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CITY OF EL PASO, TEXAS

AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: El Paso Water Utilities Public Service Board**AGENDA DATE:** Bond Ordinance, Introduction and Passage: Tuesday, December 1, 2009**CONTACT PERSON/PHONE:** Robert D. Andron, General Counsel (915) 594-5506
Paul Braden, Fulbright & Jaworski, LLP (915) 351-6053**DISTRICT(S) AFFECTED:****SUBJECT:**

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

Consider and adopt an ordinance authorizing the sale and issuance of City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A (the "Bonds"), in a principal amount not to exceed \$6,425,000.00 to be purchased by the Texas Water Development Board (TWDB) through the Clean Water Act State Revolving Fund (CWSRF) funded by the American Recovery and Reinvestment Act (ARRA) of 2009, to finance the construction of stormwater projects.

BACKGROUND / DISCUSSION:

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

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

The Public Service Board (the "Board") of the El Paso Water Utilities ("EPWU") by Resolution dated June 30, 2009 authorized the President/CEO of EPWU to submit an application on behalf of the EPWU to the TWDB for financial assistance through the Clean Water Act State Revolving Fund ("CWSRF") for the purchase of \$12,036,992.00 of City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds ("MDUS Bonds") to fund certain eligible stormwater projects and authorized the President/CEO to seek the approval of the City of El Paso, Texas (the "City") to authorize the President/CEO to submit such application on the City's behalf.

The City passed and adopted a Resolution on July 14, 2009 authorizing the President/CEO of EPWU to submit an application on behalf of the City to the TWDB for financial assistance, through the CWSRF to be funded by ARRA, for the purchase of \$12,036,992.00 of MDUS Bonds to fund certain eligible stormwater projects. Upon reviewing the application, the TWDB limited its approval to three (Featherlake II, Basin G, and RV Channel) of the six proposed projects for a total of \$6,425,000 to be funded through a twenty-year, zero-interest loan.

The EPWU finds that it is in the best interest of its ratepayers to pursue this advantageous funding for the three stormwater projects as described above and requests the El Paso City Council to authorize the issuance of City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A, in a principal amount not to exceed \$6,425,000, to fund the projects to be approved by TWDB.

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PRIOR COUNCIL ACTION:

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

On September 8, 2009, the City Council passed and adopted an Ordinance authorizing the issuance of \$53,000,000.00 in City of El Paso, Texas Municipal Drainage Utility System Revenue Bonds for capital infrastructure stormwater projects, such bonds having been sold to the North American Development Bank.

AMOUNT AND SOURCE OF FUNDING:

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

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

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

El Paso Water Utilities Public Service Board passed and adopted a Resolution, November 19, 2009 requesting the El Paso City Council to authorize the issuance and sale of City of El Paso, Texas Municipal Drainage Utility System Revenue Bonds, Series 2009A, to the TWDB for the construction of three stormwater infrastructure projects.

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

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

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

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

CITY CLERK DEPT.

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ORDINANCE NO. _____

AUTHORIZING THE ISSUANCE OF

CITY OF EL PASO, TEXAS
MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS,
SERIES 2009A

Adopted: December 1, 2009

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AN ORDINANCE PROVIDING FOR THE ISSUANCE OF "CITY OF EL PASO, TEXAS, MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, SERIES 2009A"; PLEDGING THE NET REVENUES OF THE DRAINAGE UTILITY SYSTEM TO THE PAYMENT AND PRINCIPAL OF SAID BONDS; AND RESOLVING OTHER MATTERS WHICH ARE NECESSARY TO EFFECTUATE SAID ISSUANCE

WHEREAS, in accordance with the Constitution and the laws of the State of Texas, specifically Chapter 552 of the Texas Local Government Code, as amended, formerly known as Subchapter C of Chapter 402 of the Texas Local Government Code (the "Act"), the City of El Paso, Texas (the "City") held public hearings on the creation of a municipal drainage utility system and adopted Ordinance No. 016668 on June 19, 2007 establishing and declaring the creation of the City's Municipal Drainage Utility System (the "System") within the municipal boundaries and unincorporated extraterritorial jurisdiction of the City; and

WHEREAS, pursuant to an application filed with the Texas Water Development Board (the "Board"), the City has received a loan commitment from the Board for financial assistance in the amount of \$6,425,000 to finance the projects hereinafter described, and such financial assistance is to be evidenced by the Board's purchase of revenue bonds payable from and equally and ratably secured solely by a first and prior lien on and pledge of the Net Revenues (hereinafter defined) of the System; and

WHEREAS, the City is empowered by the provisions of the Act, Chapter 1502 of the Texas Government Code ("Chapter 1502") and the City's Home Rule Charter to issue such bonds; and

WHEREAS, there has been filed with the City Council a resolution adopted and approved by the Public Service Board (which manages the System) requesting the City Council to approve the issuance and sale of the City's revenue bonds for the purpose of financing drainage improvements; and

WHEREAS, in the ordinance authorizing the City's Previously Issued Bonds (hereinafter defined), the City reserved the right and option to issue, under certain conditions, "Additional Bonds" on a parity as to lien and right with such bonds; and

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

WHEREAS, the City Council has found and determined that the bonds herein authorized should be issued on a parity with its Previously Issued Bonds, for the purpose of the acquisition, construction and repair of structures, equipment and facilities for the City's Municipal Drainage Utility System, pursuant to this Ordinance and as permitted by the Act and the laws of the State of Texas, as amended; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended; and

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

ARTICLE 1

DEFINITIONS, FINDINGS AND INTERPRETATION

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

“Act” means Chapter 552 of the Texas Local Government Code, as amended.

“Additional Bonds” means the additional revenue bonds permitted to be issued on a parity with the Previously Issued Bonds and the Bonds by Section 10.03(a) of this Ordinance.

“Application” means the Application filed by the City with the Texas Water Development Board requesting financial assistance for the Project.

“Average Annual Debt Service” means an amount which, at the time of computation, is derived by dividing the total amount of Debt Service to be paid over a period of years as the same is scheduled to become due and payable by the number of years taken into account in determining the total Debt Service. Capitalized interest payments provided from bond proceeds shall be excluded in making the aforementioned computation.

“Board” or “Board of Trustees” means that certain board of trustees known as the “Public Service Board” heretofore established for the purpose of managing the System and other water utilities of the City, as represented by the various persons appointed from time to time.

“Bond” means any of the Bonds.

“Bonds” means the City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A, authorized by this Ordinance.

“Bonds Similarly Secured” means collectively, the Previously Issued Bonds, the Bonds and Additional Bonds.

“Bond Counsel” means a firm of nationally recognized attorneys experienced in the issuance of bonds and acceptable to the City, initially Fulbright & Jaworski L.L.P.

“Bullet Obligation” means all Bonds Similarly Secured of a series maturing in any single year in a principal amount that totals at least 15% of the initial aggregate principal amount of the entire series of such Bonds Similarly Secured.

“Business Day” means any day other than a Saturday, Sunday or legal holiday or other day on which banking institutions in the State of Texas are generally authorized or obligated by law or executive order to close.

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"Chapter 1371" means Chapter 1371 of the Texas Government Code, as amended.

"Chapter 1502" means Chapter 1502 of the Texas Government Code, as amended.

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

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

"Closing Agent" means Wells Fargo Bank, National Association, Austin, Texas.

"Closing Date" means the date of the initial delivery of and payment for the Bonds.

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

"Construction Fund" means the fund by that name designated in Section 9.01(b) hereof.

"Debt Service" means as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of premium if any, and interest (to the extent not capitalized) on such obligations; provided, however, that in making such calculation the following rules shall apply:

(1) For any series of Bonds Similarly Secured issued at a variable rate, that such obligations bear, or would have borne, interest at the highest rate of (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least twelve months, the average rate over the twelve months immediately preceding the date of calculation and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Internal Revenue Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published) plus 50 basis points, or (B) if interest is not so excludable, the interest rate on direct United States Treasury Obligations with comparable maturities plus 50 basis points; provided, however, that for purposes of any rate covenant measuring actual debt service during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period; and

(2) For any series of Bonds Similarly Secured issued as Short Term Obligations, Demand Obligations, or Bullet Obligations, Debt Service may be computed on the assumption that the principal amount shall be refinanced at maturity (or an earlier date on which principal thereof is payable on demand) by fixed rate Bonds Similarly Secured bearing interest at (a) if the interest on such obligations is excludable from gross income of the owners thereof for federal income tax purposes, a Revenue Bond Index published by the Bond Buyer or any successor publication or (b) if the interest on such obligations is not excludable from gross income of the owners thereof for federal income tax purposes, the yield on the Treasury Constant Maturity Series as reported in Federal Reserve Statistical Release H.15, Selected Interest Rates of the

Board of Governors of the Federal Reserve System, or any successor publication as certified by the City's financial advisor, in both cases (a) and (b) within 30 days prior to the date of such calculation (or the gross fixed or capped rate payable by the City under an interest rate swap or cap agreement that substantially hedges the rate of interest on such Bonds Similarly Secured) and maturing in substantially equal annual payments of principal and interest over a term of 25 years (or such longer period as a nationally recognized financial advisor or investment banker certifies is then reasonably attainable) or less; and

(3) For any series of Bonds Similarly Secured for which the City is entitled to receive payments from the federal or state government in such period on account of, and substantially contemporaneously with, interest paid on such Bonds Similarly Secured, the amount to be received in such period shall be deducted from such interest in computing Debt Service.

"Demand Obligations" means any Bonds Similarly Secured the principal of which is payable by the City on demand of the owner or holder thereof.

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

"Designated Payment/Transfer Office" means (i) with respect to the initial Paying Agent/Registrar named herein, its designated office in Minneapolis, Minnesota, or at such other location designated by the Paying Agent/Registrar and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"EPWU" means the El Paso Water Utilities, a component unit of the City of El Paso and any successors thereto.

"Fiscal Year" means the twelve month financial accounting period used by the EPWU in connection with the operation of the System which may be any twelve consecutive month period established by the EPWU.

"Government Obligations" means (i) direct noncallable obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations unconditionally guaranteed or insured by the agency or instrumentality and on the date of their acquisition or purchase by the City are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and on the date of their acquisition or purchase by the City, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent.

"Improvement Fund" means the fund by such name described in Section 8.01(a)(iv) hereof.

"Initial Bonds" means the Initial Bonds authorized by Section 3.04 of this Ordinance.

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

“Interest and Sinking Fund” means the fund by that name described in Section 8.01(a)(ii) hereof.

“Issue Price” has the meaning stated in section 1.148-1(b) of the Regulations.

“MSRB” means the Municipal Securities Rulemaking Board.

“Net Revenues” shall mean Revenues of the System, with respect to any period, after deducting the System’s Operating and Maintenance Expenses during such period.

“Operating and Maintenance Expenses” shall mean all current expenses of operating and maintaining the System not paid from the proceeds of any Debt, including all salaries, labor, materials and administrative costs, allocable under generally accepted accounting principles, to the System. Depreciation charges and other costs and disbursements which may be capitalized under generally accepted accounting principles shall not be considered Operating and Maintenance Expenses.

“Outstanding” means when used in this Ordinance with respect to Bonds or Bonds Similarly Secured, as the case may be, means, as of the date of determination, all Bonds and Bonds Similarly Secured theretofore sold, issued and delivered by the City, except:

(1) Bonds or Bonds Similarly Secured canceled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations;

(2) Bonds or Bonds Similarly Secured paid or deemed to be paid in accordance with applicable law; and

(3) Bonds or Bonds Similarly Secured that have been mutilated, destroyed, lost, or stolen and replacement bonds have been registered and delivered in lieu thereof.

“Owner” means the person who is the registered owner of a Bond or Bonds.

“Paying Agent/Registrar” means Wells Fargo Bank, National Association, or any successor thereto or replacement therefor as provided in this Ordinance.

“Previously Issued Bonds” means the outstanding bonds of the following issue: City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Taxable Series 2009 (Direct Subsidy-Build America Bonds).

“Project” means drainage improvements and facilities, including the acquisition, construction and repair of structures, equipment and facilities of the System as further described in the Application.

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"Purchaser" means the purchaser named in Section 14.01 hereof.

"Register" means the Register specified in Section 5.01(a) of this Ordinance.

"Required Reserve" means the total amount required to be accumulated and maintained in the Reserve Fund under the provisions of Section 8.02(b) hereof.

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

"Reserve Fund Requirement" means an amount equal to the lesser of (i) the Average Annual Debt Service (calculated on a Fiscal Year basis) for all Bonds Similarly Secured then Outstanding, as determined on the date each series of Additional Bonds are delivered or incurred, as the case may be, or (ii) the maximum amount in a reasonably required reserve fund that can be invested without restriction as to yield pursuant to Subsection (d) of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations promulgated.

"Revenue Fund" means the Drainage Utility System Revenue Fund established in Section 8.01(a)(i) hereof.

"Revenues" shall mean all income, receipts and revenues of every nature derived or received from the operation and ownership (excluding restricted gifts, grants in aid of construction and any amounts received from drainage charges specifically provided by ordinance for contribution to the funding of future drainage system construction) of the System, including earnings and income derived from the investment or deposit of moneys in any special funds or accounts created and established for the payment and security of the Bonds Similarly Secured and other obligations payable solely from and secured only by a lien on and pledge of the Net Revenues of the System, and excluding those amounts subject to payment to the United States of America as rebate pursuant to section 148 of the Code and any federal subsidies received pursuant to section 6431 of the Code.

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission.

"Short Term Obligations" means each series of bonds, notes and other debt obligations issued pursuant to a commercial paper or other similar financing program, the payment of principal of which is scheduled to be payable within one year from the date of issuance and is contemplated at the time of issuance to be refinanced through the issuance of Additional Bonds.

"System" or "Municipal Drainage Utility System" shall mean all land, easements and interest in land, together with all structures, equipment and facilities used in draining benefitted property (within the meaning of the Act), including, but not limited to, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses (but excluding City parks, roads, streets and bridges in existence on June 19, 2007) and excluding the property or entities exempted from the Act pursuant to Section 552.053 of the Act.

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“TWDB” means the Texas Water Development Board.

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

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

Section 1.04: Interpretation.

(a) Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa.

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

ARTICLE 2

SECURITY FOR THE BONDS

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

Section 2.02: Limited Obligations. The Bonds Similarly Secured, are special obligations of the City, payable solely from the Net Revenues, and do not constitute a prohibited indebtedness of the City. The Bonds Similarly Secured shall never be payable out of funds raised or to be raised by taxation.

Section 2.03: Security Interest. The City represents that, under Chapter 1208.002, Texas Government Code, a security interest in property, other than real property, that is created by the City is valid and effective according to the terms of the security agreement and is perfected from the time the security agreement is entered into or adopted continuously through the termination of the security interest, without physical delivery or transfer of control of the property, filing of a document, or another act. The City covenants that, if Chapter 1208.002 is amended at any time while the Bonds Similarly Secured are Outstanding, the City shall take all actions required in order to preserve for the Owners of the Bonds or Additional Bonds a perfected security interest in the property in which such security interest is granted pursuant to Section 2.01 hereof.

ARTICLE 3

AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS

Section 3.01: Authorization. The City’s revenue bonds to be designated the “City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A” are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State of Texas, particularly the Act, and the Charter of the City. The Bonds shall be issued in the aggregate principal amount of \$6,425,000 for the purpose of (i) the acquisition, construction and repair of structures, equipment and facilities for the City’s Municipal Drainage Utility System, and (ii) paying the costs of issuing the Bonds.

Section 3.02: Date, Denomination, Maturities, Numbers and Interest.

(a) The Bonds shall have an Initial Date of November 15, 2009. The Bonds shall be in fully registered form, without coupons, and shall be numbered consecutively from one upward, except the Initial Bonds, which shall be numbered as specified in Section 3.04(c).

(b) The Bonds shall be in the denomination of \$1,000 or any integral multiple thereof and shall mature on March 1 in the years and in the principal amounts in accordance with the following schedule:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2012	\$325,000	2022	\$320,000
2013	325,000	2023	320,000
2014	325,000	2024	320,000
2015	325,000	2025	320,000
2016	325,000	2026	320,000
2017	325,000	2027	320,000
2018	325,000	2028	320,000
2019	325,000	2029	315,000
2020	325,000	2030	315,000
2021	320,000	2031	310,000

Section 3.03: Medium, Method and Place of Payment

(a) The principal of the Bonds shall be paid in lawful money of the United States of America, as provided in this Section.

(b) The principal of each Bond shall be paid to the Owner of such Bond on the due date thereof (whether at the maturity date or the date of prior redemption thereof) upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Provided, however, while the Board is the registered owner of the Bonds, payments on the Bonds shall be made by wire transfer without expense to the Holder.

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(c) If the date for the payment of the principal of the Bonds is not a Business Day, the date for such payment shall be the next succeeding Business Day, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in this Section.

(d) Unclaimed payments shall be segregated in a special escrow account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which the unclaimed payments pertain. Subject to Title 6 of the Texas Property Code, payments remaining unclaimed by the Owners entitled thereto for three years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, neither the City, the Paying Agent/Registrar nor any other person shall be liable or responsible to any Owners of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to Title 6 of the Texas Property Code.

Section 3.04: Execution and Initial Registration. The Bonds shall be executed on behalf of the City by the Mayor and the City Clerk or Alternate City Clerk as of the date of adoption of this Ordinance, by their manual or facsimile signatures, and the official seal of the City shall be impressed or placed in facsimile thereon. Such facsimile signatures on the Bonds shall have the same effect as if each of the Bonds had been signed manually and in person by each of said officers, and such facsimile seal on the Bonds shall have the same effect as if the official seal of the City had been manually impressed upon each of the Bonds.

(a) In the event any officer of the City whose manual or facsimile signature appears on the Bonds ceases to be such officer before the authentication of such Bonds or before the delivery thereof, such facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in such office.

(b) Except as provided below, no Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit of this Ordinance unless and until there appears thereon the Certificate of Paying Agent/Registrar substantially in the form provided herein, duly authenticated by manual execution by an officer or duly authorized signatory of the Paying Agent/Registrar. It shall not be required that the same officer or authorized signatory of the Paying Agent/Registrar sign the Certificate of Paying Agent/Registrar on all of the Bonds. In lieu of the executed Certificate of Paying Agent/Registrar described above, the Initial Bonds delivered on the Closing Date shall have attached thereto the Comptroller's Registration Certificate substantially in the form provided herein, manually executed by the Comptroller of Public Accounts of the State of Texas, or by his duly authorized agent, which certificate shall be evidence that the Initial Bonds have been duly approved by the Attorney General of the State of Texas and that they are valid and binding special obligations of the City, and have been registered by the Comptroller of Public Accounts of the State of Texas.

(c) On the Closing Date, twenty (20) Initial Bonds, being one bond for each year of maturity, numbered T-1 upward, executed by manual or facsimile signature of the Mayor and City Clerk or Alternate City Clerk, approved by the Attorney General, and registered and manually signed by the Comptroller of Public Accounts, shall be delivered to the Closing Agent.

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As installment deliveries of the Bonds are made to the TWDB, the Paying Agent/Registrar, as Closing Agent, pursuant to written instructions from the City, or the designee thereof, and in accordance with Article Six of the Paying Agent/Registrar Agreement shall cancel the Initial Bonds and deliver in exchange therefor definitive Bonds of like principal amount and maturity date, in authorized denominations for transfer and delivery to DTC for the account of the initial purchaser; all pursuant to and in accordance with said Article Six of the Paying Agent/Registrar Agreement, written instructions from the initial purchaser, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

Section 3.05: Ownership.

(a) The City, the Paying Agent/Registrar and any other person may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment of the principal and for all other purposes, whether or not such Bond is overdue, and neither the City nor the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

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

Section 3.06: Registration, Transfer and Exchange

(a) So long as any Bonds remain Outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a register (the "Register") in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Ordinance.

(b) Registration of any Bond may be transferred in the Register only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of the Bonds, or any portion thereof in any integral multiple of \$1,000, to the assignee or assignees thereof, and the right of such assignee or assignees thereof to have the bond or any portion thereof registered in the name of such assignee or assignees. No transfer of any Bond shall be effective until entered in the Register. Upon assignment and transfer of any Bond or portion thereof, a new Bond or Bonds will be issued by the Paying Agent/Registrar in exchange for such transferred and assigned Bond. To the extent possible the Paying Agent/Registrar will issue such new Bond or Bonds in not more than three business days after receipt of the Bond to be transferred in proper form and with proper instructions directing such transfer.

(c) Any Bond may be exchanged only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the registered owner or assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantees of signatures satisfactory to the Paying Agent/Registrar, for a Bond or Bonds of the same maturity and in any authorized

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denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. If a portion of any Bond is redeemed prior to its scheduled maturity as provided herein, a substitute Bond or Bonds having the same maturity date, in the denomination or denominations of any integral multiple of \$1,000 at the request of the registered owner, and in an aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon surrender thereof for cancellation. To the extent possible, a new Bond or Bonds will be required to be delivered by the Paying Agent/Registrar to the registered owner of the Bond or Bonds in not more than three business days after receipt of the Bond to be exchanged in proper form and with proper instructions directing such exchange.

(d) Each Bond issued in exchange for any Bond or portion thereof assigned or transferred shall be of the same tenor and shall have the same maturity date as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall exchange the Bonds as provided herein, and each substitute Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Ordinance to the same extent as the Bond or Bonds in lieu of which such substitute Bond is delivered.

(e) The City will pay the Paying Agent/Registrar's reasonable and customary charge for the initial registration of the Bonds and the subsequent exchange of the Bonds pursuant to the provisions hereof. However, the Paying Agent/Registrar will require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer or exchange of a Bond. In addition, the City hereby covenants with the Owners of the Bonds that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of the Bonds, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer, registration and exchange of Bonds as provided herein to the extent such fees and charges are payable hereunder by the City.

(f) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Bond called for redemption, in whole or in part, where such redemption is scheduled to occur within 45 calendar days of the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the owner of the uncalled principal balance of a Bond.

Section 3.07: Cancellation and Authentication.

(a) All Bonds paid or redeemed before scheduled maturity in accordance with this Ordinance, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Ordinance, shall be canceled upon the making of proper records regarding such payment, redemption, exchange or replacement.

(b) Each substitute Bond issued in exchange for or replacement of (pursuant to the provisions of Section 3.09 hereof) any Bond or Bonds issued under this Ordinance shall have printed thereon a Certificate of Paying Agent/Registrar, in the form hereinafter set forth. An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such

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bond, manually sign and date such Certificate, and no such Bond shall be deemed to be issued or outstanding unless such Certificate is so executed. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing exchange or replacement of any Bond or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bonds in the manner prescribed herein. Pursuant to Chapter 1201, Texas Government Code, the duty of exchange or replacement of Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of the above Certificate of Paying Agent/Registrar, the exchanged or replaced Bonds shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which originally were delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

Section 3.08: Temporary Bonds.

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

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

Section 3.09: Replacement Bonds

(a) Upon the presentation and surrender to the Paying Agent/Registrar of a mutilated Bond, the Paying Agent/Registrar shall authenticate and deliver in exchange therefor a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding. The City or the Paying Agent/Registrar may require the Owner of such Bond to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection therewith and any other expenses connected therewith.

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the Paying Agent/Registrar, pursuant to the applicable laws of the State of Texas and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount, bearing a number not contemporaneously outstanding, provided that the Owner first:

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

(d) furnishes such security or indemnity as may be required by the Paying Agent/Registrar and the City, to save each of them harmless;

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

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

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

(f) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, without the necessity of issuing a replacement Bond, may pay such Bond on the date on which such Bond becomes due and payable.

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

Section 3.10: Book-Entry Only System.

(a) Notwithstanding any other provision hereof, upon initial issuance of the Bonds, the ownership of the Bonds shall be registered in the name of Cede & Co., as nominee of DTC. The definitive Bonds shall be initially issued in the form of a single separate fully registered certificate for each of the maturities thereof.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/ Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Owner, as shown in the Register of any amount with respect to principal of and premium, if any, on the

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Bonds. Notwithstanding any other provision of this Ordinance to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, on the Bonds, for the purpose of all matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of and premium, if any, on the Bonds only to or upon the order of the respective owners, as shown in the Register as provided in this Ordinance, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than an owner, as shown in the Register, shall receive a certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

Section 3.11: Successor Securities Depository; Transfer Outside Book-Entry Only System. In the event that the City or the Paying Agent/Registrar determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the City to DTC, or in the event DTC discontinues the services described herein, the City or the Paying Agent/Registrar shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Ordinance.

Section 3.12: Payments to Cede & Co. Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bonds are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and premium, if any, on the Bonds, and all notices with respect to such Bonds, shall be made and given, respectively, in the manner provided in the blanket representation letter of the City to DTC.

ARTICLE 4

REDEMPTION OF BONDS BEFORE MATURITY

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

Section 4.02: Optional Redemption.

(a) The City reserves the option to redeem Bonds, in whole or in part (in inverse order of Stated Maturities), before their respective scheduled maturity dates, on March 1, 2012, or any date thereafter, at a price equal to the principal amount thereof only upon written approval of the Executive Administrator of the TWDB.

(b) If less than all of the Bonds are to be redeemed pursuant to an optional redemption, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity or maturities and in such principal amounts for redemption.

(c) The City, at least 45 days before the redemption date (unless a shorter period shall be satisfactory to the Paying Agent/Registrar), shall notify the Paying Agent/Registrar of such redemption date and of the principal amount of Bonds to be redeemed.

Section 4.03: Partial Redemption.

(a) A portion of a single Bond of a denomination greater than \$1,000 may be redeemed, but only in a principal amount equal to \$1,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall assign a separate number for each \$1,000 portion of the Bonds and select the portion or portions of the Bond to be redeemed by lot or by any other customary method that results in a random selection.

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

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

Section 4.04: Notice of Redemption to Owners.

(a) The Paying Agent/Registrar shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond (or portion thereof) to be redeemed, at the address shown in the Register at the close of business on the Business Day next preceding the date of mailing of such notice.

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

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

(d) With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by this Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, on the Bonds to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

Section 4.05: Payment Upon Redemption.

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

(b) Upon presentation and surrender of any Bond called for redemption at the Designated Payment/Transfer Office of the Paying Agent/Registrar, on or after the date fixed for redemption, the Paying Agent/Registrar shall pay the principal of such Bond from the moneys set aside for such purpose.

Section 4.06: Effect of Redemption.

(a) Notice of redemption having been given as provided in Section 4.04 of this Ordinance, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption.

(b) Money set aside for the redemption of Bonds and remaining unclaimed by the Owners thereof shall be subject to the provisions of Section 3.03(d) hereof.

ARTICLE 5

PAYING AGENT/REGISTRAR

Section 5.01: Appointment of Initial Paying Agent/Registrar.

(a) Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States of America authorized to do business in the State of Texas, is hereby appointed as the initial Paying Agent/Registrar for the Bonds.

(b) The Mayor and the City Manager are authorized and directed to execute an agreement with the Paying Agent/Registrar specifying the duties and responsibilities of the City and the Paying Agent/Registrar.

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Section 5.02: Qualifications of Paying Agent/Registrar. Each Paying Agent/Registrar shall be a commercial bank, a national banking association trust company organized under the laws of the State of Texas, or other entity duly qualified and legally authorized to serve as, and perform the duties and services of, paying agent and registrar for the Bonds.

Section 5.03: Maintaining Paying Agent/Registrar.

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

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

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

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

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

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

ARTICLE 6

FORM OF THE BONDS

Section 6.01: Form Generally.

(a) The Bonds, including the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Certificate of the Paying Agent/Registrar, and the Assignment to appear on each of the Bonds, (i) shall be substantially in the form set forth herein with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance, and (ii) may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and

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endorsements (including any applicable statement of insurance and any reproduction of an opinion of counsel) thereon as, consistently herewith, may be determined by the City or by the officers executing such Bonds, as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse side thereof, with an appropriate reference thereto on the face of the Bonds.

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

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

Section 6.03: CUSIP Registration. The City may secure identification numbers through the CUSIP Service Bureau Division of Standard & Poor's Corporation, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor the attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed on the Bonds.

Section 6.04: Legal Opinion. The approving legal opinion of Bond Counsel, may be attached to or printed on each Bond over the certification of the City Clerk or Alternate City Clerk of the City, which certification may be executed in facsimile.

ARTICLE 7

PUBLIC SERVICE BOARD

Section 7.01: Public Service Board.

(a) Pursuant to the authority contained in Section 1502.071, Texas Government Code, during such time as any of the Bonds herein authorized are outstanding and unpaid, the Board shall have complete authority and control of the management and operation of the System.

(b) The Board shall consist of seven members, one of whom shall be the Mayor of the City who shall ex officio be one member of the Board. Each term of office shall be four years with no member being appointed to more than two consecutive terms. To the extent not prohibited by State law or in conflict with the ordinances authorizing the Bonds Similarly Secured, any member shall continue to serve until his or her successor is appointed and qualified, or until 60 days have passed beyond the expiration of such term, whichever event occurs first. After that time a vacancy on the Board shall exist and the former member shall have no power to

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vote or participate in Board proceedings; but such vacancy shall not serve to reduce the number of members required for a quorum.

Each vacancy in Board membership whether occasioned by expiration of office or otherwise shall be filled by the City Council from three persons eligible to serve as Board members and presented to City Council. A selection committee selected by the City Council and comprised of the Board and such additional members as appointed by City Council shall agree upon and submit to City Council the names of such three eligible persons.

Any member of the Board, other than the Mayor, who shall be continuously absent from all meetings of the Board for a period of three consecutive months shall, unless he or she shall be granted leave of absence by the unanimous vote of the remaining members of the Board, be removed from office, but only for adequate cause. As City Council appointees, members of the Board are subject to the City's ethics ordinance, Chapter 2.92 of the City Code of the City, as amended, and must comply with the applicable provisions contained therein.

(c) The Board shall elect one of its own members as Chairman and one as Vice-Chairman and appoint a Secretary and a Treasurer or a Secretary-Treasurer, who may, but need not, be a member or members of the Board. The Board may make such regulations or any by-laws for the orderly handling of its affairs as it may in its discretion see fit and shall thereafter, subject to the pertinent laws of the State of Texas, operate and manage the System with the same freedom and in the same manner as are ordinarily enjoyed by the Board of Directors of a private corporation operating properties of a similar nature.

Subject to the provisions and restrictions contained in this Ordinance, all of which shall be binding on the Board, the Board shall have complete authority and control of the management and operations of the System and the expenditure and application of its revenues.

(d) The Board shall elect or appoint all officers and employees which it may consider desirable, including a President/Chief Executive Officer of the EPWU. The President/Chief Executive Officer shall be responsible to appoint officers and employees that directly report to the President/Chief Executive Officer, including, an attorney or attorneys, vice president(s) and such other personnel that directly report to the President/Chief Executive Officer. All other officers and employees, except members of the Board, the President/Chief Executive Officer, attorneys, vice president(s) and persons directly reporting to the vice president(s) shall serve under the City Civil Service provisions as are or may be established by the Charter of the City or the laws of Texas, and the Board shall have the same authority with respect to such officers and employees as that of the City Council with respect to other officers and other employees of the City. The Board shall obtain and keep continually in force an employers' fidelity and indemnity bond of the so-called blanket type, written by a solvent and recognized indemnity company, and covering losses to the amount not to exceed \$50,000.

(e) The members of the Board, other than the Mayor shall, for each meeting attended, receive the sum of \$20.00, except that the amount so paid to any member of the Board in any fiscal year shall not exceed \$1,000. The members of the Board shall not personally be liable for any act or omission not willfully fraudulent or committed in bad faith.

ARTICLE 8

FUNDS; FLOW OF FUNDS

Section 8.01: Special Funds.

(a) The City covenants and agrees that all revenues derived from the operation of the System shall be kept separate from other funds of the City. To that end, the following special funds are hereby confirmed and shall be maintained at the Depository Bank so long as any of the Bonds Similarly Secured are Outstanding, to-wit:

(i) "City of El Paso, Texas, Municipal Drainage Utility System Revenue Fund" (herein called the "Revenue Fund");

(ii) "City of El Paso, Texas, Municipal Drainage Utility System Bonds Interest and Sinking Fund" (herein called the "Interest and Sinking Fund");

(iii) "City of El Paso, Texas, Municipal Drainage Utility System Bonds Reserve Fund" (herein called the "Reserve Fund"); and

(iv) "City of El Paso, Texas, Municipal Drainage Utility System Improvement Fund" (herein called the "Improvement Fund").

The Interest and Sinking Fund and the Reserve Fund shall be held in trust solely for the benefits of the Owners and the Owners of the Bonds Similarly Secured.

Section 8.02: Revenue Fund. All Revenues shall be deposited from day to day as collected into the Revenue Fund. Moneys on deposit in the Revenue Fund shall first be used to pay all Operating and Maintenance Expenses. The Revenues of the System not actually required to pay Operating and Maintenance Expenses (the "Net Revenues") shall be transferred from the Revenue Fund to the other Funds in this Ordinance, in the order of priority, in the manner, and in the amounts set forth below:

(a) Interest and Sinking Fund. In addition to the deposits required by ordinances authorizing the Previously Issued Bonds, there shall be deposited into the Interest and Sinking Fund such amounts, in equal monthly installments, commencing on the first day of the month next following the Closing Date, and on the first day of each month thereafter, as will be sufficient to pay the next maturing principal of the Bonds, including any scheduled mandatory redemption of Bonds.

The Interest and Sinking Fund shall be used to pay the principal of and interest on the Bonds Similarly Secured as such principal matures and such interest becomes due.

(b) Reserve Fund. So long as the funds on deposit in the Reserve Fund created for the benefit of the Bonds Similarly Secured are equal to the Reserve Fund Requirement, no deposits need to be made to the credit of the Reserve Fund; but should the Reserve Fund at any time contain less than the Reserve Fund Requirement, then, subject and subordinate to making the required deposits to the credit of the Interest and Sinking Fund, the City shall transfer from

the Net Revenues in the Revenue Fund and deposit to the credit of the Reserve Fund, on the first day of each month, such amounts in equal monthly installments to accumulate within sixty (60) months a sum equal to the Reserve Fund Requirement. The money on deposit in the Reserve Fund may be used to pay the principal of and interest on the Bonds Similarly Secured at any time there are not sufficient funds on deposit in the Interest and Sinking Fund for such purpose.

In accordance with the procedures specified in the preceding paragraph, the City hereby directs that the deposits, if any, being made to the Reserve Fund be increased to accumulate in the Reserve Fund within sixty (60) months from the date of the Bonds an amount equal to the Reserve Fund Requirement.

Notwithstanding anything herein to the contrary and provided that the Reserve Fund Requirement with respect to the Bonds will be funded with Net Revenues, the City retains the right, with respect to subsequent issues of Additional Bonds, to fund the Reserve Fund Requirement in whole or in part with a surety bond or insurance policy issued by an insurance company or other entity that is rated either for the long term unsecured debt of the issuer of such surety bond or for obligations insured, secured or guaranteed by such issuer have a rating in the highest letter category by two major municipal securities rating or evaluation services, and money deposited to the credit of the Reserve Fund may be used to make any payments required to satisfy the City's repayment obligation to the issuer of such surety bond or insurance policy in the same manner and with like effect as if such payments were being used to accumulate, maintain or restore the Reserve Fund Requirement in cash or with authorized investments.

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

(i) To pay the cost of any special or extraordinary repairs or replacements to or of the properties comprising the System, properly payable with such money under the laws of the State of Texas, necessitated by reason of some emergency; and

(ii) To the extent now or hereafter permitted by law, any lawful purpose.

Section 8.03: Investment of Funds.

(a) Money deposited to the credit of any Fund referenced in this Ordinance may, at the option of the City, be invested in obligations identified in, and in accordance with the provisions of the "Public Funds Investment Act" (V.T.C.A., Government Code, Chapter 2256) relating to the investment of "bond proceeds"; provided that all such investments shall be made in such a manner that the money required to be expended from said Funds will be available at the proper time or times. Such investments (except State and Local Government Series investments held in book entry form, which shall at all times be valued at cost) shall be valued in terms of current market value within 45 days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 30 days of the date of passage of each ordinance authorizing the issuance of Additional Bonds. All interest and income derived

from deposits and investments in the Interest and Sinking Fund immediately shall be credited to, and any losses debited to, the Interest and Sinking Fund. All interest and interest income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 8.02(b) hereof, be credited to and deposited in the Revenue Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

All moneys on deposit in the funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested) shall be secured in the manner and to the fullest extent required by the laws of Texas for the security of public funds.

Section 8.04: Contributions in Aid of Construction. Any moneys that may be received by the Board that shall represent contributions in aid of construction shall be deposited in a separate account at the Depository Bank. Such contributions shall not be considered as part of the Revenues of the System. Payments from such bank account shall be made only for the purposes for which the contributions were made, including any refunds that may become due to any contributor.

ARTICLE 9

DEPOSIT OF PROCEEDS; CONTROL AND DELIVERY OF BONDS

Section 9.01: Deposit of Proceeds.

(a) Pursuant to written instructions from First Southwest Company, the City's Financial Advisor, on the Closing Date the Paying Agent/Registrar shall pay, from the proceeds of the Bonds received on the Closing Date, to First Southwest Company an amount sufficient to pay the costs and expenses pertaining to the issuance of the Bonds. To the extent such amount is not required or used for such purpose, such excess shall be deposited to the Interest and Sinking Fund.

(b) There is hereby established and created the "City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A Construction Fund" (the "Construction Fund"), which shall be maintained by the City at the Depository Bank and which shall be kept segregated and apart from other funds and accounts of the City and the Board. With each installment delivery of the Bonds to the TWDB, the proceeds of sale for such delivery shall be deposited to the credit of the Construction Fund.

(c) Monies on deposit in the Construction Fund shall be applied solely to the payment of the Project in accordance with the applicable requirements of the Texas Water Code and the rules and regulations of the TWDB.

Section 9.02: Control and Delivery of Bonds.

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

(b) After registration by the Comptroller of Public Accounts, delivery of the Bonds shall be made to the Purchaser under and subject to the general supervision of the City Manager of the City or the President/Chief Executive Officer of the EPWU against receipt by the City of all amounts due the City under the terms of the sale.

ARTICLE 10

PARTICULAR REPRESENTATIONS AND COVENANTS

Section 10.01: Insurance. The City hereby agrees that it will carry at all times for the benefit of the Owners of the Bonds, such insurance on the System that is reasonably obtainable of the kinds and in the amounts which are usually carried by private companies operating similar properties and adequate to protect TWDB's interest in the Project. Such insurance may be provided by means of a self-insurance fund in which event deposits to such fund shall be a maintenance and operating expense of the System.

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

Section 10.03: Additional Covenants.

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

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

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

(iii) the City has secured a certificate or opinion of a Certified Public Accountant to the effect that, according to the books and records of the City, the Net Revenues for the last completed Fiscal Year, or for 12 consecutive months out of the 15 months, immediately preceding the date of issuance of the Additional Bonds (the date of issuance being the date of delivery of all or a portion of the Additional Bonds to the initial purchasers) are at least equal to 1.25 times the Average Annual Debt Service for all Outstanding Bonds Similarly Secured after giving effect to the issuance of the Additional Bonds then being issued. In making a determination of the Net Revenues, the Accountant may take into consideration a change in the charges for services afforded by the System that became effective at least sixty (60) days prior to the last day of the period for which Revenues are determined and, for purposes of satisfying the above Revenues test, make a pro forma determination of the Net Revenues of the System for the period of

time covered by his certification or opinion based on such change in charges being in effect for the entire period covered by the certificate or opinion of the Accountant.

(iv) the Reserve Fund Requirement shall be increased as necessary and any such additional amount shall be accumulated in equal monthly installments during a period not to exceed sixty (60) months.

(b) Refunding Bonds. The City reserves the right to issue refunding bonds to refund all or any part of the Bonds Similarly Secured (pursuant to any law then available) upon such terms and conditions as the City Council of the City may deem to be in the best interest of the City and its inhabitants, and if less than all such Bonds Similarly Secured then outstanding are refunded, the conditions precedent prescribed (for the issuance of Additional Bonds) set forth in subparagraph (a)(iii) of this Section shall be satisfied and the certificate of the Accountant required in subparagraph (a)(iii) shall give effect to the Debt Service requirements of the proposed refunding bonds (and shall not give effect to the Debt Service requirements of the Bonds Similarly Secured being refunded following their cancellation or provision being made for their payment).

(c) Obligations of Inferior Lien and Pledge. The City hereby reserves the right to issue obligations payable from and secured by a lien on and pledge of the Net Revenues of the System, junior and subordinate in rank and dignity to the lien and pledge securing the payment of the Bonds Similarly Secured, as may be authorized by the laws of the State of Texas.

(d) Maintain and Operate System Efficiently. The City and the Board hereby covenant, respectively, that they will maintain and operate the System with all possible efficiency, in good working order and at a reasonable cost while any of the Bonds remain Outstanding and faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the State.

(e) Rate Covenant. The Board hereby covenants that it will establish and maintain rates for services supplied by the System which shall produce or yield Net Revenues equal to 1.25 times the Average Annual Debt Service requirements of all Bonds Similarly Secured.

(f) Debt Service Coverage Ratio. The Board hereby covenants that each Fiscal Year while the Bonds are Outstanding, it will operate the System in a manner that results in the Net Revenues equaling 1.25 times the Average Annual Debt Service requirements of all Bonds Similarly Secured.

(g) Charges for Water and Sewer and Drainage Service. The City and the Board hereby covenant that charges for drainage services will be made jointly with charges made for the sale of water and sewer services. Such charges shall be required to be paid by the customer at the same time.

(h) Enforcement. To exercise and pursue with due diligence available remedies provided by law for the collection of delinquent drainage charges, including the power under Section 552.050 of the Act to discontinue all utility services, particularly water and sewer services provided by the City to a user of benefited property who is delinquent in the payment of drainage charges.

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(i) Nonimpairment of Lien. The City and the Board hereby covenant, respectively, to take no action or omit to take any action, or suffer to be done or omitted to be done, any matter or thing whatsoever whereby the lien of the Bonds Similarly Secured on the Net Revenues of the System might or could be lost or impaired, and that the Board will pay or cause to be paid, or will make adequate provision for the satisfaction and discharge of all lawful claims and demands for labor, materials, supplies, or other objects which, if unpaid, might by law be given precedence to, or an equality with the Bonds Similarly Secured as a lien or charge upon the revenues of the System or any part thereof; provided that nothing in this subsection (g) shall be construed to require the Board to pay, discharge or make provision for any such lien, charge, claim or demand so long as the validity thereof shall be by it in good faith contested.

(j) No Sale or Encumbrance of System. The City and the Board hereby covenant, respectively, that they will not in any manner dispose of the System or any substantial part thereof, including any and all extensions and additions that may be made thereto, until the Bonds Similarly Secured shall have been paid in full as to both principal and interest; provided, however, that this covenant shall not be construed to prevent the disposal by the City of property, which in the Board's judgment has become inexpedient to use in connection with the System, when other property of equal value is substituted therefor or when the proceeds of such disposition of such property are placed in the Interest and Sinking Fund, in addition to all other amounts required to be placed in the Interest and Sinking Fund in the current fiscal year, and are used for the retirement of Bonds Similarly Secured in advance of their respective maturities.

(k) No Competing Systems. The City hereby covenants that it will not grant a franchise for the operation of any competing drainage system in the City until all Bonds Similarly Secured have been paid in full with respect to principal and interest.

(l) No Free Service. The Board hereby covenants that it will not permit free drainage to be supplied to the City or to any other user (other than those persons exempt under the Act and/or applicable law) and the City hereby agrees that it will pay from its general fund the reasonable value of all drainage services obtained from the System by the City and all departments and agencies thereof.

Section 10.04: Payment of Bonds. While any of the Bonds are Outstanding, the Chief Financial Officer of EPWU shall cause to be transferred to the Paying Agent/Registrar therefor, from funds on deposit in the Interest and Sinking Fund, and, if necessary, in the Reserve Fund, amounts sufficient to fully pay and discharge promptly as each installment of principal of the Bonds accrues or matures or comes due by reason of redemption prior to maturity; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the business day next preceding the date of payment for the Bonds.

ARTICLE 11

COVENANTS TO MAINTAIN TAX EXEMPT STATUS

(a) Definitions. When used in this Section, the following terms shall have the following meanings:

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“Closing Date” means the date on which the Bonds are first authenticated and delivered to the initial purchasers against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

“Computation Date” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Gross Proceeds” means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

“Investment” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Nonpurpose Investment” means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

“Rebate Amount” has the meaning set forth in Section 1.148-1(b) of the Regulations.

“Regulations” means any proposed, temporary, or final Income Tax Regulations issued pursuant to Sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

“Yield” of (1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations and (2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

(b) Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner which, if made or omitted, respectively, would cause interest on (1) any Bond issued hereunder or (2) any series of bonds or obligations issued or incurred by the Texas Water Development Board or the Texas Water Resources Finance Authority to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(i) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or

indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except to the extent permitted by section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take or pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment (or use Gross Proceeds to replace money so invested), if as a result of such investment the Yield from the Closing Date of all Investments acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, exceeds the Yield of the Bonds.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

(g) Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(i) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from

all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Interest and Sinking Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by Section 148(f) of the Code and the Regulations and rulings thereunder.

(iv) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148 3(h) of the Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to subsection (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

(j) Elections. The City hereby directs and authorizes the City Manager, the President/Chief Executive Officer of the EPWU, the Vice President of the EPWU and/or the Chief Financial Officer of the EPWU, either or any combination of the foregoing, to make

elections permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds, in the Certificate as to Tax Exemption or similar or other appropriate certificate, form or document.

Section 11.02: Continuing Obligation. Notwithstanding any other provision of this Ordinance, the City's obligations under the covenants and provisions of this Article X shall survive the defeasance and discharge of the Bonds.

ARTICLE 12

DEFAULT AND REMEDIES

Section 12.01: Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in payments to be made to the Interest and Sinking Fund or the Reserve Fund as required by the Ordinance, or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in the Ordinance, the Owner or Owners of any of the Bonds shall be entitled to a writ of mandamus issued by a court of proper jurisdiction, compelling and requiring the City and its officers to observe and perform any covenant, condition or obligation prescribed in the Ordinance. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, nor shall such delay or omission be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 12.02: Remedies Not Exclusive. No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

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

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ARTICLE 13

DISCHARGE

Section 13.01: Discharge. The Bonds may be defeased, refunded and discharged in any manner permitted by law. Provided, however, that if the Bonds are defeased, the City shall remain obligated for all payments, including contribution of additional money or securities if necessary, to provide sufficient amounts to satisfy any payment obligations.

ARTICLE 14

SALE AND DELIVERY OF BONDS

Section 14.01: Sale of Bonds.

(a) The Bonds are hereby sold and awarded and shall be delivered to the TEXAS WATER DEVELOPMENT BOARD. (the "Purchaser"), pursuant to the terms and provisions of the Commitment issued by the Purchaser in connection with the sale of the Bonds. It is hereby officially found, determined and declared that the terms of this sale are the most advantageous reasonably obtainable. The Bonds shall be initially registered in the name of the Purchaser or its designee.

(b) The City Manager, the President/Chief Executive Officer of the EPWU, the Vice President of the EPWU, the Chief Financial Officer of the EPWU or any other officer of the City are each authorized to execute such documents, certificates and receipts, and to make such elections with respect to the tax-exempt status of the Bonds, as they may deem appropriate in order to consummate the delivery of the Bonds in accordance with the provisions of this Ordinance.

(c) The obligation of the Purchaser to accept delivery of the Bonds is subject to the Purchaser being furnished with the final, approving opinion of Fulbright & Jaworski L.L.P., Bond Counsel for the City, which opinion shall be dated and delivered the Closing Date. The engagement of such firm as Bond Counsel to the City in connection with the issuance of its System revenue bonds is hereby approved and confirmed.

ARTICLE 15

CONTINUING DISCLOSURE UNDERTAKING

Section 15.01: Annual Reports.

(a) The City shall cause the Board to provide annually to the MSRB (1) within six months after the end of each fiscal year ending in or after 2010, financial information and operating data with respect to the System of the general type included in the Application, being the information described in **Exhibit B** hereto, and (2) if not provided as part of such financial information and operating data, audited financial statements of the System, when and if available. Financial statements to be provided shall be (1) prepared in accordance with the accounting principles described in **Exhibit B** hereto and (2) audited, if the Board commissions

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an audit of such statements and the audit is completed within the period during which they must be provided.

(b) If the Board changes its fiscal year, the City will cause the Board to notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the Board otherwise would be required to provide financial information and operating data pursuant to this Section.

(c) The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any documents available to the public on the MSRB's Internet Web site or filed with the SEC.

Section 15.02: Material Event Notices.

(a) The City will cause the Board to notify the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:

- (i) principal and interest payment delinquencies;
 - (ii) nonpayment-related defaults;
 - (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
 - (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
 - (v) substitution of credit or liquidity providers, or their failure to perform;
 - (vi) adverse tax opinions or events affecting the tax exempt status of the Bonds;
 - (vii) modifications to rights of Owners;
 - (viii) Bond calls;
 - (ix) defeasance;
 - (x) release, substitution, or sale of property securing repayment of the Bonds;
- and
- (xi) rating changes.

(b) The City will cause the Board to notify the MSRB, in a timely manner, of any failure by the Board to provide financial information or operating data in accordance with Section 15.02 of this Ordinance by the time required by such Section.

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Section 15.03: Filings with the MSRB. All financial information, operating data, financial statements, notices, and other documents provided to the MSRB in accordance with this Section shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 15.04: Limitations, Disclaimers and Amendments

(a) The City, acting through the Board, shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City will cause the Board in any event to give notice of any deposit made in accordance with Article XIII that causes Bonds no longer to be outstanding.

(b) The provisions of this Article are for the sole benefit of the Owners and beneficial owners of the Bonds under the Rule, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City, acting through the Board, undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Article and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's or the Board's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Article or otherwise, except as expressly provided herein. Neither the Board nor the City makes any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE BOARD OR THE CITY BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE BOARD OR THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS ARTICLE, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(c) No default by the Board or the City in observing or performing its obligations under this Article shall comprise a breach of or default under the Ordinance for purposes of any other provisions of this Ordinance.

(d) Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of the Board or the City under federal and state securities laws.

(e) The provisions of this Article may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City or the Board, but only if (1) the provisions of this Article, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as

well as such changed circumstances, and (2) either (a) the Owners of a majority in aggregate principal amount (or any greater amount required by any other provisions of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Owners and beneficial owners of the Bonds. The provisions of this Section may also be amended from time to time or repealed by the City if the SEC amends or repeals the applicable provisions of the Rule or a court of final jurisdiction determines that such provisions are invalid, but only if and to the extent that reservation of the City's right to do so would not prevent underwriters of the initial public offering of the Bonds from lawfully purchasing or selling Bonds in such offering. If the City so amends the provisions of this Article, it shall include with any amended financial information or operating data next provided in accordance with Section 14.02 an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

ARTICLE 16

SPECIAL PROVISIONS RELATING TO THE TEXAS WATER DEVELOPMENT BOARD

Section 16.01: Compliance with State Revolving Loan Fund Rules. In compliance with the Rules of the Board, the City agrees and covenants:

(i) to keep and maintain full and complete records and accounts pertaining to the construction of the project financed with the proceeds of sale of the Bonds (the "Project"), including the construction fund account created below, in accordance with the standards set forth by the Governmental Accounting Standards Board;

(ii) to create and establish at the Depository Bank a Construction Fund as provided in Section 9.01(b) hereof for the receipt and disbursement of all proceeds from the sale of the Bonds and all funds deposited to the credit of the Construction Fund shall be disbursed only for the payment of costs and expenses incurred in connection with the planning and building of the Project as approved by the Board and as otherwise allowed by the rules;

(iii) upon completion of the construction of the Project, to provide (i) to the Executive Administrator of the Board a complete set of as-built drawings and (ii) to the Board a final accounting of the total costs of the Project. If the Project as finally completed were built at a total cost less than the amount of available funds for building the Project, or if the Executive Administrator of the Board disapproves construction of any portion of the Project as not being in accordance with the plans and specifications, the City agrees to immediately, with filing of the final accounting, return to the Board the amount of any such excess and/or the cost determined by the Executive Administrator of the Board relating to the parts of the Project not built in accordance with the plans and specifications, to the nearest multiple of the authorized denominations for the Bonds, upon the surrender and cancellation of a like amount of such Bonds held by the Board in inverse order of their Stated Maturities. In determining the amount of available funds for

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building the Project, the City agrees to account for all amounts deposited to the credit of the Construction Fund, including all loan funds extended by the Board, all other funds available from the Project as described in the project engineer's or fiscal representative's sufficiency of funds statement and all interest earned by the City on money in the Construction Fund;

(iv) maintain current, accurate and complete records and accounts necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(v) to implement any water conservation program required by the Board until all financial obligations to the State have been discharged;

(vi) to comply with any special conditions specified by the Board's environmental determination until all financial obligations to the State have been discharged;

(vii) to abide by the Board's rules and relevant state statutes, including the Texas Water Code, Chapters 15, 16 and 17; and

(viii) To the extent permitted by law, the City agrees to indemnify, hold harmless and protect the Board from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport and/or removal and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project.

Section 16.02: American Recovery and Reinvestment Act of 2009 Requirements. The City hereby agrees and covenants as follows:

(i) It will seek written approval from the Executive Administrator prior to making any changes to plans, specifications, objectives, or project scope, including any changes to any Green (as defined in the Commitment) portion of the Project;

(ii) All laborers and mechanics employed by contractors and subcontractors for a project that is funded in whole or in part with American Recovery and Reinvestment Act of 2009 ("ARRA") funds shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with §1606 of the ARRA, the Davis-Bacon Act and the United States Department of Labor's implementing regulations;

(iii) None of the proceeds of the Bonds shall be used for the Project unless all of the iron, steel, and manufactured goods used in the Project are produced in the United States in accordance with §1605 of the ARRA, subject to certain limited exceptions established by the U.S. Environmental Protection Agency ("EPA");

(iv) It will comply with all federal and state reporting requirements applicable to the receipt and disbursement of ARRA funds, as detailed in a separate Reporting

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Agreement to be executed by and between the City and the Executive Administrator. No funds shall be released to reimburse expenses or for any other purpose unless the City has complied with all of the ARRA reporting requirements. Compliance with reporting requirements means that the City has submitted accurate, timely reports as required by EPA, the Office of Management and Budget, ("OMB"), and other applicable federal and state entities;

(v) The proceeds of sale of the Bonds will be kept separate and distinct from other sources of funding from the date of receipt thereof through costing and final disbursement;

(vi) It will require all contractors and subcontractors on the Project to comply with ARRA requirements for the entire Project, whether the Project is funded in whole or in part under ARRA, including but not limited to the "Buy American" requirements set forth in §1605, the reporting requirements set forth in §1512, and the prevailing wage rate requirements set forth in §1606 of the ARRA;

(vii) It will comply with all federal Disadvantaged Business Enterprise and other procurement and contracting requirements established by the ARRA and adopted by the EPA and will provide documentation of such compliance in the form and manner approved by the TWDB's Executive Administrator;

(viii) It will comply, and will ensure that all of its contractors and subcontractors comply, with §1553 of the ARRA prohibiting the discharge of, demotion of or discrimination against any person disclosing information in accordance with §1553(a) of the ARRA;

(ix) It will require all of its contractors and subcontractors to include in the Project's bid solicitations and project contracts a requirement that they shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds. Both contractors and subcontractors shall be required to forward to the EPA Office of Inspector General any information, records or other documentation requested by that office within a reasonable time of receiving such request;

(x) It will ensure and its contractors and subcontractors shall ensure that the construction sites display the ARRA logo in a manner that informs the public that the Project is being funded under the ARRA. The ARRA logo may be obtained from:

U.S. Environmental Protection Agency
Grant Programs Section, 6MD-CG
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2722

(xi) It accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all state funds received pursuant to this Ordinance. The City shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The City agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The City will require the contractor and subcontractor to submit to audits and investigation by the State Auditor's Office in connection with the Project; and

(xii) The City agrees that the Board, the EPA, and the Comptroller General of the United States shall have full access to any books, documents, papers, and records which are related to the funds expended under this Ordinance and that further these federal entities may make audit, examination, excerpts, and transcriptions of any such books, documents, papers, and records pursuant to §1514 and §1515 of the ARRA.

ARTICLE 17

MISCELLANEOUS

Section 17.01: Amendment to Ordinance.

(a) ***Amendments Without Consent.*** This Ordinance and the rights and obligations of the City and of the Owners of the Bonds Similarly Secured may be modified or amended at any time without notice to or the consent of any owner of the Bonds Similarly Secured, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the City contained in this Ordinance, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the City in this Ordinance;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Ordinance, upon receipt by the City of an opinion of nationally recognized bond counsel, that the same is needed for such purpose, and will more clearly express the intent of this Ordinance;

(iii) To supplement the security for the Bonds, replace or provide additional credit facilities, or change the form of the Bonds or make such other changes in the provisions hereof as the City may deem necessary or desirable and which shall not, in the judgment of the City, materially adversely affect the interests of the owners of the outstanding Bonds;

(iv) To make any changes or amendments requested by any bond rating agency then rating or requested to rate Bonds Similarly Secured, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the owners of the outstanding Bonds Similarly Secured; or

(v) To make such other changes in the provisions hereof as the City may deem necessary or desirable and which shall not, in the judgment of the City, materially adversely affect the interests of the owners of outstanding Bonds Similarly Secured.

Notice of any such amendment may be published by the City in the manner described in subsection (c) of this Section; provided, however, that the publication of such notice shall not constitute a condition precedent to the adoption of such amendatory resolution and the failure to publish such notice shall not adversely affect the implementation of such amendment as adopted pursuant to such amendatory resolution.

(b) **Amendments With Consent.** Subject to the other provisions of this Ordinance, the owners of outstanding Bonds Similarly Secured aggregating a majority in outstanding principal amount shall have the right from time to time to approve any amendment, other than amendments described in subsection (a) of this Section, to this Ordinance which may be deemed necessary or desirable by the City; provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the owners of all of the outstanding Bonds Similarly Secured the amendment of the terms and conditions in this Ordinance or in the Bonds Similarly Secured so as to:

(i) Make any change in the maturity of the outstanding Bonds Similarly Secured;

(ii) Reduce the rate of interest borne by outstanding Bonds Similarly Secured;

(iii) Reduce the amount of the principal payable on outstanding Bonds Similarly Secured;

(iv) Modify the terms of payment of principal of or interest on the outstanding Bonds Similarly Secured, or impose any conditions with respect to such payment;

(v) Affect the rights of the owners of less than all Bonds Similarly Secured then outstanding; or

(vi) Change the minimum percentage of the outstanding principal amount of Bonds Similarly Secured necessary for consent to such amendment.

(c) **Notice.** If at any time the City shall desire to amend this Ordinance other than pursuant to subsection (a) of this Section, the City shall cause written notice of the proposed amendment to be given by certified mail to each registered owner of the Bonds affected at the address shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file with the City Clerk for inspection by all owners of Bonds.

(d) **Consent Irrevocable.** Any consent given by any owner of Bonds pursuant to the provisions of this Section shall be irrevocable for a period of eighteen (18) months from the date of mailing of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the same Bonds during such period. Such consent may be revoked at any time after eighteen (18) months from the date of mailing by the owner who gave such consent, or by a

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successor in title, by filing notice thereof with the Paying Agent/Registrar and the City, but such revocation shall not be effective if the owners of a majority in outstanding principal amount of Bonds, prior to the attempted revocation, consented to and approved the amendment.

(e) **Ownership.** For the purpose of this Section, the ownership and other matters relating to all Bonds registered as to ownership shall be determined from the registration books kept by the Paying Agent/Registrar therefor. The Paying Agent/Registrar may conclusively assume that such ownership continues until written notice to the contrary is served upon the Paying Agent/Registrar.

Section 17.02: Further Procedures. The Mayor, the City Clerk, the Alternate City Clerk, the City Manager of the City, the President/Chief Executive Officer of the EPWU, the Vice President of the EPWU and/or the Chief Financial Officer of the EPWU and all other officers, employees and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the seal of the City and on behalf of the City all agreements, instruments, or such other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, and the Paying Agent/Registrar Agreement. In addition, prior to the initial delivery of the Bonds, the Mayor, the City Clerk, the Alternate City Clerk, the City Manager of the City, the President/Chief Executive Officer of the EPWU, the Vice President of the EPWU and/or the Chief Financial Officer of the EPWU and the City's Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance: (i) in order to cure any technical ambiguity, formal defect, or omission in the Ordinance or such other document; or (ii) as requested by the Attorney General or his representative to obtain the approval of the Certificates by the Attorney General and if such officer or counsel determines that such ministerial changes are consistent with the intent and purpose of the Ordinance, which determination shall be final. In the event that any officer of the City whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 17.03: No Municipal Bond Insurance. The Bonds shall be sold without municipal bond insurance.

Section 17.04: Inconsistent Provisions. All ordinances, orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters contained herein.

Section 17.05: Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 17.06: Effectiveness. This Ordinance shall take effect and be in force from and after its passage and approval.

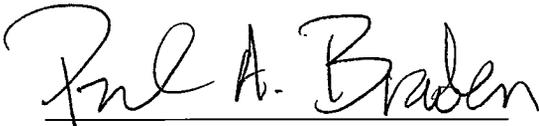
APPROVED AND ADOPTED this _____ day of _____, 2009.

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

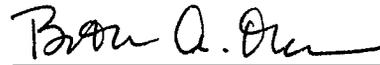
ATTEST:

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

Approved as to Form:



Paul A. Braden
Bond Counsel



Bertha A. Ontiveros
Assistant City Attorney

Approved as to Content:



Marcela Navarrete
Chief Financial Officer
El Paso Water Utilities

EXHIBIT A

Form of Bonds

(a) Form of Bond.

REGISTERED

REGISTERED

No. _____

\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF EL PASO
CITY OF EL PASO, TEXAS
MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS
SERIES 2009A

MATURITY DATE:

INITIAL DATE:

CUSIP NO.:

March 1, 20__

November 15, 2009

The City of El Paso (hereinafter referred to as the "City"), a body corporate and political subdivision in the County of El Paso, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, solely from the sources and in the manner hereinafter provided, on the Stated Maturity date specified above the Principal Amount hereinabove stated (or so much thereof as shall not have been paid upon prior redemption). The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the designated payment/transfer office in Minneapolis, Minnesota (the "Designated Payment/Transfer Office") of Wells Fargo Bank, National Association, Austin, Texas, Paying Agent/Registrar, or at the Designated Payment/Transfer Office of any successor thereto.

If the date for the payment of the principal of this Bond shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day which is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the original date payment was due.

This Bond is one of a series of fully registered bonds specified in the title hereof, dated as of November 15, 2009, issued in the aggregate principal amount of \$6,425,000 (herein referred to as the "Bonds"), and issued pursuant to the authority provided by Chapter 552 of the Texas Local Government Code, and Chapter 1371 of the Texas Government Code, and a certain ordinance of the City (the "Ordinance"), for the purpose of (i) the acquisition, construction and repair of structures, equipment and facilities for the City's Municipal Drainage Utility System, and (ii) paying the costs of issuing the Bonds as described in the Ordinance. Capitalized terms used herein and not otherwise defined shall have the meaning assigned thereto in the Ordinance.

CITY CLERK DEPT.

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The Bonds are special obligations of the City, payable solely from and, together with the Previously Issued Bonds (identified and defined in the Ordinance), equally and ratably secured by a first lien on and pledge of the Net Revenues (as defined in the Ordinance) of the City's Municipal Drainage Utility System (as defined in the Ordinance and hereinafter referred to as the "System"). The Bonds do not constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the City or the System, except with respect to the Net Revenues. The Owner hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation.

Subject to satisfying the terms and conditions prescribed therefor, the City has reserved the right to issue additional revenue obligations payable from and equally and ratably secured by a parity lien on and pledge of the Net Revenues of the System, in the same manner and to the same extent as the Bonds.

The City reserves the option to redeem in whole or in part (in inverse order of Stated Maturities), in principal amounts of \$1,000 or any integral multiple thereof, before their respective scheduled maturity dates, on March 1, 2012 or on any date thereafter, at a price equal to the principal amount of the Bonds so called for redemption only upon written approval of the Executive Administrator of the TWDB. If less than all of the Bonds are to be redeemed, the City shall determine the maturity or maturities and the amounts thereof to be redeemed and shall direct the Paying Agent/Registrar to call by lot the Bonds, or portions thereof, within such maturity and in such principal amounts, for redemption.

A portion of a single Bond of a denomination greater than \$1,000 may be redeemed, but only in a principal amount equal to \$1,000 or any integral multiple thereof. If such a Bond is to be partially redeemed, the Paying Agent/Registrar shall assign a separate number for each \$1,000 portion of the Bonds and select the portion or portions of the Bond to be redeemed by lot or by any other customary method that results in a random selection.

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

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Ordinance have been met and moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

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

Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer or exchange any Bond called for redemption when such redemption is to occur within 45 calendar days after the transfer or exchange date. However, such limitations of transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

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

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

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

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

City Clerk
City of El Paso, Texas

Mayor
City of El Paso, Texas

(SEAL)

CITY CLERK DEPT.

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(b) Form of Comptroller's Registration Certificate.

[to appear on Initial Bonds only]

OFFICE OF THE COMPTROLLER	§	
OF PUBLIC ACCOUNTS	§	REGISTER NO. _____
OF THE STATE OF TEXAS	§	

I hereby certify that there is on file and of record in my office a certificate of the Attorney General of the State of Texas to the effect that this Bond has been examined by him as required by law, that he finds that it has been issued in conformity with the Constitution and laws of the State of Texas, and that it is a valid and binding special obligation of the City of El Paso, Texas, payable from the revenues pledged to its payment by and in the ordinance authorizing same and that said Bond has this day been registered by me.

Witness my hand and seal of office at Austin, Texas, on this date: _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

(c) Form of Certificate of Paying Agent/Registrar.

CERTIFICATE OF PAYING AGENT/REGISTRAR

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

WELLS FARGO BANK, NATIONAL
ASSOCIATION, Austin, Texas,
as Paying Agent/Registrar

Dated: _____

By: _____

Authorized Signature

CITY CLERK DEPT.

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(d) Form of Assignment.

ASSIGNMENT

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

(Social Security or other identifying number: _____) the within Bond and all rights hereunder and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration hereof, with full power of substitution in the premises.

Dated:

Signature Guaranteed By:

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Paying Agent/Registrar.

Authorized Signatory

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

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

(g) Form of Principal Advancement Ledger to appear on Initial Bonds.

PRINCIPAL ADVANCEMENT LEDGER

Date of Advancement of Funds	Amount of Funds Advanced	Principal Amount remaining for Advancements	Signature (Bank Officer)

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DESCRIPTION OF ANNUAL DISCLOSURE OF FINANCIAL INFORMATION

The following information is referred to in Article 15 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified below:

Financial information and operating data customarily prepared by the City and publicly available include (i) financial statements of the City for the most recently concluded fiscal year, (ii) current monthly drainage rates, (iii) municipal drainage utility system revenue debt service requirements, (iv) condensed statement of operations for the System, (v) a list of current investments and (vi) customer count for the System.

Accounting Principles

The accounting principles referred to in such Section are the generally accepted accounting principles as applicable to governmental units as prescribed by The Governmental Accounting Standards Board.

CITY CLERK DEPT.

RESOLUTION

09 NOV 23 AM 10:55

A RESOLUTION REQUESTING THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS APPROVE THE ISSUANCE AND SALE OF CITY OF EL PASO, TEXAS, MUNICIPAL DRAINAGE UTILITY SYSTEM REVENUE BONDS, SERIES 2009A, IN A PRINCIPAL AMOUNT NOT TO EXCEED SIX MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$6,425,000) TO BE PURCHASED BY THE TEXAS WATER DEVELOPMENT BOARD (TWDB) THROUGH THE CLEAN WATER ACT STATE REVOLVING FUND (CWSRF) FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) OF 2009, TO FINANCE THE CONSTRUCTION OF STORMWATER PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the American Recovery and Reinvestment Act of 2009 (“ARRA”), enacted by the United States Congress and signed into law February 17, 2009, provides for, among other things, investment in infrastructure throughout the United States; and,

WHEREAS, the Texas Water Development Board (“TWDB”) is the Texas administrative agency charged with implementing ARRA funding of water projects within the State of Texas; and,

WHEREAS, the Public Service Board (the “Board”) of the El Paso Water Utilities (“EPWU”) by Resolution dated June 30, 2009 authorized the President/CEO of EPWU to submit an application on behalf of the EPWU to the TWDB for financial assistance through the Clean Water Act State Revolving Fund (“CWSRF”) for the purchase of \$12,036,992.00 of City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds (“MDUS Bonds”) to fund certain eligible stormwater projects and authorized the President/CEO to seek the approval of the City of El Paso, Texas (the “City”) to authorize the President/CEO to submit such application on the City’s behalf; and,

WHEREAS, the City passed and adopted a Resolution on July 14, 2009 authorizing the President/CEO of EPWU to submit an application on behalf of the City to the TWDB for financial assistance, through the CWSRF to be funded by ARRA, for the purchase of \$12,036,992.00 of MDUS Bonds to fund certain eligible stormwater projects; and,

WHEREAS, upon reviewing the application, the TWDB limited its approval to three (Featherlake II, Basin G, and RV Channel) of the six proposed projects for a total of \$6,425,000 to be funded through a twenty-year, zero-interest loan; and,

WHEREAS, the Board finds that it is in the best interest of its ratepayers to pursue this advantageous funding for the three stormwater projects as described above;

NOW THEREFORE, BE IT RESOLVED by the El Paso Water Utilities Public Service Board of the City of El Paso:

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Section 1. The findings and recitations set out in the preamble to this Resolution are true and correct and are hereby adopted by the Board and made a part of this Resolution for all purposes.

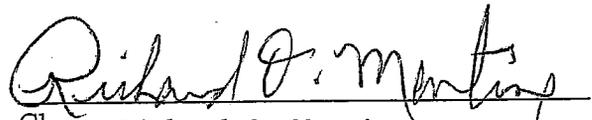
Section 2. That the Board hereby requests the City Council of the City to approve the issuance and sale of City of El Paso, Texas, Municipal Drainage Utility Revenue Bonds, Series 2009A, in a principal amount not to exceed SIX MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$6,425,000.00), to the TWDB, through the CWSRF to be funded by ARRA, to finance the construction of certain eligible stormwater projects.

Section 3. That all previous actions heretofore taken by the President/CEO of EPWU, the City's Financial Advisor, and the Board's Bond Counsel with respect to this matter are hereby ratified and approved.

Section 4. A copy of this Resolution shall be transmitted to the City Attorney's Office and originals filed with the TWDB and the Office of the Attorney General of the State of Texas as necessary for the issuance of the MDUS Bonds.

PASSED and APPROVED at a special meeting of the El Paso Water Utilities Public Service Board, this 19th day of November, 2009, the Resolution's effective date, at which meeting a quorum was present, said meeting being held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.

PUBLIC SERVICE BOARD


Chair Richard O. Martinez

ATTEST:


Secretary-Treasurer Maria Teran

APPROVED AS TO FORM:


Robert D. Andron, General Counsel

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FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

WWW.FULBRIGHT.COM

MEMORANDUM

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

FROM: Paul A. Braden

DATE: November 20, 2009

RE: An Ordinance authorizing the issuance of "City of El Paso, Texas, Municipal Drainage Utility System Revenue Bonds, Series 2009A;" and resolve matters which are necessary to effectuate said issuance [Paul A. Braden, Bond Counsel (915) 351-6053] [Public Hearing Date: December 1, 2009]

INTRODUCTION AND PUBLIC HEARING OF ORDINANCE – City Council Meeting,
Tuesday, December 1, 2009

At a special meeting held on November 19, 2009, the El Paso Water Utilities Public Service Board approved the attached resolution requesting the City Council to approve the issuance and sale of municipal drainage utility system revenue bonds to finance the acquisition, construction and repair of structures, equipment and facilities for the City's Municipal Drainage Utility System. At the December 1, 2009 City Council meeting, the PSB will request authorization for such bonds to be sold in a single series to the Texas Water Development Board at advantageous rates. Please accept the enclosed Ordinance for introduction and public hearing by the City Council at its regular City Council meeting to be held on December 1, 2009.

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

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

Thank you for your attention to this matter.

Enclosures

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

RESOLUTION

A RESOLUTION AUTHORIZING THE PRESIDENT/CEO TO SUBMIT AN APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD FOR FINANCIAL ASSISTANCE THROUGH THE CLEAN WATER ACT STATE REVOLVING FUND UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 TO PURCHASE \$12,036,992 OF CITY OF EL PASO STORMWATER REVENUE BONDS TO FUND CERTAIN ELIGIBLE STORMWATER PROJECTS; AUTHORIZING THE PRESIDENT/CEO TO SEEK THE APPROVAL OF THE CITY COUNCIL OF EL PASO; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Federal Government enacted the American Recovery and Reinvestment Act of 2009 (ARRA) to provide for, among other things, investment in infrastructure throughout the United States and the Texas Water Development Board (TWDB) is the administrative agency charged with implementing the ARRA in Texas; and,

WHEREAS, the Texas Water Development Board has established a financial assistance program to assist in the construction of wastewater treatment collection and treatment, nonpoint source pollution control, and estuary management projects in Texas; and

WHEREAS, the TWDB, ARRA Program, is offering 0% loans for eligible projects in Texas and El Paso Water Utilities Public Service Board Stormwater Utility is the only Texas Utility that has certain eligible projects in the stormwater category to which the full funding amount has been allocated; and,

WHEREAS, the Public Service Board (PSB) hereby finds and determines that it is in the best interest of its stormwater customers to submit an application to the TWDB for financial assistance to complete these projects.

NOW, THEREFORE, BE IT RESOLVED by the Public Service Board of the City of El Paso:

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

Section 2. That the PSB hereby authorizes the President/CEO to submit an application to the TWDB through the Clean Water Act State Revolving Fund (CWSRF) to purchase \$12,036,992 of City of El Paso Stormwater Revenue Bonds to fund certain eligible stormwater projects. The PSB further requests the City Council of the City of El Paso to pass all necessary resolutions, ordinances or documents approving and authorizing the filing of this application with the TWDB.

Section 3. That the President/CEO is hereby authorized and directed to take all actions necessary to request financial assistance through the CWSRF to purchase \$12,036,992 of City of El Paso Stormwater Revenue Bonds for certain eligible stormwater projects, and all actions heretofore taken in furtherance of this project are ratified and approved.

Section 4. That a copy of this Resolution shall be transmitted to the City Attorney's Office and Texas Water Development Board.

PASSED, APPROVED AND EFFECTIVE at this Special Meeting of the Public Service Board of the City of El Paso, Texas, the 30th day of June, 2009, at which meeting a quorum was present and held in accordance with the provisions of V.T.C.A. Government Code, Sections 551.001 et. seq.

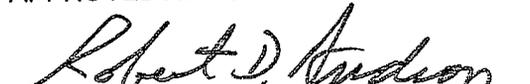
ATTEST:


Secretary/Treasurer

PUBLIC SERVICE BOARD


Ruben E. Guerra, Chair

APPROVED AS TO FORM:


Robert D. Andron, General Counsel

CITY CLERK DEPT.

09 JUL -2 PM 3: 32

Consulting Engineers:

Brown and Caldwell
Steve Morgan
1200 Golden Key Cir., Suite 430
El Paso, Texas 79925
(915) 545-4400
smorgan@brwncald.com

URS Corp.
Rick French
P.O. Box 201088
Austin, Texas 78720
(512) 419-5123
rick_french@urscorp.com

Moreno Cardenas Inc.
Robert Moreno
2505 E. Missouri Ave., Suite 100
El Paso, Texas 79903
(915) 532-2091
rmoreno@morenocardenas.com

Bond Counsel:

Paul Braden
Fulbright & Jaworski L.L.P.
2200 Ross Ave., Suite 2800
Dallas, Texas 75201
El Paso Phone: (915) 351-6053
pbraden@fulbright.com

SECTION 4: It is officially found, determined and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

SECTION 5: This Resolution shall be in force and effect from and after its passage on the date shown below.

SECTION 6: The Mayor and City Manager are hereby authorized to sign any and all documents required to further the application the subject of this Resolution.

09 JUL -2 PM 3:32

PASSED AND ADOPTED, this July 14, 2009.

CITY OF EL PASO, TEXAS



John Cook, Mayor

ATTEST:



Richarda Duffy Momsen, City Clerk

(City Seal)

APPROVED AS TO FORM:



Charlie McNabb, City Attorney



City of El Paso, Texas

Texas Water Development Board Financing for Drainage Improvements

December 1, 2009

Presented By:



Financing Stormwater Projects



- The Stormwater Utility has identified numerous essential capital improvement projects to improve the level of stormwater protection for the citizens of El Paso
- The Utility has been aggressively seeking funding solutions to meet these stormwater needs
- The Utility has identified several opportunities for low cost financing



Financing Stormwater Projects



- American Recovery and Reinvestment Act Bonds (ARRA bonds) managed by the Texas Water Development Board (TWDB)
- Build America Bonds
- North American Development Bank/Border Environment Cooperation Commission – NADBank/BECC
- EPA, Department of Energy and other grant opportunities



CWSRF ARRA, Series 2009A



- On July 14, 2009, the City authorized the PSB (Municipal Drainage Utility System) to submit an application to the TWDB for five projects totaling approximately \$12,036,992.
- After thorough review by TWDB, they have committed to the eligibility of three out of the five projects for funding in the amount of \$6,425,000.
 - Featherlake II: \$3,585,000
 - Basin G: \$1,195,000
 - RV Channel : \$1,645,000
- The loan will be for 20 years at a 0% Coupon.



Site Map



Site Map



Site Map



FirstSouthwest
A PlainsCapital Company



Board Action Items

- Adopt the Resolution requesting the City Council to approve the issuance and sale of **\$6,425,000 City of El Paso, Municipal Drainage Utility Revenue Bonds, Series 2009A** to the Texas Water Development Board.
- The Bonds will be purchased through the Clean Water State Revolving Fund, which is being funded by the American Recovery and Reinvestment Act of 2009.

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A PlainsCapital Company

Series 2009A Projected Debt Service



Fiscal Year	Principal	Coupon	Interest	Total
2010	\$ -	0%	\$ -	\$ -
2011	-	0%	-	-
2012	-	0%	-	-
2013	325,000	0%	-	325,000
2014	325,000	0%	-	325,000
2015	325,000	0%	-	325,000
2016	325,000	0%	-	325,000
2017	325,000	0%	-	325,000
2018	324,000	0%	-	324,000
2019	324,000	0%	-	324,000
2020	324,000	0%	-	324,000
2021	324,000	0%	-	324,000
2022	319,000	0%	-	319,000
2023	319,000	0%	-	319,000
2024	319,000	0%	-	319,000
2025	319,000	0%	-	319,000
2026	319,000	0%	-	319,000
2027	319,000	0%	-	319,000
2028	319,000	0%	-	319,000
2029	319,000	0%	-	319,000
2030	319,000	0%	-	319,000
2031	319,000	0%	-	319,000
2032	314,000	0%	-	314,000
	<u>\$ 6,425,000</u>		<u>\$ -</u>	<u>\$ 6,425,000</u>



Debt Service Comparison



Fiscal Year	TWDB Loan	Open Market Bond ⁽¹⁾	Variance
2010	\$ -	\$ -	\$ -
2011	-	179,850	(179,850)
2012	-	274,348	(274,348)
2013	325,000	477,907	(152,907)
2014	325,000	477,833	(152,833)
2015	325,000	477,375	(152,375)
2016	325,000	477,511	(152,511)
2017	325,000	478,199	(153,199)
2018	324,000	477,439	(153,439)
2019	324,000	477,230	(153,230)
2020	324,000	477,530	(153,530)
2021	324,000	477,318	(153,318)
2022	319,000	477,572	(158,572)
2023	319,000	478,250	(159,250)
2024	319,000	477,351	(158,351)
2025	319,000	477,854	(158,854)
2026	319,000	477,717	(158,717)
2027	319,000	477,918	(158,918)
2028	319,000	477,436	(158,436)
2029	319,000	478,228	(159,228)
2030	319,000	477,272	(158,272)
2031	319,000	477,548	(158,548)
2032	314,000	477,992	(163,992)
	<u>\$ 6,425,000</u>	<u>\$ 10,007,677</u>	<u>\$ (3,582,677)</u>

Gross Interest Savings: \$ 3,582,677

(1) Assumes a Total Interest Cost of 4.27% as of 11/10/09.



Timetable of Events TWDB Financing



<u>Date</u>	<u>Event</u>
June 16	Financial Advisor begins preparation of TWDB Financial Assistance Application
June 19	TWDB sends invitation letter to PSB for CWSRF-ARRA Funds
July 8	PSB Authorizes Financial Assistance Application to the TWDB
July 14	City Authorizes Requests for Financial Assistance
July 15	PSB Submits Financial Assistance Application to the TWDB
July 24	Financial Assistance Application is accepted as final by the TWDB
July 25-Nov 18	Review Period for TWDB



Timetable of Events TWDB Financing



<u>Date</u>	<u>Event</u>
November 19	TWDB meets and approves financial assistance to PSB
November 19	PSB requests the City to sell Series 2009A Bonds
December 1	City Council authorizes issuance of revenue bonds to be sold to TWDB
December 3	Documents submitted to Texas Attorney General by Bond Counsel
January 5	Closing, delivery of bonds, and disbursement of funds

