

ORDINANCE NO. 2023-1701-A

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, TEXAS, AMENDING CHAPTER 102, UTILITIES; SECTION 102-81 OF THE CODE OF ORDINANCES TO CANCEL SCHEDULED ADJUSTMENTS TO THE RESACA FEE; SETTING A PUBLIC HEARING THEREON; AND PROVIDING A SEVERABILITY CLAUSE AND EFFECTIVE DATE.

WHEREAS, pursuant to Article VI, Sec. 1(b) of the City Charter, the Public Utilities Board of the City of Brownsville, Texas (“BPUB”) is vested with all of the powers of the City of Brownsville, Texas (the “City”) with respect to the expenditures and application of the revenues from the management and operation of the water and wastewater utility systems owned by the City, “except for the fixing of rates, fees and charges for such services;”

WHEREAS, pursuant to Article VI, Sec. 4(b) of the City Charter, BPUB shall periodically “review the rates, fees and charges for services rendered by the utilities system, . . . and in the event such review reflects a necessity for the adjustment . . . of such rates, fees and charges, then BPUB shall submit to the City Commission a report of the review,” explaining “the basis upon which the proposed adjustment is predicated, accompanied by a written request for approval and adoption of the rates, fees and charges recommended by BPUB;”

WHEREAS, Article VI, Sec. 4(b) of the City Charter further provides that the City Commission shall pass an ordinance placing in effect the rates, fees, and charges recommended by BPUB only if the City Commission approves the adjustment(s) thus recommended;

WHEREAS, BPUB has reviewed its water and wastewater rates, fees and charges, and recommends and requests that Section 102-81 of Chapter 102 of the City’s Code of Ordinances be amended to cancel scheduled adjustments to resaca fee such that said fee remains fixed in the amount of \$6.25 and is not increased on January 1, 2024, and January 1, 2026, as contemplated by City Ordinance No. 2022-1701; and

WHEREAS, BPUB, pursuant to Resolution No. 2023-0911(CIC-3), bases its request upon a sound evaluation consistent with applicable ratemaking standards, and upon recommendations of BPUB staff and consultants, which have been provided with BPUB’s recommendations;

WHEREAS, pursuant to Article IV, Sec. 6 of the City Charter, “the entire income from the municipal waterworks system, . . . sewer system, or other public utilities owned now or hereafter by the City” is set aside for certain purposes enumerated therein, including “the maintenance and repair of such public utilities so that same shall continue to operate efficiently,” and the “cost of such extensions and repairs, as in the judgment of the City Commission are necessary to keep the utility systems in operation and render adequate service to the City and its inhabitants or such as may be necessary to meet some physical accident or condition which would otherwise impair the efficient operation of the utility systems;”

WHEREAS, the City Commission hereby finds that the recommendations of BPUB are reasonable and necessary to ensure the efficient operation of the utility systems, keep such systems in operation, and render adequate service to the City and its inhabitants and, therefore, should be approved and adopted in order to provide for the continued preservation of the public health, safety, and welfare of the people;

WHEREAS, BPUB presented a draft ordinance, Ordinance No. 2023-____, that provided acceptable language to implement the amendment to Section 102-81 of the City's Code of Ordinances to adjust the resaca fee such that said fee remains fixed in the amount of \$6.25, and, upon conclusion of the public hearing, on _____, 2023, the City Commission, by unanimous vote, approved the adjustment to the resaca fee, which adjustment continues to leverage federal funding available under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act and ongoing resaca restoration programs involving the United States Army Corps of Engineers;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BROWNSVILLE, TEXAS:

Section 1. Amendment to Chapter 102, Utilities, art. III, Rates and Charges. Section 102-81, chapter 102 of the Code of Ordinances of the City of Brownsville, Texas is hereby repealed and replaced to implement a fixed resaca fee and provide as follows:

Sec. 102-81. Resaca Fee.

A monthly resaca fee of \$6.25 is applicable to a retail water customer.

Section 2. Public Hearing. A hearing for public input as to the fee adjustments set forth in Section 1 of this Ordinance will be held at 5:00 p.m., _____, 2023, in City Commission Chambers at City Hall.

Section 3. Severability. If any section, sentence, phrase, or clause of this Ordinance is declared by a Court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, such declaration shall not be deemed to affect the remaining sections, sentences, phrases, or clauses of this Ordinance.

Section 4. Effective Date. This Ordinance shall become effective at 12:01 a.m. on the date of final approval upon second reading, as provided by the Charter of the City of Brownsville and the laws of the State of Texas.

PASSED and APPROVED following a public hearing on FIRST READING on the _____ day of _____, 2023.

PASSED and APPROVED on SECOND READING on the _____ day of _____, 2023.

John Cowen, Jr.
Mayor

Yolanda "Yoli" Galarza
City Secretary

RESOLUTION NO. 2023-0911(CIC-3)

A RESOLUTION REQUESTING THE CITY COMMISSION AMEND SECTION 102-81 OF THE CODE OF ORDINANCES, ENTITLED "RESACA FEE," TO PROVIDE FOR ADJUSTMENTS TO SAID RESACA FEE

WHEREAS, pursuant to Article VI, Section 1(b) of the Charter of the City of Brownsville, Texas (the "Charter"), the Public Utilities Board of the City of Brownsville, Texas ("BPUB") is vested with all of the powers of the City of Brownsville, Texas (the "City") with respect to the expenditures and application of the revenues from the management and operation of the water and wastewater utility systems owned by the City, "except for the fixing of rates, fees and charges for such services;" and

WHEREAS, Article VI, Section 4(b) of the Charter requires BPUB to periodically "review the rates, fees and charges for services rendered by the utilities system, . . . and in the event such review reflects a necessity for the adjustment . . . of such rates, fees and charges, then [BPUB] shall submit to the City Commission a report of the review," explaining "the basis upon which the proposed adjustment is predicated, accompanied by a written request for approval and adoption of the rates, fees and charges recommended by BPUB;" and

WHEREAS, as part of the management and operation of the water and wastewater utility systems, BPUB maintains and improves portions of the City's resaca system to, among other things, increase raw water storage; and

WHEREAS, in connection with said maintenance and improvement, BPUB and the City have collaborated with the U.S. Army Corps of Engineers to receive federal funding for the "Resacas In The Vicinity of The City of Brownsville, Texas, Ecosystem Restoration Project" (the "USACE Project"); and

WHEREAS, BPUB has also collaborated with the City to receive federal resaca maintenance and improvement funding under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (the "RESTORE Act Project"); and

WHEREAS, BPUB previously engaged an independent consulting and engineering firm, Willdan Group, Inc., to complete a study of the adequacy of water and wastewater rates, fees and charges (the "Rate Study"); and

WHEREAS, the Rate Study was prepared in light of customer growth, increased operating costs, and projected capital improvements required over the next decade; included potential options for recovery of existing and planned resaca-related costs; and is consistent with the Charter, City bond ordinances, and applicable law and ratemaking principles; and

WHEREAS, the Rate Study recommended adoption of a resaca fee to recover costs related to resaca maintenance and improvement programs, including options for phasing in these rates, fees and charges; and

WHEREAS, BPUB staff reviewed the Rate Study and, based on thereon, recommended that BPUB adopt a resaca fee to finance non-federally funded portions of the USACE Project and the RESTORE Act Project; and

WHEREAS, pursuant to BPUB Resolution No. 2022-0314-(IC6), approved March 14, 2022, BPUB found that adoption of a resaca fee and certain specified annual increases thereto was reasonable and necessary to effectuate the public purpose of recovering costs related to the maintenance and improvement of City resacas used and useful in supporting the water and wastewater utility systems under BPUB's management and control; and

WHEREAS, BPUB submitted the Rate Study and BPUB Resolution No. 2022-0314-(IC6) to the City Commission, thereby providing a written request for approval and adoption of the rates, fees and charges therein recommended by BPUB; and

WHEREAS, the City Commission found that said recommendation was reasonable and necessary for the public purpose of operating the City's water and wastewater systems and should be adopted in order to provide for the continued preservation of the public health, safety, and welfare of the people; and

WHEREAS, pursuant to City Ordinance No. 2022-1701, approved May 3, 2022, the City Commission added Section 102-81 to Chapter 102 of the City's Code of Ordinances, adopting a resaca fee of \$4.50, effective June 1, 2022; a resaca fee of \$6.25, effective January 1, 2023; a resaca fee of \$10.00, effective January 1, 2024; and a resaca fee of \$12.00, effective January 1, 2016; and

WHEREAS, BPUB staff has further reviewed BPUB's water and wastewater rates, fees and charges, and recommends that Section 102-81 of Chapter 102 of the City's Code of Ordinances be amended such that the resaca fee remain fixed in the amount of \$6.25 and that said amount not be increased on January 1, 2024, and January 1, 2026, as contemplated by City Ordinance No. 2022-1701; and

WHEREAS, BPUB has determined that said recommendation is based upon a sound evaluation consistent with applicable ratemaking standards and is in the public interest of BPUB's utility customers; now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITIES BOARD OF THE CITY OF BROWNSVILLE, TEXAS:

1. That BPUB finds that the recommended adjustment to the resaca fee is reasonable and necessary to effectuate the public purpose of recovering costs related to the maintenance and improvement of City resacas used and useful in supporting the water and wastewater utility systems under BPUB's management and control.

2. That the General Manager and Chief Executive Officer submit immediately the recommendation to amend Section 102-81 of the City's Code of Ordinances to the City

Commission together with a copy of this Resolution and a draft ordinance reflecting the requested adjustment of the monthly resaca fee such that it remains fixed in the amount of \$6.25.

3. That BPUB, by this Resolution, requests in writing that the City Commission approve and adopt the aforementioned recommendation by passing an appropriate ordinance amending Section 102-81 of the City's Code of Ordinances to adjust the resaca fee currently in effect.

PASSED and APPROVED this 11th day of September 2023.

Arthur Rendon

Arthur "Art" Rendon, Chair
Public Utilities Board of the
City of Brownsville, Texas

Daisy Zamora

Daisy Zamora, Ph.D.,
Secretary/Treasurer
Public Utilities Board of the
City of Brownsville, Texas