920 (41 Stat.451).

**NOW THEREFORE**, the parties agree as follows:

Paragraph 9.A.1. of the Contract is replaced in its entirety with the following:

1. For each acre of land owned by the City, legally or beneficially, and described and listed on Exhibit B attached hereto and made a part hereof (as it may be supplemented from time to time by the City with notice given to the other parties pursuant to section 21), but in no case more than 1,250 acres, during the term hereof the District shall provide annually to the City, and the City shall purchase from the District, the total quantity of District Water which in such calendar year the owner of the lands listed on Exhibit B would have been entitled to receive from the District pursuant to District policy then in effect had such lands been owned by a private landowner, provided however that such quantity shall never exceed 4.00 acre-feet of District Water per acre of such land. For each acre-foot of District Water

provided to the City under this section 9A, the City shall pay to the District a price per acre-foot equal to \$15 for the calendar year commencing January 1, 2001. On the first day of January of 2002 and each year thereafter during the term of this Contract the price per acre-foot of District Water subject to this section 9A1 shall increase in the same proportions as any increases after January 1, 2001 in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor now known as the Consumer Price Index-All Urban Consumers (CPI-U), All Items.

Paragraph 9.B. of the Contract is replaced in its entirety with the following:

**B. Price for All Other District Water**

1. For all District Water provided by the District to the City and not included in section 9A of this Contract or supplied pursuant to the Existing Contracts, the District shall charge the City, and the City shall pay to the District, the following amounts:

\$260.00 per acre-foot for the calendar year commencing January 1, 2011 through December 31, 2012

2. On the first day of January of 2013 and each year thereafter during the term of this Contract the price per acre-foot of District Water subject to this section shall increase in same proportions as any increases after January 1, 2012 in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor now known as the Consumer Price Index-All Urban Consumers (CPI-U), All Items.

3. The annual adjustments in the price per acre-foot shall be determined by multiplying \$260.00 by a fraction, the numerator of which is the index number for December of the calendar year that ended immediately before the date on which the adjustment is to be made and the denominator of which is the index number for December, 2012. In no event shall any annual adjustment called for in this section result in a price per acre-foot which is less than the previous year's price per acre-foot or increase by more than 4% in any year, and the price per acre-foot shall not be subject to adjustment under the provisions of paragraph 11.A of the Contract.

4. If the CPI-U, All Items, is discontinued during the Contract term, the future adjustments in price shall be made by substituting the index numbers for the Bureau of Labor Statistics of the United States Department of Labor that are most nearly comparable to the CPI-U, All Items. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or to publish statistics concerning the purchasing power of the consumer dollar during the Contract term, the future adjustments required under this

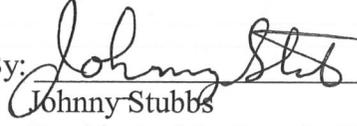
section shall be made by using the most nearly comparable statistics published by a generally recognized financial authority.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed, and this Contract becomes effective on the date of execution shown below for the signature of the United States.

Attest:

  
Indar Singh  
Secretary

**EL PASO COUNTY WATER  
IMPROVEMENT DISTRICT NO. 1**

By:  Date 3/4/10  
Johnny Stubbs  
President of the Board of Directors

Attest:

\_\_\_\_\_  
Richarda Momsen  
City Clerk

**THE CITY OF EL PASO**

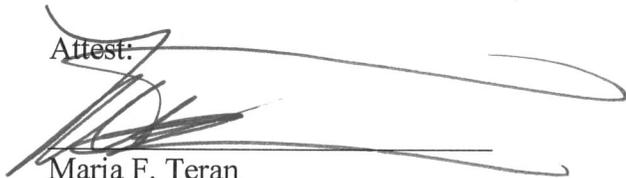
By: \_\_\_\_\_ Date \_\_\_\_\_  
John F. Cook  
Mayor

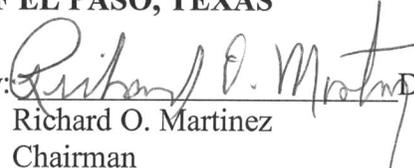
Approved to as Form:

  
Charlie McNabb  
City Attorney

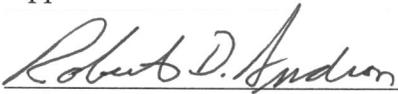
**THE PUBLIC SERVICE BOARD  
OF EL PASO, TEXAS**

Attest:

  
Maria F. Teran  
Secretary

By:  Date 10 Mar 10  
Richard O. Martinez  
Chairman

Approved to as Form:

  
Robert Andron  
General Counsel

Attest:

\_\_\_\_\_  
Christopher Rich, Field Solicitor

**UNITED STATES OF AMERICA**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Larry Walkoviak, Regional Director  
Upper Colorado Region  
Bureau of Reclamation