



CITY OF LAS VEGAS

1700 N. GRAND AVE. • LAS VEGAS, NEW MEXICO 87701-4731 • 505-454-1401 • FAX: 505-425-7335

ALFONSO E. ORTIZ, JR.
Mayor

**CITY OF LAS VEGAS
SPECIAL CITY COUNCIL AGENDA
June 16, 2014–Monday– 4:00 p.m.
City Council Chambers
1700 N. Grand Ave**

(The City Council shall act as the Housing Authority Board of Commissioners on any matters on the Agenda concerning the Housing Department.)

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **MOMENT OF SILENCE**
- V. **APPROVAL OF AGENDA**
- VI. **PUBLIC INPUT (not to exceed 3 minutes per person)**
- VII. **BUSINESS ITEMS**

1. Approval of Appointment of Elmer Martinez as Acting City Manager until such time the position of City Manager is filled.

Mayor Alfonso E. Ortiz, Jr. As per City Charter Section 3.02 Power and Duties, section (3) Appoint and remove, subject to approval of the Council, The City Manager... and Section 5.01 City Manager-Appointment and General Provisions, (D) the Mayor shall appoint, subject to Council approval, an acting City Manager for any absence exceeding thirty (30) days.

2. Approval/Disapproval of Resolution 14-40 replacing and repealing Resolution 13-39 which establishes funding priorities for water system improvements for the City of Las Vegas.

Ken Garcia, Utilities Director This updated resolution will include all funding requested and received for Preliminary Engineering Report

related projects and incorporate the latest SRF application for the Bradner Reservoir project/Raw Water Conveyance.

3. Approval/Disapproval of Resolution 14-39 to submit an application for funding assistance to the New Mexico Finance Authority for the Bradner Reservoir project and the Raw Water Conveyance Project.

Ken Garcia, Utilities Director This resolution will allow the City of Las Vegas to submit their application to the NM Finance Authority Drinking Water State Revolving Loan Fund for the Bradner Reservoir/Raw Water Conveyance project. This project will assist the City in moving water more effectively, increasing its water supply storage and meeting demand during times of drought and wildfire.

VIII. EXECUTIVE SESSION

- Personnel Matters – City Manager’s Resignation and Acting Manager’s Appointment

THE COUNCIL MAY CONVENE INTO EXECUTIVE SESSION IF SUBJECT MATTER OF ISSUES ARE EXEMPT FROM THE OPEN MEETINGS REQUIREMENT UNDER § (H) OF THE OPEN MEETINGS ACT.

- A. Personnel matters, as permitted by Section 10-15-1 (H) (2) of the New Mexico Open Meetings Act, NMSA 1978.**
- B. Matters subject to the attorney client privilege pertaining to threatened or pending litigation in which the City of Las Vegas is or may become a participant, as permitted by Section 10-15-1 (H) (7) of the New Mexico Open Meetings Act, NMSA 1978.**
- C. Matters pertaining to the discussion of the sale and acquisition of real property, as permitted by Section 10-15-1 (H) (8) of the Open Meetings Act, NMSA 1978.**

IX. ADJOURN

ATTENTION PERSONS WITH DISABILITES: The meeting room and facilities are accessible to persons with mobility disabilities. If you plan to attend the meeting and will need an auxiliary aid or service, please contact the City Clerk’s Office prior to the meeting so that arrangements may be made.

ATTENTION PERSONS ATTENDING COUNCIL MEETING: By entering the City Chambers, you consent to photography, audio recording, video recording and its/their use for inclusion on the City of Las Vegas Web-site, and to be televised on Comcast.

NOTE: A final agenda will be posted 72 hours prior to the meeting. Copies of the Agenda may be obtained from City Hall, Office of the City Clerk, 1700 N. Grand Avenue, Las Vegas, N.M 87701

SPECIAL CITY COUNCIL MEETING AGENDA REQUEST

DATE: 6-11-14

DEPT: Executive

MEETING DATE: June 16, 2014

ITEM/TOPIC: Approval of Appointment of Elmer Martinez as Acting City Manager

ACTION REQUESTED OF COUNCIL: Approval of Appointment of Elmer Martinez as Acting City Manager until such time the position of City Manager is filled.

BACKGROUND/RATIONALE: As per City Charter Section 3.02 Power and Duties, section (3) Appoint and remove, subject to approval of the Council, the City Manager... and Section 5.01 City Manager –Appointment and General Provisions, (D) the Mayor shall appoint, subject to Council approval, an acting City Manager for any absence exceeding thirty (30) days.

STAFF RECOMMENDATION: Mayor Alfonso E. Ortiz, Jr. is recommending approval of this appointment.

COMMITTEE RECOMMENDATION:

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY MANAGER'S OFFICE NO LATER THAN 10:00 A.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



ALFONSO E. ORTIZ, JR.
MAYOR

ANN MARIE GALLEGOS,
FINANCE DIRECTOR

CITY MANAGER

PURCHASING AGENT
(FOR BID AWARD ONLY)

DAVE ROMERO
CITY ATTORNEY

Approved as to Legal Sufficiency Only

(If Box is Initialed by City Mngr., Review and Sign)

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 06/12/14

DEPT: Utilities Dept.

MEETING DATE: 06/16/14

ITEM/TOPIC: Resolution No. 14-40 replacing and repealing Resolution No. 13-39 which establishes funding priorities for water system improvements for the City of Las Vegas.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution No. 14-40.

BACKGROUND/RATIONALE: This updated resolution will include all funding requested and received for Preliminary Engineering Report (adopted September of 2011) related projects and incorporate the latest SRF application for the Bradner Reservoir project/Raw Water Conveyance. The City of Las Vegas must have and maintain a sustainable water supply and delivery system to be able to deliver enough water to the community. The current system is most likely unable to meet these obligations unless improvements are made.

The Governing Body approved Ordinance No. 12-16 on 11/19/12 authorizing the issuance and sale of water utility refunding and system improvement revenue bonds in the maximum amount of \$25,000,000 for defraying the cost of refunding, paying, refinancing and discharging loan agreements between the City and the New Mexico Finance Authority to complete the water system improvement projects.

STAFF RECOMMENDATION: Approval of Resolution No. 14-40.

COMMITTEE RECOMMENDATION: This item will be discussed at the July 8, 2014 Utility Advisory Committee meeting for ratification.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY MANAGER'S OFFICE NO LATER THAN 10:00 A.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.

REVIEWED AND APPROVED BY:



ALFONSO E. ORTIZ, JR.
MAYOR



CITY MANAGER . Acting



SUBMITTER'S SIGNATURE



ANN MARIE GALLEGOS
FINANCE DIRECTOR

PURCHASING AGENT
(FOR BID AWARD ONLY)

DAVE ROMERO
CITY ATTORNEY
Approved as to Legal Sufficiency Only

**CITY OF LAS VEGAS
RESOLUTION 14-40**

A RESOLUTION OF THE CITY OF LAS VEGAS, NEW MEXICO ESTABLISHING FUNDING PRIORITIES FOR WATER SYSTEM IMPROVEMENTS FOR THE CITY OF LAS VEGAS

WHEREAS, the City is required to reliably deliver enough water at sufficient quality with funding dollars for years to come; and

WHEREAS, on September 13, 2011, the Governing Body adopted the Preliminary Engineering Report (PER) which prioritized various water system improvements (*Resolution No. 11-57*); and

WHEREAS, the PER indicated that no single project would allow the City to meet its water obligations, but rather all of the Phase 1 projects would be needed to be implemented; and

WHEREAS, on September 28, 2012, the Governing Body amended water rates to partially fund water system improvements outlined in the PER related to water quality, storage, conveyance and supply (*Ordinance No. 12-13*); and

WHEREAS, on August 8, 2012, the Governing Body authorized the submission of a funding assistance application to the NM Safe Drinking Water Revolving Loan Fund (SRF) for the PER projects as ranked by the 2014-2018 Infrastructure Capital Improvement Plan (*Resolution No. 12-39*); and

WHEREAS, on June 21, 2013, the City received \$1,100,000 (\$875,000 grant / \$275,000 loan) in SRF-2727 funding for installation of Automated Meter Reading System (*Ordinance 13-05*); and

WHEREAS, on June 21, 2013, the City has received \$ 1,600,000 (\$1,200,000 grant / \$400,000 loan) in SRF-2878 funding to provide for the pre-construction phase of each Well field PER project (with the exception of storage which is not authorized for SRF funding), which includes but is not limited to planning, engineering, design, environmental, permitting, geotechnical evaluation; and

WHEREAS, on June 21, 2013, the City has received \$ 1,222,000 (\$907,500 grant / \$302,500 loan) in SRF-2910 funding to provide for the pre-construction phase of the Raw Water Conveyance project, which includes but is not limited to planning, engineering, design, environmental, permitting, geotechnical evaluation; and

WHEREAS, on June 21, 2013, the City has received \$ 1,222,757 (\$917,068 grant / \$305,689 loan) in SRF-2911 funding to provide for the pre-construction phase of PER projects for Effluent, Water Treatment Plant Oxidation, Water Treatment Plant Repairs, Leak Repair and Replace, Tank Rehabilitation and Distribution System Improvements (with the exception of storage which is not authorized for SRF funding), which includes but is not limited to planning, engineering, design, environmental, permitting, geotechnical evaluation; and

WHEREAS, on June 30, 2013, the City received a \$1,800,000 grant from the NM legislature for the completion of the Bradner Dam pre-construction phase; and

WHEREAS, the City has been awarded a \$10,000,000 grant from the NM legislature for the completion of the Bradner Dam pre-construction phase; and

WHEREAS, the Governing Body authorized the submission of a funding assistance application of \$888,800 (\$666,600 grant / \$222,200 loan) , to the NM Safe Drinking Water Revolving Loan Fund for construction of the Water Tank Rehabilitation project (SRRF-3043); and

WHEREAS, the Governing Body authorized the submission of a funding assistance application of \$174,730 (\$131,048 grant / \$43,682 loan) , to the NM Safe Drinking Water Revolving Loan Fund for construction of the Water Treatment Plant Building Repairs project (SRF-3046); and

WHEREAS, the Governing Body has authorized the submission of a Water Trust board funding applications in the amount of \$ 4,000,000 (\$ 2,400,000 grant/ 1,600,000 loan) for the Bradner Reservoir construction phase.

WHEREAS, the Governing Body has authorized the submission of a State Revolving Grant/Loan funding applications in the amount of \$ 20,000,000 for the Bradner Reservoir construction phase.

WHEREAS, the City recognized the value and integrity of the PER Phase 1 plan and chose to proceed toward implementing the recommended Phase 1 projects as fast as funding and engineering conditions permit; and

WHEREAS, there are significant engineering and funding uncertainties always associated with such projects and plans; and

WHEREAS, newly understood drought conditions drove the City to promote "Desalination" action to Phase 1 and increase the urgency of "Groundwater" sub-projects; and

WHEREAS, "Peterson Reservoir expansion" failed its feasibility validation during geotechnical investigation, causing the Utility to promote Bradner Dam expansion to top priority in Phase 1; and

WHEREAS, the funding agencies require an update to the PER to reflect Peterson Reservoir expansion and Bradner Dam expansion project modifications and associated cost implications; and

WHEREAS, the Governing Body adopted the Bradner PER recommendations on 12/11/13 (Resolution 13-56)

WHEREAS, the City chose to establish its flexibility to meet the uncertainties on which projects would be able to obtain external construction funding, rather than betting all assets on only the top priority project; and

WHEREAS, to take advantage of funding opportunities the City is using a portion of its borrowing capacity on all projects, rather than hold back the entire borrowing capacity for the one top priority project; and

WHEREAS, the choice to be flexible in this way carries a possible risk that if no external funding is forthcoming for Bradner Dam, there will not be sufficient City borrowing capacity to allow the City to visibly demonstrate actual Dam completion progress within a two year period; and

WHEREAS, the City must achieve a balance between adequate control in the use of funds and sufficient flexibility to meet the array of uncertainties;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE City of Las Vegas that the Governing Body establishes the following policies to manage the implementation of Phase 1 of the PER;

1. Staff to continue the procurement processes where the governing body must pre-approve applications for funds, acceptance of funds, requests for proposals and awards of bids.
2. Staff to obtain Governing Body approval of changes to the preliminary plan (PER).
3. Staff to advise the Governing Body of significant engineering problems and funding problems promptly after they arise, and advise the Governing Body of proposed remedies/costs as soon as the remedies are credibly firm.
4. Staff to provide the Governing Body with periodic (e.g., quarterly) detailed tabulations of fund acquisitions and fund deployments.
5. Staff to continue vigorous quest for external construction funding on all PER Phase 1 projects, with the on-going support of the Governing Body.
6. Staff to continue pursuing completion of detailed design (shovel readiness) on all PER Phase 1 projects.
7. Staff to seek alternatives that preserve the City's currently remaining borrowing capacity for construction on the top priority PER Phase 1 project, unless otherwise requested by staff and explicitly approved by the Governing Body.

8. Staff to alert Governing Body promptly if fund acquisition processes suggest further rate increases will be necessary to avoid any delay in the prompt completion of the PER Phase 1 (Bradner Dam Expansion) top priority project.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 20 ____.

CITY OF LAS VEGAS

Mayor Alfonso E. Ortiz, Jr.

(Seal)

ATTEST:

Casandra Fresquez, City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:

Dave Romero Jr., City Attorney

**CITY OF LAS VEGAS
RESOLUTION 13-39**

A RESOLUTION OF THE CITY OF LAS VEGAS, NEW MEXICO ESTABLISHING FUNDING PRIORITIES FOR WATER SYSTEM IMPROVEMENTS FOR THE CITY OF LAS VEGAS

WHEREAS, the City is required to reliably deliver enough water at sufficient quality with funding dollars for years to come; and

WHEREAS, on September 13, 2011, the Governing Body adopted the Preliminary Engineering Report (PER) which prioritized various water system improvements (*Resolution No. 11-57*); and

WHEREAS, the PER indicated that no single project would allow the City to meet its water obligations, but rather all of the Phase 1 projects would be needed to be implemented; and

WHEREAS, on September 28, 2012, the Governing Body amended water rates to partially fund water system improvements outlined in the PER related to water quality, storage, conveyance and supply (*Ordinance No. 12-13*); and

WHEREAS, on August 8, 2012, the Governing Body authorized the submission of a funding assistance application to the NM Safe Drinking Water Revolving Loan Fund (SRF) for the PER projects as ranked by the 2014-2018 Infrastructure Capital Improvement Plan (*Resolution No. 12-39*); and

WHEREAS, the City has received \$ 4,054,560 (\$3,179,560 grant / \$1,076,520 loan) in SRF funding to provide for the pre-construction phase of each project (with the exception of storage which is not authorized for SRF funding), which includes but is not limited to planning, engineering, design, environmental, permitting, geotechnical evaluation; and

WHEREAS, on June 21, 2013, the City received \$1,100,000 (\$875,000 grant / \$275,000 loan) in SRF funding for installation of Automated Meter Reading System (*Ordinance 13-05*); and

WHEREAS, on June 30, 2013, City received a \$1,800,000 grant from the NM legislature for the completion of the Bradner Dam pre-construction phase; and

WHEREAS, on July 30, 2013, the Governing Body authorized the submission of a funding assistance application of \$5,363,000 (\$4,022,250 grant / \$1,340,750 loan) to the NM Safe Drinking Water Revolving Loan Fund for construction of various PER projects that qualify for a Categorical Exclusion and meet SRF Readiness to Proceed criteria (*Resolution No. 13-33*); and

WHEREAS, the Governing Body has authorized the submission of various Water Trust board funding applications and received \$4,556,460 (\$3,478,245 grant / \$1,078,215 loan) for various PER projects; and

WHEREAS, the City recognized the value and integrity of the PER Phase 1 plan and chose to proceed toward implementing the recommended Phase 1 projects as fast as funding and engineering conditions permit; and

WHEREAS, there are significant engineering and funding uncertainties always associated with such projects and plans; and

WHEREAS, newly understood drought conditions drove the City to promote "Desalination" action to Phase 1 and increase the urgency of "Groundwater" sub-projects; and

WHEREAS, "Peterson Reservoir expansion" failed its feasibility validation during geotechnical investigation, causing the Utility to promote Bradner Dam expansion to top priority in Phase 1; and

WHEREAS, the funding agencies require an update to the PER to reflect Peterson Reservoir expansion and Bradner Dam expansion project modifications and associated cost implications; and

WHEREAS, the City chose to establish its flexibility to meet the uncertainties on which projects would be able to obtain external construction funding, rather than betting all assets on only the top priority project; and

WHEREAS, to take advantage of funding opportunities the City is using a portion of its borrowing capacity on all projects, rather than hold back the entire borrowing capacity for the one top priority project; and

WHEREAS, the choice to be flexible in this way carries a possible risk that if no external funding is forthcoming for Bradner Dam, there will not be sufficient City borrowing capacity to allow the City to visibly demonstrate actual Dam completion progress within a two year period; and

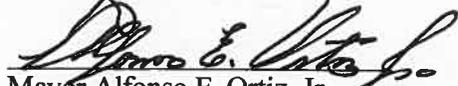
WHEREAS, the City must achieve a balance between adequate control in the use of funds and sufficient flexibility to meet the array of uncertainties;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE City of Las Vegas that the Governing Body establishes the following policies to manage the implementation of Phase 1 of the PER;

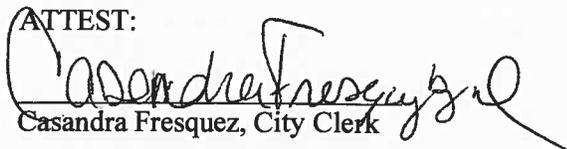
1. Staff to continue the procurement processes where the governing body must pre-approve applications for funds, acceptance of funds, requests for proposals and awards of bids.
2. Staff to obtain Governing Body approval of changes to the preliminary plan (PER).
3. Staff to advise the Governing Body of significant engineering problems and funding problems promptly after they arise, and advise the Governing Body of proposed remedies/costs as soon as the remedies are credibly firm.
4. Staff to provide the Governing Body with periodic (e.g., quarterly) detailed tabulations of fund acquisitions and fund deployments.
5. Staff to continue vigorous quest for external construction funding on all PER Phase 1 projects, with the on-going support of the Governing Body.
6. Staff to continue pursuing completion of detailed design (shovel readiness) on all PER Phase 1 projects.
7. Staff to seek alternatives that preserve the City's currently remaining borrowing capacity for construction on the top priority PER Phase 1 project, unless otherwise requested by staff and explicitly approved by the Governing Body.
8. Staff to alert Governing Body promptly if fund acquisition processes suggest further rate increases will be necessary to avoid any delay in the prompt completion of the PER Phase 1 (Bradner Dam Expansion) top priority project.

PASSED, APPROVED, AND ADOPTED this 21st day of August, 2013.

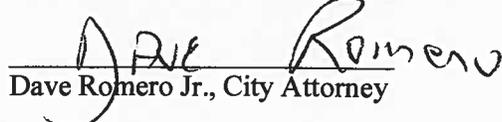
CITY OF LAS VEGAS


Mayor Alfonso E. Ortiz, Jr.

(Seal)

ATTEST:

Casandra Fresquez, City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:


Dave Romero Jr., City Attorney

STATE OF NEW MEXICO)
COUNTY OF SAN MIGUEL) ss.
CITY OF LAS VEGAS)

The City Council (the "Governing Body") of the City of Las Vegas, New Mexico, met in special session in full conformity with the law and the rules and regulations of the Governing Body at the City Hall at 1700 North Grand Avenue, Las Vegas, New Mexico, 87701, being the meeting place of the Governing Body for the special meeting held on the 19th day of November, 2012, at the hour of 6:00 p.m. Upon roll call, the following members were found to be present:

Present:

Mayor Alfonso E. Ortiz, Jr.
Councilor Tonita Gurule-Giron'
Councilor Vincent Howell
Councilor Joey Herrera
Councilor David L. Romero

Absent:

Also Present:

City Manager Timothy Dodge
City Attorney Dave Romero
City Clerk Casandra Fresquez

Thereupon, there was officially filed with the City Clerk a copy of a proposed bond ordinance in final form.

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION	3
Section 1.01 Definitions.	3
Section 1.02 Rules of Construction.	11
ARTICLE II RATIFICATION	12
ARTICLE III FINDINGS AND DECLARATIONS.....	12
ARTICLE IV WATER UTILITY	12
ARTICLE V AUTHORIZATION OF PROJECT, EXPENSES, AND RESERVE REQUIREMENT	12
Section 5.01 Project.	12
Section 5.02 Debt Service Reserve.	12
ARTICLE VI SERIES BONDS.....	13
Section 6.01 Authorization; Series Bonds.	13
Section 6.02 Details of the Bonds.	13
Section 6.03 Securities Depository.	14
Section 6.04 Redemption.	15
Section 6.05 Payment of the Series Bonds.	17
Section 6.06 Registration, Transfer, Exchange and Ownership of the Bonds.	17
ARTICLE VII FILING OF SIGNATURES	18
ARTICLE VIII EXECUTION AND CUSTODY OF THE BONDS.....	19
Section 8.01 Execution.	19
Section 8.02 Custody.	19
Section 8.03 Authentication.	19
ARTICLE IX NEGOTIABILITY; PREFERENCE	19
ARTICLE X SPECIAL LIMITED OBLIGATIONS	19
ARTICLE XI SALE AND REMARKETING OF SERIES BONDS.....	20
ARTICLE XII FORMS OF SERIES BONDS.....	20
ARTICLE XIII PERIOD OF SYSTEM'S USEFULNESS	20

ARTICLE XIV USE OF PROCEEDS; PROJECT COMPLETION; PURCHASERS NOT RESPONSIBLE	20
Section 14.01 <i>Proceeds; Completion of Project for which the Bonds are Issued.</i>	20
Section 14.02 <i>Purchaser Not Responsible.</i>	21
ARTICLE XV SUFFICIENCY OF ESCROW	22
ARTICLE XVI APPROVAL	22
Section 16.01 <i>Governing Body Approval.</i>	22
Section 16.02 <i>Further Acts.</i>	22
Section 16.03 <i>Use of Disclosure Documents.</i>	23
ARTICLE XVII FUNDS AND ACCOUNTS	23
Section 17.01 <i>Water Utility System Fund.</i>	23
Section 17.02 <i>Acquisition Fund.</i>	23
Section 17.03 <i>Redemption Fund.</i>	23
Section 17.04 <i>Debt Service Fund.</i>	23
Section 17.05 <i>Debt Service Reserve Fund.</i>	23
Section 17.06 <i>Subordinate Lien Funds and Accounts.</i>	23
Section 17.07 <i>Rebate Fund.</i>	24
Section 17.08 <i>Replacement Fund.</i>	24
Section 17.09 <i>Rate Stabilization Fund.</i>	24
Section 17.10 <i>Other Funds.</i>	24
ARTICLE XVIII ADMINISTRATION OF FUNDS AND ACCOUNTS.....	24
Section 18.01 <i>Use of Gross Revenues.</i>	24
Section 18.02 <i>Debt Service Fund.</i>	25
Section 18.03 <i>Reserve Fund.</i>	26
Section 18.04 <i>Termination Upon Deposits to Maturity</i>	27
Section 18.05 <i>Subordinated Bonds.</i>	27
Section 18.06 <i>Replacement Fund.</i>	27
Section 18.07 <i>Rate Stabilization Fund.</i>	27
ARTICLE XIX TRANSFERS TO PAY PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS; PAYMENT OF EXPENSES	28
Section 19.01 <i>Transfers to Fiscal Agent.</i>	28
Section 19.02 <i>Expenses.</i>	28
ARTICLE XX GENERAL ADMINISTRATION OF FUNDS	28
Section 20.01 <i>Investment of Money.</i>	28
Section 20.02 <i>Deposits of Funds.</i>	28
Section 20.03 <i>Valuation of Investments.</i>	28

ARTICLE XXI [RESERVED]	29
ARTICLE XXII PLEDGE OF NET REVENUES, LIEN OF THE BONDS AND EQUALITY OF THE BONDS	29
Section 22.01 <i>Pledge of Net Revenues</i>	29
Section 22.02 <i>[Reserved]</i>	29
Section 22.03 <i>Equality of Bonds</i>	29
Section 22.04 <i>Other Pledged Amounts</i>	29
ARTICLE XXIII ADDITIONAL BONDS OF THE SYSTEM.....	29
Section 23.01 <i>Limitations Upon Issuance of the Bonds</i>	29
Section 23.02 <i>Parity Bonds</i>	29
Section 23.03 <i>Superior Obligations Prohibited</i>	31
Section 23.04 <i>Subordinate Obligations Permitted</i>	31
ARTICLE XXIV REFUNDING BONDS	31
ARTICLE XXV PROTECTIVE COVENANTS	31
Section 25.01 <i>Use of Proceeds of the Bonds</i>	31
Section 25.02 <i>Payment of the Bonds</i>	32
Section 25.03 <i>Rate Covenant</i>	32
Section 25.04 <i>Lien on Lands Serviced by System</i>	33
Section 25.05 <i>Levy of Charges</i>	33
Section 25.06 <i>Efficient Operation</i>	33
Section 25.07 <i>Records</i>	33
Section 25.08 <i>Right to Inspect</i>	33
Section 25.09 <i>Audits</i>	33
Section 25.10 <i>Billing Procedure</i>	34
Section 25.11 <i>Charges and Liens Upon System</i>	34
Section 25.12 <i>Insurance</i>	34
Section 25.13 <i>[Reserved]</i>	34
Section 25.14 <i>Alienating System</i>	34
Section 25.15 <i>Extending Interest Payments</i>	35
Section 25.16 <i>Competent Management</i>	35
Section 25.17 <i>Performing Duties</i>	35
Section 25.18 <i>Other Liens</i>	35
Section 25.19 <i>City's Existence</i>	35
Section 25.20 <i>Tax Compliance</i>	35
ARTICLE XXVI REBATE FUND	37
ARTICLE XXVII EVENTS OF DEFAULT	37
ARTICLE XXVIII REMEDIES UPON DEFAULT	38

ARTICLE XXIX DUTIES UPON DEFAULT	39
ARTICLE XXX DEFEASANCE.....	39
ARTICLE XXXI BONDS NOT PRESENTED WHEN DUE.....	40
ARTICLE XXXII DELEGATED POWERS	40
ARTICLE XXXIII AMENDMENT OF THE ORDINANCE OR RESOLUTION OF SALE.....	41
Section 33.01 <i>Limitations upon Amendments</i>	41
Section 33.02 <i>Additional Amendments</i>	41
Section 33.03 <i>Proof of Instruments</i>	42
Section 33.04 <i>Proof of Bonds</i>	42
ARTICLE XXXIV ORDINANCE IRREPEALABLE.....	42
ARTICLE XXXV NOTICE OF PRIOR REDEMPTION.....	42
Section 35.01 <i>The Refunded Loan Obligations</i>	42
Section 35.02 <i>Contingency</i>	42
ARTICLE XXXVI EFFECTIVE DATE AND GENERAL SUMMARY FOR PUBLICATION	42
ARTICLE XXXVII GOVERNING LAW.....	44
ARTICLE XXXVIII SEVERABILITY CLAUSE.....	44
ARTICLE XXXIX REPEALER CLAUSE.....	44
ARTICLE XL INTERESTED PARTIES.....	44
ARTICLE XLI LIMITATION OF CITY'S LIABILITY.....	44

CITY OF LAS VEGAS, NEW MEXICO
ORDINANCE NO. 12-16

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS VEGAS, NEW MEXICO WATER UTILITY REFUNDING AND SYSTEM IMPROVEMENT REVENUE BONDS, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWENTY FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00) FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING, REFINANCING AND DISCHARGING LOAN AGREEMENTS BETWEEN THE CITY AND THE NEW MEXICO FINANCE AUTHORITY AND FOR THE CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS TO THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

RECITALS:

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the City of Las Vegas, San Miguel County, New Mexico (the "City"), is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico; and

WHEREAS, the City now owns, operates and maintains a public utility consisting of a water utility system (the "System"), which the City hereby declares shall be continued to be operated as a public utility; and

WHEREAS, the City will provide for the imposition of rates and charges against users of the System; and

WHEREAS, pursuant to Ordinance No. 83-30 passed and adopted by the Council on June 8, 1995, the City has authorized and approved the Loan as evidenced by the Loan Agreement (as defined below) with the NMFA, payable from a lien on the Net Revenues (defined below) in the initial principal amount of \$4,680,500, and pursuant to Ordinance No. 03-06 passed and adopted by the Council on June 18, 2003, the City has authorized and approved an amendment to the Loan Agreement with the NMFA, payable from a lien on the Net Revenues, in order to lower interest rates on a portion of the Loan, of which \$979,703 of the principal amount of such Loan

remains outstanding and \$341,301.50 is deposited in the required debt service reserve fund (the "Loan Agreement Reserve Fund"); and

WHEREAS, the City has been advised of the need to make certain improvements to the System in order to: acquire, extend, enlarge, better, repair and/or otherwise improve the System, and, more specifically, those capital improvement projects to be set forth in a Resolution of Sale (the "System Improvements"); and

WHEREAS, the City intends to issue its Bonds (as defined below), upon the terms and subject to the conditions as set forth in this Ordinance and a subsequent Resolution of Sale, in part for the purpose of refunding, paying, refinancing, and discharging the Loan (the "Refunding Project"), which will substantially reduce the interest costs the principal remaining on the Loan, and will effect other savings and economies, all to the benefit of the City, and consequently will provide for public health, peace, and safety of the City and its citizens; and

WHEREAS, the City also intends to issue its Bonds, upon the terms and subject to the conditions as set forth in this Ordinance and a subsequent Resolution of Sale, as applicable, in part to finance a portion of the costs of the System Improvements (the "Improvement Project"), which will meet an urgent need for the Improvement Project and consequently also will provide for the public health, peace and safety of the City and its citizens; and

WHEREAS, the Bonds consist of two portions designated as the "Refunding Bonds" and the "Improvement Bonds" as defined in Section 1 of this Ordinance, and the Refunding Project shall be funded by the Refunding Bonds and the Improvement Project shall be funded by the Improvement Bonds; and

WHEREAS, the City will issue the Bonds only after receipt of the required approval of the Refunding Bonds by the Department of Finance and Administration of the State of New Mexico; and

WHEREAS, the City is authorized under the Act to issue utility revenue bonds to defray all or a part of the costs of the Project and the Bonds shall be issued pursuant to the Act; and

WHEREAS, the issuance of the Bonds will provide for the preservation of the public health, peace and safety; and

WHEREAS, the Governing Body has determined that it is necessary and in the best interest of the City and the residents of the City that the Series Bonds be authorized and issued in a maximum aggregate principal amount of \$25,000,000 and that the specific terms of the Series Bonds be specified in this Ordinance and a subsequent Resolution of Sale within the parameters set forth herein.

BE IT ORDAINED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF LAS VEGAS:

ARTICLE I
DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 *Definitions.* As used in this Ordinance and in any Resolution of Sale, the following terms have the meanings specified, unless the context clearly requires otherwise:

"Acquisition Fund" means the "City of Las Vegas, New Mexico Water Utility Loan Refunding and System Improvement Revenue Bonds Acquisition Fund," established in Article XVII.

"Act" means with respect to the Bonds, this Ordinance, a Resolution of Sale, the powers of the City under the Constitution and general laws of the State applicable to the City, including NMSA 1978, §§ 3-23-1 to -10 (2011), NMSA 1978, §§ 3-27-1 to -9 (2011), NMSA 1978, §§ 3-31-1 to -12 (2011), NMSA 1978, §§ 6-18-1 to -16 (2005), enactments of the Governing Body and the laws of the State, as may be further provided in a Resolution of Sale.

"Authenticating Agent" means the Registrar or other Fiscal Agent if otherwise designated by this Ordinance or Resolution of Sale, required to authenticate the Bonds.

"Authorized Denominations" means denominations of \$1.00 or integral multiples of \$1.00, unless otherwise specified for an issuance of Bonds in the applicable Resolution of Sale.

"Authorized Officer" means the City's Mayor, City Manager, City Treasurer, City Attorney, City Finance Director or other officer or employee of the City when designated by a certificate signed by the Mayor of the City from time to time.

"Bonds" means any obligation of the City as authorized pursuant to Section 3-31-1 to 3-31-12 (2011), NMSA 1978 whether designated as a bond, note, loan or loan agreement, warrant, debenture, lease-purchase agreement, or other instrument evidencing an obligation of the City to make payments which may be marketed in a public, private placement, or negotiated sale to a lender or purchaser with the final terms thereof as set forth in a Resolution of Sale.

"Bond Counsel" means an attorney at law or a firm of attorneys, designated by the City, of nationally recognized standing in matters pertaining to the issuance of bonds issued by states and their political subdivisions.

"Bond Purchase Agreement" means a bond purchase agreement or loan agreement to be entered into between the City and a Purchaser in substantially the form presented at the meeting of the Governing Body at which this Ordinance or Resolution of Sale is adopted.

"Bond Year" means, the twelve-month period specified in this Ordinance or Resolution of Sale.

"Business Day" means any day during which any bank, trustee, paying agent, remarketing agent and tender agent for that series, and the New York Stock Exchange are all open for business during normal business hours unless otherwise defined in a Resolution of Sale.

"City" means the City of Las Vegas in the County of San Miguel, State of New Mexico.

"Code" means the Internal Revenue Code of 1986, as amended, the federal income tax regulations of the Treasury Department promulgated thereunder or applicable thereto (whether proposed, temporary or final) and any amendments of, or successor provision to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code in this Ordinance or a Resolution of Sale means that Section of the Code and such applicable regulations, rulings, announcements, notice, procedures and determinations pertinent to that Section.

"Completion Date" means the date of completion of the acquisition, construction and installation of the Project as certified pursuant to Article XIV.

"Consulting Engineer" means any registered or licensed professional engineer or firm of engineers or Independent Accountant, entitled to practice and practicing as such under the laws of the State, retained and compensated by the City but not in the regular employ of the City; but, as to any construction drawings and specifications prepared for the System by City employees under the supervision of the City Engineer, this term may include the City Engineer.

"Continuing Disclosure Undertaking" means, if applicable, the agreement of the City for the benefit of Owners pursuant to which the City agrees for the benefit of Owners that, while the Bonds are Outstanding, the City will annually provide certain financial information and operating data and will provide notice of certain material events in accordance with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934.

"Council" means the Governing Body.

"Counsel" means an attorney at law (who may be counsel to the City).

"Debt Service Fund" means the Debt Service Fund established in Article XVII for the Bonds into which deposits are to be made for payment of the Debt Service Requirements.

"Debt Service Requirements," for any given period, means the sum of: (a) the amount required to pay the interest becoming due on the Bonds during that period, or to make reimbursements for payments of interest; and (b) the amount required to pay the principal becoming due on the Bonds during that period, whether at maturity or upon mandatory sinking fund redemption dates, or to make reimbursements for payments of that principal.

"Debt Service Reserve Fund" means the reserve fund established in Article XVII for the Bonds into which deposits are made to meet the Reserve Requirement.

"Depository" means any of the following registered securities depository: The Depository Trust Company or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depositories as an Authorized Officer of the City may designate.

"Expense Account" means that account established for the purpose of appropriating for the annual budget that part of the Operation and Maintenance Expenses which are reasonably necessary for the administration of the Debt Service Fund.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the Bonds and Related Documents, including, without limitation, fees paid to consultant fees, the fees, compensation, costs and expenses to be paid to any Fiscal Agent and expenses incurred in connection with the sale, issuance, remarketing, payment and administration of the Bonds, including attorneys’ fees. Expenses do not include any payment of or reimbursement for the payment of Debt Service Requirements or premiums on the Bonds or liabilities incurred by the City as the result of negligence in the operation of the System or any payments made to the City’s general fund as payments in lieu of franchise or other City taxes.

“Fiscal Agent” means any trustee, paying agent, tender agent, registrar, remarketing agent, bank, or other agent employed with respect to the sale, issuance, remarketing, payment, purchase, administration or otherwise in connection with the Bonds.

“Fiscal Agreement” means any remarketing agreement, tender agreement, investment agreement, trust agreement, paying agent agreement, escrow agreement or other document required for the remarketing, purchase, payment, security or administration of the Bonds.

“Fiscal Year” means the twelve-month period beginning on the first day of July of each year and ending on the last day of June of the next succeeding year, or any other twelve-month period which the City or other appropriate authority may establish as the fiscal year for the System.

“Governing Body” means the Council which is vested with legislative power of the City and any successor thereto.

“Government Obligations” means direct obligations of the United States of America or obligations guaranteed by the United States of America.

“Gross Revenues” means all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part of the System, and includes, without limitation, all revenues received by the City, or any municipal corporation or agency succeeding to the rights of the City, from the System involving the transportation, distribution and sale of water for use or consumption by the City and public and private customers of the System (including all territorial annexations which may be made while the Bonds are outstanding). Such term also includes:

- (a) All income derived from the investment of any money in the Acquisition Fund, Water Utility System Fund, Debt Service Fund and Rate Stabilization Fund and from surplus Net Revenues;
- (b) Money released from the Rebate Fund to the City;
- (c) Money released from the Rate Stabilization Fund to the extent that the amount released is used to pay Operation and Maintenance Expenses or Debt Service Requirements on Bonds in the year released; provided that withdrawals from the Rate Stabilization Fund shall not be included in Gross Revenues for the purposes of the Rate Covenant in any two consecutive calendar years; and

- (d) Property insurance proceeds which are not necessary to restore or replace the property lost or damaged and the proceeds of the sale or other disposition of any part of the System.

Gross Revenues do not include:

- (a) any money received as (i) grants or gifts from the United States of America, the State or other sources or (ii) the proceeds of any charge or tax intended as a replacement therefor or other capital contributions from any source which are restricted as to use;
- (b) taxes and/or fees collected by the City and remitted to other governmental agencies;
- (c) condemnation proceeds or the proceeds of any insurance policy, except any property insurance proceeds described above in clause (4) of this definition or derived in respect of loss of use or business interruption; and
- (d) the proceeds of the Bonds or any other bonds or refunding bonds.

“Historic Test Period” means any period of 12 consecutive months out of the 18 calendar months next preceding the delivery of additional Parity Bonds pursuant to Section 23.02 of Article XXIII.

“Improvement Bonds” means that portion of the Bonds used for the Improvement Project and consists of all of the Bonds the proceeds of which are not used for the Refunding Project and which are not specified as a part of the Refunding Bonds.

“Improvement Project” means the Improvements, and if moneys become available therefor from proceeds of the issuance of the Bonds, any other capital improvement project approved by the Council for which the proceeds of tax-exempt system revenue bonds may be lawfully expended pursuant to Section 3-31-1(A), NMSA 1978.

“Independent Accountant” means any certified public accountant, registered accountant or firm of accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the City who (a) is, in fact, independent and not under the domination of the City, (b) does not have any substantial interest, direct or indirect, with the City, and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

“Insured Bank” means a bank insured by an agency of the United States.

“Interest Payment Date” means the date or dates for the payment of interest stated in this Ordinance or Resolution of Sale for the Bonds.

“Loan” or *“Loan Agreement”* means the original loan and loan agreement dated as of June 1, 1995 between the City and the NMFA in the initial principal amount of \$4,680,500 consisting of a “Cash Funded Portion” in the amount of \$425,500 of which \$80,703 is currently outstanding;

and a second portion of the loan, was amended by amendment dated June 25, 2004, between the City and the NMFA, in order to reduce the interest rate with respect to the "Market Rate Portion" of the loan, which is payable from a lien on the Net Revenues with \$909,000 of such "Market Rate Portion" currently outstanding and \$341,301.50 remaining in the required Loan Agreement Reserve Fund.

"Loan Agreement Reserve Fund" means the applicable debt service reserve fund established under the Loan Agreement.

"NMFA" means the New Mexico Finance Authority.

"NMSA" means New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

"Net Revenues" means the Gross Revenues after deducting Operation and Maintenance Expenses.

"Official Statement" means the final disclosure document, if any, relating to the offer and sale of the Bonds (including the cover page and all summary statement appendices and other materials included or incorporated by reference or attached thereto), as amended or supplemented.

"Operation and Maintenance Expenses" means all reasonable and necessary current expenses of the System, in any particular Fiscal Year or period to which such term is applicable, paid or accrued, related to operating, maintaining and repairing the System including, without limiting the generality of the foregoing:

- (a) legal and overhead expenses of the various City departments directly related and reasonably allocable to the administration of the System;
- (b) insurance premiums for the System, including, without limitation, premiums for property insurance, public liability insurance and workmen's compensation insurance, whether or not self-funded;
- (c) expenses other than Expenses paid from the proceeds of Bonds;
- (d) the costs of audits of the books and accounts of the System;
- (e) amounts required to be deposited in the Rebate Fund or otherwise required to make rebate payments to the United States Government; and
- (f) salaries, administrative expenses, labor costs, surety bonds and the cost of materials and supplies used for or in connection with the current operation of the System; and
- (g) any fees required to be paid under any operation, maintenance and/or management agreement with respect to the System.

Operation and Maintenance Expenses do not include any allowance for depreciation, payments in lieu of taxes, liabilities incurred by the City as a result of its negligence or other misconduct in the operation of the System, any charges for the accumulation of reserves for capital replacements or any Operation and Maintenance expenses payable from moneys other than Gross Revenues.

"Outstanding" or *"outstanding"* when used in reference to Bonds means, on any particular date, the aggregate of all Bonds issued and delivered under the this Ordinance and Resolution of Sale authorizing the issuance of the Bonds, except:

- (a) those cancelled at or prior to such date or delivered to or acquired by the City at or prior to such date for cancellation;
- (b) those which have been paid or are deemed to be paid in accordance with the applicable City ordinance and resolution authorizing the issuance of the applicable bonds or otherwise relating thereto;
- (c) in the case of variable rate bonds, bonds deemed tendered but not yet presented for payment; and
- (d) those in lieu of or in exchange or substitution for which other bonds shall have been delivered, unless proof satisfactory to the City and the paying agent for the applicable bonds is presented that any bond for which a new bond was issued or exchanged is held by a bona fide holder in due course.

"Owner" means the registered owner or owners of any Bond as shown on the registration books for the Bonds as maintained by the Registrar.

"Parity Bonds" means the Loan as evidenced by the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien on or pledge of and issued with a lien on, the Net Revenues on a parity with the Series Bonds issued under this Ordinance and a Resolution of Sale.

"Paying Agent" means the City Finance Director or any trust company, national or state banking association or financial institution qualified to act and appointed as the paying agent for the Bonds in a Resolution of Sale or by an Authorized Officer from time to time.

"Permitted Investments" means any of the following to the extent that, at the time the investment is made, it is an investment that is authorized by the law of the State for public money of the City: (i) bonds or negotiable securities of the United States or the State, (ii) bonds or negotiable securities of any county, municipality or school district that has a taxable valuation of real property for the last preceding year of at least one million dollars and has not defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding the time of investment, (iii) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies guaranteed by the United States government, (iv) money market accounts that invest solely in direct obligations of the United States Treasury that have maturities

of one year or less, (v) certificates of deposit of banks (including the Depository), savings and loan associations or credit unions certified or designated to receive public money on deposit and whose deposits are insured by an agency of the United States, and (vi) the State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1 NMSA 1978, and operated, maintained and invested by the State Treasurer.

"Preliminary Official Statement" means the initial disclosure document, if any, relating to the offer and sale of the Bonds.

"Project" means the Improvement Project and the Refunding Project, and all costs incidental to the foregoing and the issuance of the Bonds.

"Prospective Test Period" means the 12-month period commencing on the first day of the month following the estimated Completion Date of the project for which additional Parity Bonds are proposed to be issued pursuant to Section 23.02 of Article XXIII or the first day of the thirty-sixth month following the delivery of such Parity Bonds, whichever is earlier.

"Purchaser" means the original purchaser or lender with respect to the Bonds as set forth in a Resolution of Sale.

"Rate Covenant" means the covenant in Section 25.03 of Article XXV relating to charging rates for use of the System to pay Debt Service Requirements.

"Rate Stabilization Fund" means the Rate Stabilization Fund for the Bonds established in Article XVII.

"Rebate Fund" means the Rebate Fund for the Bonds established in Article XVII.

"Record Date" means, unless otherwise stated in a Resolution of Sale, (a) with respect to the Bonds with a term or tender period of less than one year, the first Business Day preceding each Interest Payment Date and (b) with respect to the Bonds with a term or tender period of one year or more, the fifteenth day of the calendar month preceding each Interest Payment Date.

"Redemption Date" means that date as set forth in Section 35 hereof.

"Redemption Fund" means the "City of Las Vegas, New Mexico Water Utility Refunding and System Improvement Revenue Bonds Redemption Fund," established in Article XVII, for deposit of the proceeds of the Refunding Bonds at a closing pending payment of such proceeds to the Paying Agent to be used to pay the redemption price of the Loan.

"Refinancing Proceeds" means proceeds receivable by the City from the sale of bonds or otherwise, the proceeds of which are pledged to the payment of the Bonds.

"Refunded Loan Obligations" means the obligations of the City under the Loan as evidenced by the Loan Agreement, outstanding in the aggregate principal amount of \$664,000, plus accrued interest, or such other amount as provided in a Resolution of Sale. The Cash Funded Principal is not included in the Refunding Project.

“Refunding Bonds” means Bonds issued for the purpose refunding or refinancing outstanding water system revenue bonds as provided in this Ordinance or Resolution of Sale.

“Refunding Project” means refunding, discharging and paying all or a portion of the Loan as evidenced by the Loan Agreement obligation.

“Registrar” means the City Finance Director or any trust company, national or state banking association or financial institution qualified to act and appointed as the registrar for the Bonds in this Ordinance, a Resolution of Sale or by an Authorized Officer from time to time.

“Related Documents” means, as applicable, the Fiscal Agreements, Preliminary Official Statement, Official Statement, Continuing Disclosure Undertaking or other disclosure documents, Bond Purchase Agreement, mortgages or other security documents, loan agreements, and such other agreements as may be required for the Bonds as provided in this Ordinance or a Resolution of Sale.

“Replacement Fund” means the Replacement Fund established in Article XVII.

“Reserve Account” means an account of the Debt Service Fund to be established for the Bonds with a Reserve Requirement.

“Reserve Requirement” means, unless otherwise defined in this Ordinance or a Resolution of Sale, for an issuance of Tax-Exempt System Bonds (as defined in Section 25.20), an amount not to exceed an amount equal to the lesser of ten percent (10%) of the principal amount of the Bonds, the maximum annual Debt Service Requirement on the Bonds or 125% of average annual Debt Service Requirements on the Bonds, calculated on the date of initial issuance of the Bonds and recalculated on the date of any optional redemption or purchase by the City for cancellation of the Bonds from the date of original issuance of the Bonds redeemed or purchased were never issued.

“Resolution of Sale” means a resolution and all amendments thereto of the Governing Body that may be adopted prior to the initial issuance and delivery of the Bonds, approving specific terms, details and designation with respect to the Bonds within the parameters set forth in this Ordinance, and providing for the issuance and sale of the Bonds.

“Series Bonds” means the “City of Las Vegas, New Mexico Water Utility Loan Refunding and System Improvement Revenue Bonds” which may be issued within two (2) years from the date of this Ordinance and in one or more issuances of bonds or loans, in an amount not to exceed the maximum aggregate principal amount of \$25,000,000, to be issued pursuant to the terms of this Ordinance and Resolution of Sale setting forth the terms, conditions, series, and final designation or name of such Bonds for the purpose of defraying the costs of the Project.

“S&P” means Standard & Poor’s Ratings Group, a division of McGraw-Hill, Inc., its successors and their assigns.

“State” means the State of New Mexico.

"Subordinated Bonds" means all other bonds and other obligations of the City now or hereafter issued with a lien on the Net Revenues subordinate to the liens of Parity Bonds on the Net Revenues.

"System Improvements" means the improvements to the System as enumerated in the Recitals to this Ordinance.

"System" or "Utility" means the municipally owned public utility designated as the City's Water Utility System, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City through purchase, construction, condemnation, or otherwise, and used in connection with said water utility system of the City, and in any way appertaining thereto, whether situated within or without the limits of the City.

"Valuation Date" means the date provided in this Ordinance or a Resolution of Sale.

"Water Utility System Fund" means the "City of Las Vegas, New Mexico, Water Utility System Fund" established in Article XVII of this Ordinance.

Section 1.02 Rules of Construction. For purposes of this Ordinance and a Resolution of Sale, unless otherwise expressly provided or unless the context requires otherwise:

- (a) Unless otherwise stated in this Ordinance, a Resolution of Sale, all references in the this Ordinance, or a Resolution of Sale to designated Articles and other sections are to the designated Article and other section of this Ordinance, or a Resolution of Sale, as applicable.
- (b) The words "herein," "hereof," "hereunder" and "herewith" and other words of similar import refer to this Ordinance, or a Resolution of Sale, as applicable, as a whole and not to any particular Article or section.
- (c) All accounting terms not otherwise defined in this Ordinance, or the a Resolution of Sale have the meanings assigned to them in accordance with generally accepted accounting principles.
- (d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (e) The headings used in this Ordinance, and a Resolution of Sale are for convenience of reference only and shall not define or limit the provisions of this Ordinance, or a Resolution of Sale.
- (f) Terms in the singular include the plural and vice versa.

**ARTICLE II
RATIFICATION**

All action previously taken (not inconsistent with the provisions of the Ordinance) by the Governing Body and the officers of the City, directed toward the authorization, issuance and sale of the Bonds is ratified, approved and confirmed.

**ARTICLE III
FINDINGS AND DECLARATIONS**

The Governing Body, having considered all relevant information and data including recitals set forth hereinabove makes the following findings and declarations:

- (a) *Authorization.* The City finds that it has authority under the Act to complete the System Improvements, to undertake the Project, and to issue the Series Bonds, for the purpose of defraying the cost of such acquisition.
- (b) *Benefit to Public.* The issuance of the Series Bonds, to provide funds to finance the Project is necessary and in the interest of the public health, safety and welfare of the residents of the City and will result in savings of interest and System operations costs to the City.
- (c) *Parity Obligation.* The Loan constitutes a Parity Obligation within the meaning of the Loan Agreement.

**ARTICLE IV
WATER UTILITY**

The water facilities now owned and hereafter acquired by the City constitute a municipally owned and operated water utility (i.e., the System shall be owned, operated and maintained by the City as such).

**ARTICLE V
AUTHORIZATION OF PROJECT, EXPENSES, AND
RESERVE REQUIREMENT**

Section 5.01 *Project.* The Project and payment of Expenses related to the Series Bonds are authorized and approved. The Series Bonds shall be issued pursuant to this Ordinance and a Resolution of Sale to (a) initially fund the Project; (b) pay expenses related to the issuance of the Series Bonds; and (c) to fund any related Reserve Requirement not otherwise funded by the application of the funds remaining in the Loan Agreement Reserve Fund.

Section 5.02 *Debt Service Reserve.* The funding of a Reserve Fund with Bond proceeds, funds remaining in the Loan Agreement Reserve Fund, or from Net Revenues in the amount of the Reserve Requirement, as applicable, is hereby authorized and approved.

ARTICLE VI SERIES BONDS

Section 6.01 *Authorization; Series Bonds.* This Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the Governing Body for the purpose of establishing parameters in connection with the issuance of Bonds subject to a Resolution of Sale to be adopted by the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the citizens of the City, and for the purpose of defraying the cost of the Project, the Governing Body hereby declares it is necessary that the City issue, and the City is hereby authorized to issue, in one or more issuances, pursuant to all or any specific statutory authorization as part of the Act, the Bonds to be initially designated "City of Las Vegas, New Mexico New Mexico Water Utility Loan Refunding and System Improvement Revenue Bonds" in an aggregate principal amount not to exceed \$25,000,000. The Series Bonds shall be payable, collectable and reimbursable solely from the Pledged Revenues. The Governing Body hereby authorizes the sale of the Series Bonds through a public, private-placement, or negotiated sale to the Purchaser, subject to the terms and conditions and restrictions set forth in this Ordinance, a Resolution of Sale and Related Documents. The Series Bonds, if sold to the Purchaser, may be sold subject to payment by the City of a placement fee as set forth in a Resolution of Sale.

Section 6.02 *Details of the Bonds.*

- (a) ***General.*** The Bonds shall be issued, in Authorized Denominations, numbered with such prefixes or other distinguishing designations and shall be fully registered or payable to a lender identified in a loan agreement. The Series Bonds shall be dated, have such principal amounts and have such maturity dates (no later than 40 years, or other shorter period of time from the date of issuance) as set forth in a Resolution of Sale.
- (b) ***Interest.*** Interest on the Bonds shall be payable at the rates set forth in a Resolution of Sale. The interest on the Bonds shall be the interest rate or rates established in a Resolution of Sale and shall be payable on each Interest Payment Date as set forth in a Resolution of Sale, provided that the maximum interest rate and net effective interest rate shall not exceed 12% per annum.

Unless otherwise stated in a Resolution of Sale, the Bonds shall bear interest from the most recent date to which interest has been paid or provided for or if no interest has been paid or provided for from the date of the Bonds until maturity or until redeemed if called for redemption prior to maturity. Unless otherwise stated in a Resolution of Sale, interest on the Bonds will be computed on the basis of a 360-day year consisting of twelve 30-day months. If, upon presentation at maturity or for prior redemption, payment of the principal amount of a Bond is not made as required by this Ordinance or Resolution of Sale, interest on the unpaid principal amount of such Bond shall continue to accrue at the interest rate stated or described in that Bond until the principal amount of that Bond is paid in full.

- (c) ***Priority on Net Revenues.*** Unless otherwise provided in a Resolution of Sale, the Bonds payable in whole or in part from Net Revenues shall have priority for payment from the Net Revenues of the System on a parity with the Loan as evidenced by the Loan Agreement. Hereafter, Parity Bonds may be issued by complying with the requirements for the issuance of additional Parity Bonds set forth in Section 23.02 or as Subordinated Bonds. Subordinated Bonds may be converted to Parity Bonds by the City at any time by resolution or ordinance of the Governing Body upon satisfaction of the conditions for issuing additional Parity Bonds set forth in Section 23.02.
- (d) ***Other Related Documents.*** The City may enter into other Related Documents relating to the sale, issuance, delivery, remarketing, purchase, registration or other administration of the Bonds and pay reasonable fees and expenses to the Fiscal Agents charged with the administration of the Bonds and Related Documents.

Section 6.03 *Securities Depository.*

- (a) The Bonds may be issued, in whole or in part, in book-entry form with no physical distribution of bond certificates made to the public. A Depository will act as securities depository for the Bonds issued in book-entry form. A single certificate for each maturity date of those Bonds will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in Authorized Denominations, with transfers of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered Owner of the Bonds in book-entry form. The transfer of principal and interest payments to Participants will be the responsibility of the Depository; the transfer of principal and interest payments to the beneficial owners of the Bonds ("Beneficial Owners") by Participants will be the responsibility of such Participants and other nominees of Beneficial Owners maintaining a relationship with Participants ("Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.
- (b) If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Owners of the Bonds, the City will either identify another Depository or Bond certificates will be delivered to Beneficial Owners or their nominees and the Beneficial Owners or their nominees, upon authentication of the Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the Owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect

Participants and Beneficial Owners of the substitute Depository or the issuance of Bond Certificates to Beneficial Owners or their nominees, as applicable.

- (c) Authorized Officers are authorized to sign agreements with Depositories relating to the matters set forth in this Section 6.03.
- (d) The terms of this Section 6.03 may be changed with respect to the Bonds by a Resolution of Sale.

Section 6.04 *Redemption.*

- (a) The Bonds may be subject to optional, mandatory sinking fund and/or extraordinary redemption, in whole or in part, upon the conditions, on the dates and upon payment of the redemption prices set forth in a Resolution of Sale and Related Documents for the Series Bonds.
- (b) At its option, to be exercised on or before the 45th day next preceding any mandatory sinking fund redemption date, the City may irrevocably elect to (i) deliver to the Paying Agent for cancellation Series Bonds, interest terms and maturity in any aggregate principal amount and/or (ii) receive a credit in respect to its sinking fund redemption obligation for any Bonds, interest terms and maturity which, prior to said date, have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Series Bond delivered or previously redeemed shall be credited by the Paying Agent as directed by the City at the principal amount thereof in Authorized Denominations against the amounts required to be paid by the City on the designated mandatory sinking fund redemption date and the principal amount of the Bonds to be redeemed by operation of such sinking fund on such date shall be reduced by that principal amount
- (c) If less than all of the Bonds subject to redemption are to be redeemed at any one time, the Bonds to be redeemed, other than Bonds redeemed pursuant to mandatory sinking fund redemption provisions, shall be selected by the Registrar in the manner determined by the City or as otherwise set forth in a Resolution of Sale. However, if less than all Bonds are redeemed, the Bonds to be redeemed within a maturity shall be selected by lot in such manner as determined by the Registrar. Part of a Bond may be redeemed if the amount of that Bond which remains outstanding is also in an Authorized Denomination.
- (d) Unless otherwise provided in the applicable Resolution of Sale, notice of redemption of the Bonds shall be given by the Registrar by sending a copy of such notice by registered or certified first-class, postage prepaid mail not less than 30 days prior to the redemption date to the Owner of each Bond, or portion thereof, to be redeemed at the address shown as of the fifth day prior to the mailing of notice on the registration books kept by the Registrar. Unless the Registrar is the City Finance Director, the City shall give the Registrar notice of

Bonds to be called for optional or extraordinary redemption at least fifteen (15) days prior to the date that the Registrar is required to give Owners notice of redemption specifying the Bonds and the principal amount thereof to be called for redemption and the applicable redemption date. Bonds to be called for mandatory sinking fund redemption shall be called for redemption by the Registrar without the necessity of any notice to the Registrar from the City. If the City has not designated the Bonds to be called for redemption on the dates specified above, the Registrar shall select the Bonds to be redeemed by lot. Neither the City's failure to give such notice, the Registrar's failure to give such notice to the registered Owner of any Bonds, or any defect therein, nor the failure of the Depository to notify a Participant or any Participant or Indirect Participant to notify a Beneficial Owner of any such redemption, shall affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices shall specify the series, numbers CUSIP numbers and maturity date or dates of the Bonds to be redeemed (if less than all Bonds are to be redeemed), the principal amounts of any Bonds to be redeemed in part, the date fixed for redemption, and shall further state that on such redemption date there will become and be due and payable upon each Bond or part thereof to be redeemed at the office of the Paying Agent the principal amount, as applicable, thereof to be redeemed plus accrued interest, if any, to the redemption date and the stipulated premium, if any, and that from and after such date, interest will cease to accrue on those Bonds. In addition to the foregoing notice, the notice of redemption given by the Registrar shall include such additional information, and the Registrar shall comply with any other terms regarding redemption, as are required by any applicable agreement with a Depository.

Notice having been given in the manner provided above, the Bonds or part thereof called for redemption shall become due and payable on the redemption date designated and, if an amount of money sufficient to redeem all Bonds called for redemption shall be on deposit with the Paying Agent on the redemption date, the Bonds or part thereof to be redeemed shall not be deemed to be Outstanding and shall cease to bear or accrue interest from and after such redemption date.

However, if money sufficient to pay the principal of and premium, if any, on the Bonds to be redeemed at the option of the City is not received by the Paying Agent prior to the giving notice of redemption in accordance with this Section 6.04, that notice shall state that the redemption is conditional upon the receipt of that money by the Paying Agent by 2:00 p.m. prevailing Mountain Time on the redemption date. If an amount sufficient to redeem all the Bonds called for redemption is so received (i) the Paying Agent shall redeem only those Bonds called for redemption for which the redemption price was received and the Bonds to be redeemed, being less than all of the Bonds to be redeemed, shall be selected by the Registrar in the manner and from the maturities designated by the City; and if less than all of the Bonds of a given maturity are redeemed, the Bonds to be redeemed within that maturity shall be selected by lot in such manner as determined by the Registrar, and (ii) the redemption notice shall have no effect with respect to those Bonds for which the redemption price was not received and those Bonds shall not be redeemed. Part of a Bond may be redeemed in an Authorized Denomination if the

amount of that Bond which remains outstanding is also in an Authorized Denomination. In addition, the notice of redemption given by the Registrar shall include such additional information, and the Registrar shall comply with any other terms regarding redemption, as are required by any applicable agreement with a Depository.

Notice having been given in the manner provided in this Section 6.04, and subject to the terms of this Section 6.04, the Bonds or part thereof called for redemption shall become due and payable on the redemption date designated and the Bonds or part thereof to be redeemed, for which sufficient money on deposit with the Paying Agent, shall not be deemed to be Outstanding and shall cease to bear or accrue interest from and after such redemption date. Upon presentation of a Bond to be redeemed at the office of the Paying Agent on or after the redemption date, or, so long as the book-entry system is used for determining beneficial ownership of Bonds, upon satisfaction of the terms of any other arrangement between the Paying Agent and the Depository, the Paying Agent will pay such Bond or portion thereof called for redemption.

The Registrar shall also send a copy of the notice of redemption by certified mail or by overnight delivery to each Depository and to an Information Service. Failure to provide notice to any Depository or the Information Service shall not affect the validity of proceedings for the redemption of the Bonds.

- (e) The terms of this Section 6.04 may be changed with respect to the Bonds by a Resolution of Sale.

Section 6.05 *Payment of the Series Bonds.* Except as otherwise provided in a Resolution of Sale for an issuance of Bonds, principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal on each Bond shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent (which is appointed as registrar and transfer agent for the Bonds) or at the designated office of any successor Paying Agent. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the fifteenth calendar day of the month next preceding the interest payment date (the "Record Date"). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 6.06 *Registration, Transfer, Exchange and Ownership of the Bonds.* Except as otherwise provided in a Resolution of Sale for an issuance of Bonds:

- (a) The City shall cause books for registration, transfer and exchange of the Bonds to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any Bond at the principal office of the Registrar duly endorsed by the Owner or its attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and properly executed, the City shall execute and the Registrar shall authenticate and deliver in the name of the transferee or Owner, as appropriate, a new Bond or Bonds of the same series, maturity, interest rate and same aggregate principal amount in Authorized Denominations.
- (b) The person in whose name any Bond is registered shall be deemed and regarded as its absolute Owner for all purposes. Payment of either the principal of or interest on any Bond shall be made only to or upon the order of its Owner or its legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability on the Bonds to the extent of the amount paid.
- (c) If any Bond is lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of that Bond if mutilated, and the evidence, information or indemnity which the Registrar may reasonably require, authenticate and deliver a replacement Bond or Bonds of the same series, aggregate principal amount, maturity and interest rate, bearing a number or numbers not then outstanding. If any lost, stolen, destroyed or mutilated Bond has matured or been called for redemption, the Registrar may direct the Paying Agent to pay that Bond in lieu of replacement.
- (d) The City may issue Bonds in bearer form if permitted by applicable law and if, in the opinion of Bond Counsel, the issuance of such Bonds in bearer form will not adversely effect the legality or tax-status of such Bonds.
- (e) Exchanges and transfers of Bonds shall be made without charge to the Owner or any transferee except that the Registrar may make a charge sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to that transfer or exchange.
- (f) Except for any Bond which may be and is tendered for purchase, the Registrar shall not be required to transfer or exchange (i) any Bond during the five (5) day period preceding the mailing of notice calling Bonds for redemption and (b) any Bond called for redemption.

ARTICLE VII FILING OF SIGNATURES

Prior to the execution of any Series Bond pursuant to Uniform Facsimile Signature of Public Officials Act, NMSA 1978, §§ 6-9-1 to -6 (1999), the Mayor, City Clerk and/or City Finance Director shall each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

**ARTICLE VII
EXECUTION AND CUSTODY OF THE BONDS**

Section 8.01 *Execution.* Except as otherwise provided in a Resolution of Sale for an issuance of Bonds, the Bonds shall be signed with the facsimile of the signature, or the manual signature, of the Mayor and the manual or facsimile signature of the City Clerk or a Deputy City Clerk. There shall be placed on each Bond the printed, engraved, stamped or otherwise placed facsimile or imprint of the City's corporate seal. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of their signing shall be valid and binding obligations of the City, notwithstanding that before delivery of those Bonds, any or all of the persons who executed those Bonds shall have ceased to fill their respective offices. The Mayor and City Clerk or Deputy City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds. No manual or facsimile signature of an officer of the City or an Authenticating Agent shall be required if the Bonds are issued in book-entry form without the delivery of any physical securities.

Section 8.02 *Custody.* Except as otherwise provided in a Resolution of Sale for an issuance of Bonds, the Authenticating Agent or its designee shall hold in custody all Bonds signed and attested by the Mayor and City Clerk or Deputy City Clerk until ready for delivery to the purchaser, transferee or Owner. The City shall, from time to time, at the written request of the Authenticating Agent, provide the Authenticating Agent an adequate supply of Bonds.

Section 8.03 *Authentication.* Except as otherwise provided in a Resolution of Sale for an issuance of Bonds, no Series Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Authenticating Agent. The Authenticating Agent's certificate of authentication shall be deemed to have been duly executed if manually signed by an authorized officer of the Authenticating Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all the Bonds.

**ARTICLE IX
NEGOTIABILITY; PREFERENCE**

Except as otherwise stated in this Ordinance or a Resolution of Sale, Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Owners shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the State's Uniform Commercial Code-Investment Securities. Except as otherwise set forth in this Ordinance, or Resolution of Sale or Related Documents, the Bonds shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the dates or the actual times of the issuance or maturities of the Bonds.

**ARTICLE X
SPECIAL LIMITED OBLIGATIONS**

All of the Bonds and all payments of principal of and interest on Bonds, the purchase price of Bonds and the fees, costs, expenses and other obligations of the City under the Related

Documents, together with the interest accruing thereon, shall be special limited obligations of the City and shall be payable, collectible and reimbursable solely from the Pledged Revenues. However, the City may, subject to the provisions of the Act, in its sole discretion, pursuant to a Resolution of Sale, pledge, mortgage or encumber property and other collateral in addition to the Net Revenues, Refinancing Proceeds and Bond Proceeds, other than ad valorem property tax revenues, to the payment of the Bonds. Owners and obligees under the Related Documents may not look to any general or other municipal fund or assets for the payment of the principal of or interest on such obligations or such fees, costs and expenses, except the designated special funds or assets specifically pledged for the Bonds as set forth in or permitted by this Section. Neither the Series Bonds, the Related Documents, nor such costs, fees and expenses of the City shall constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each Bond shall recite that it is payable and collectible solely from the Pledged Revenues. Notwithstanding the foregoing, the City may, in its sole discretion, use any other funds legally available to the City, without having pledged such funds, for the payment of the Bonds

**ARTICLE XI
SALE AND REMARKETING OF SERIES BONDS**

The Series Bonds shall be sold in accordance with a Bond Purchase Agreement at a public, private-placement, or negotiated sale to the Purchaser or Purchasers as specified in the Bond Purchase Agreement. Bonds delivered shall be sold in accordance with the terms of a Resolution of Sale. After the Bonds have been duly executed and authenticated and, upon receipt of the purchase price, the Bonds shall be delivered to the Purchaser by the Authenticating Agent in accordance with the Bond Purchase Agreement. However, if Bonds are in book-entry form, those Bonds shall be delivered to the Depository.

**ARTICLE XII
FORMS OF SERIES BONDS**

The form of the Series Bonds shall be substantially as set forth in a Resolution of Sale, with such terms and provisions as are not inconsistent with this Ordinance.

**ARTICLE XIII
PERIOD OF SYSTEM'S USEFULNESS**

The period of usefulness of the System is in excess of the final maturity date of the Series Bonds.

**ARTICLE XIV
USE OF PROCEEDS; PROJECT COMPLETION;
PURCHASERS NOT RESPONSIBLE**

Section 14.01 *Proceeds; Completion of Project for which the Bonds are Issued.*

- (a) Proceeds from the sale of the Bonds subject to the provisions of a Resolution of Sale, shall be deposited as follows:

- (i) The proceeds of the Bonds designated for the payment of interest may be deposited in the Acquisition Fund or the Debt Service Fund. Money on deposit in the Acquisition Fund for the payment of interest on the Bonds shall be transferred to the Debt Service Fund in the amounts, and prior to the due dates, of the interest payments to be made on the Bonds.
 - (ii) Proceeds of the Bonds may be used to satisfy all or part of the Reserve Requirement by depositing proceeds the Reserve Account for that series.
 - (iii) If Bonds are issued to refund other Bonds, proceeds from the sale of the refunding Bonds shall be deposited in an escrow fund or a redemption account established for the payment of the Bonds to be refunded, may be used to pay Expenses relating to the refunding or the refunded Bonds, and for such other purposes relating to the refunding or incidental to the issuance or administration of the refunding Bonds as are permitted in this Ordinance or a Resolution of Sale.
 - (iv) The proceeds from the portion of the Bonds designated as the Refunding Bonds shall be deposited in the Redemption Fund and shall be used to finance the Refunding Project. Such amount shall be sufficient to pay the redemption price of the Loan Agreement.
 - (v) The balance of the proceeds from the portion of the Bonds designated as the Improvement Bonds shall be deposited in the Acquisition Fund established and applied to the Improvement Project, for the payment of Expenses of or relating to the Bonds and for any other purpose related to the Project or incidental to the issuance or administration of the Bonds permitted in this Ordinance, subject to the provisions of a Resolution of Sale. Earnings on amounts on deposit in an Acquisition Fund may be used to pay costs of the Project or, Debt Service Requirements on the Bonds.
- (b) Subject to the provisions of a Resolution of Sale, the Completion Date for the Improvement Project financed by the issuance of the Bonds shall be evidenced by a certificate signed by the managing director of the System or other City official responsible for the System stating that the part of the Improvement Project being funded by the Bonds has been completed. As soon as practicable, and in any event not more than 60 days after the Completion Date, any balance remaining in the Acquisition Fund (other than any amount retained by the City for costs of that part of the Project not then due and payable) shall be used by the City for the payment of the principal of or interest next coming due on the Bonds.

Section 14.02 *Purchaser Not Responsible.* The Purchasers of the Bonds shall not be responsible for the application or use by the City of the proceeds of Series Bonds.

**ARTICLE XV
SUFFICIENCY OF ESCROW**

The proceeds of refunding bonds, together with any other money of the City available to pay principal of, premium, if any, and interest on bonds of the System being refunded (including, but not limited to Outstanding Parity Bonds), deposited in an escrow fund or account established to refund Outstanding bonds shall be sufficient to pay when due the principal of, premium, if any, and interest on the bonds to be refunded. The escrow agent shall invest the money on deposit in the escrow fund or account as permitted under the ordinance, a Resolution of Sale and, if applicable, the escrow agreement pertaining to the refunding bonds. The investment obligations held by the escrow agent shall mature at such times as are necessary to insure the prompt payment of the principal of, premium, if any, and interest on the bonds to be refunded as they become due and such obligations shall not permit the redemption thereof at the option of the issuer of such obligations.

**ARTICLE XVI
APPROVAL**

Section 16.01 ***Governing Body Approval.*** Prior to issuance of the Bonds, a Bond Purchase Agreement, a Preliminary Official Statement or form of Official Statement, the Continuing Disclosure Undertaking, with terms which are not inconsistent with the terms of this Ordinance and a Resolution of Sale, shall be submitted to the Governing Body for approval or ratification. Other Related Documents with terms which are consistent with this Ordinance and a Resolution of Sale may be approved by an Authorized Officer. An Authorized Officer may consent to any changes in Related Documents as are not inconsistent with this Ordinance and a Resolution of Sale. With respect to the Bonds, an Authorized Officer is:

- (a) authorized to execute a Bond Purchase Agreement, subject to either prior approval or effective upon ratification by the Governing Body with terms of the Bonds and of the sale to the Purchaser of the Bonds within the parameters set forth in this Ordinance and a Resolution of Sale; and
- (b) authorized and directed to execute and deliver Preliminary Official Statement and Official Statement, the Continuing Disclosure Undertaking the Related Documents, and other documents to which the City is a party or which the City is required to execute and any extension of or changes or amendments thereto or any substitutions therefor approved by the Authorized Officer substantially in the form presented to the Governing Body if applicable, and which are not inconsistent with this Ordinance and a Resolution of Sale. The execution of a Related Document by an Authorized Officer, or any extensions thereof or substitutions therefor, in its final form shall constitute conclusive evidence of the Authorized Officer's approval of that Related Document and compliance with this Section. The City Clerk is authorized to affix the seal of the City to and to attest any Related Documents, as required.

Section 16.02 ***Further Acts.*** From and after the adoption of this Ordinance, the officers, agents and employees of the City are authorized, empowered and directed to do all such acts and

things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Ordinance, a Resolution of Sale and the applicable Related Documents.

Section 16.03 *Use of Disclosure Documents.* The Purchaser of the Bonds is authorized to lawfully use and distribute the Preliminary Official Statement and the Official Statement (with terms which are not inconsistent with this Ordinance, and a Resolution of Sale in connection with the offering and sale of the Bonds.

ARTICLE XVII FUNDS AND ACCOUNTS

Section 17.01 *Water Utility System Fund.* The City shall establish or continue the Water Utility System Fund as a separate, distinct and segregated fund to be held by the City or its designee. As long as any Debt Service Requirements on the Bonds payable in whole or in part from Net Revenues are outstanding, all Gross Revenues shall continue to be set aside and credited to the Water Utility System Fund.

Section 17.02 *Acquisition Fund.* The Acquisition Fund is established as a separate and distinct fund of the City to be maintained and controlled by the City or its designee. The City may establish a separate Acquisition Account in the Acquisition Fund and may establish separate subaccounts in any such account for the payment of capitalized interest and for other purposes permitted by this Ordinance or a Resolution of Sale.

Section 17.03 *Redemption Fund.* The Redemption Fund is established as a separate and distinct fund of the City to be maintained and controlled by the City or its designee for deposit of the proceeds of the Refunding Bonds in payment of the Refunded Loan Obligations as provided in a Resolution of Sale.

Section 17.04 *Debt Service Fund.* The Debt Service Fund is established as a separate and distinct fund of the City to be maintained and controlled by the City or its designee for the deposit of Net Revenues and, if applicable, Refinancing Proceeds. Subject to the provisions of a Resolution of Sale, the City may establish a separate Debt Service Account in the Debt Service Fund and may establish separate subaccounts in any such account for purposes permitted by this Ordinance or the Resolution of Sale.

A separate Expense Account may also be established as part of the Debt Service Fund as provided in a Resolution of Sale. Money on deposit or credited to the Expense Account shall be used for the purpose of payment of that part of Operation and Maintenance Expenses that are reasonably necessary for the administration of the Debt Service Fund.

Section 17.05 *Debt Service Reserve Fund.* The City may establish a reserve fund as a separate and distinct fund to be maintained and controlled by the City or its designee as provided under a Resolution of Sale with respect to meeting the Reserve Requirement.

Section 17.06 *Subordinate Lien Funds and Accounts.* The City may establish separate and distinct funds and accounts to be maintained and controlled by the City or its designee to pay Debt Service Requirements on, and to fund Reserve Accounts for, Subordinated Bonds as provided in a Resolution of Sale.

Section 17.07 **Rebate Fund.** The Rebate Fund is established as a special and separate fund, subject to the provisions of a Resolution of Sale, to be maintained and controlled by the City or its designee to the extent that rebate payments may be required to be made pursuant to Section 148(f) of the Code.

Section 17.08 **Replacement Fund.** The Replacement Fund may be established as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 18.06 as provided under the provisions of a Resolution of Sale.

Section 17.09 **Rate Stabilization Fund.** The Rate Stabilization Fund may be established as a special and separate fund to be maintained and controlled by the City or its designee for the purposes described in Section 18.07 as provided under the provision of a Resolution of Sale.

Section 17.10 **Other Funds.** Other funds and accounts relating to the Bonds, including, but not limited to escrow funds and accounts if Bonds are to be refunded, may be established by a Resolution of Sale, to be controlled and maintained by the City or its designee.

ARTICLE XVIII ADMINISTRATION OF FUNDS AND ACCOUNTS

Section 18.01 **Use of Gross Revenues.** As long as any Bonds are outstanding, all Gross Revenues shall be deposited in the Water Utility System Fund and subject to the provisions of a Resolution of Sale, transferred from that Fund to the following funds and accounts or for payment of the following amounts in the order listed:

- (a) **Operation and Maintenance Expenses.** A sufficient amount of Gross Revenues shall be set aside each month to be used to pay the current Operation and Maintenance Expenses as they become due.
- (b) **Debt Service Fund or Account for Parity Bonds.** Net Revenues shall be transferred to the Debt Service Fund or Account established for each series of Outstanding Parity Bonds payable in whole or in part from Net Revenues to pay Debt Service Requirements on Parity Bonds as they become due.
- (c) **Reserve Fund or Account.** Net Revenues shall be transferred to the Reserve Fund or Account for each series of Parity Bonds payable in whole or in part from Net Revenues with a Reserve Requirement to the extent that deposits are required to be made as a result of any deficiency in the Reserve Requirement for an applicable series of Parity Bonds.
- (d) **Subordinated Bonds.** Net Revenues shall be used to pay Debt Service Requirements on Subordinated Bonds payable in whole or in part from Net Revenues and to fund any Reserve Requirement for applicable Subordinated Bonds.
- (e) **Replacement Fund.** At the option of the City, Net Revenues may be transferred to the Replacement Fund to be used for the purposes stated in Section 18.06.

- (f) *Rate Stabilization Fund.* At the option of the City, Net Revenues may be transferred to the Rate Stabilization Fund to be used for the purposes stated in Section 18.07.
- (g) *Surplus Net Revenues.* Net Revenues shall be retained in the Water Utility System Fund or used for any other lawful System purpose including, but not limited to, redeeming or purchasing the Bonds or paying costs and expenses of the City relating to the administration of the Bonds but shall not be transferred to the general fund of the City except for Operation and Maintenance Expenses owed by the System to the City and taxes, payments in lieu of taxes, assessments and other municipal or governmental charges of the City lawfully levied or assessed upon the System.
- (h) *Accumulation of Revenues.* Gross Revenues need not be retained for any use or in any fund or account described in this Section 18.01 in excess of the Gross Revenues required for any current use or deposit. For the purposes of this subparagraph, the term current shall mean the month during which the Net Revenues are being distributed and the immediately following month.

Section 18.02 *Debt Service Fund.*

- (a) Except as stated in Section 18.04 or required by a Resolution of Sale, Net Revenues shall be transferred to the Debt Service Fund sufficient to pay when due the Debt Service Requirements on the Bonds:
 - (i) in substantially equal monthly deposits of Net Revenues shall be made to the Debt Service Fund beginning six months before each Interest Payment Date for the Bonds in order to make the next payment of interest on each Bond when due. However, if the first Interest Payment Date for the Bonds is less than seven months after the date of the original issuance of the Bonds, equal monthly deposits of Net Revenues before the first Interest Payment Date shall begin in the first full month following the date of issuance of the Bonds.
 - (ii) in substantially equal monthly deposits of Net Revenues shall be made to the Debt Service Fund beginning 12 months before each principal payment date for the Bonds in order to make the next scheduled payment of principal on each Bond when due whether at maturity on a mandatory sinking fund redemption date. However, if the first principal payment date for the Bonds is less than thirteen months after the date of the original issuance of the Bonds, equal monthly deposits of Net Revenues before the first principal payment date shall begin in the first full month following the date of issuance of the Bonds. Principal payments include scheduled payments at maturity, by mandatory sinking fund installment or otherwise scheduled payments of principal.

- (iii) if in the month immediately preceding any payment date for the Bonds, the City determines that there are not sufficient funds accumulated in a Debt Service Fund to pay the amount becoming due on the Bonds on the payment date, the City shall promptly deposit any available Net Revenues in the Debt Service Fund in an amount equal to the deficiency. If, prior to any payment date for the Bonds, there has accumulated in the Debt Service Fund the entire amount necessary to pay the amount becoming due on the Bonds on that payment date, no additional Net Revenues need be deposited in the Debt Service Fund prior to that payment date. In making the determinations permitted by this paragraph, the City may take into account the amount on deposit in any other fund or account or escrow relating to the Bonds irrevocably set aside for the next payment of the Bonds.
- (b) Amounts other than Net Revenues pledged to or available for payment of the Bonds, including without limitation Refinancing Proceeds, shall be deposited in the Debt Service Fund and applied to the payment of the Debt Service Requirements of the Bonds as provided in a Resolution of Sale.
- (c) Unless otherwise stated in a Resolution of Sale, amounts deposited in the Debt Service Fund shall be applied first to the payment of interest and then to pay or satisfy any sinking fund requirements for the payment of principal.
- (d) Money in a Debt Service Fund shall be used only to pay the Debt Service Requirements on the Bonds. Transfers of amounts equal to the Debt Service Requirements shall be made by the City on a timely basis to the appropriate Fiscal Agent.
- (e) Moneys on deposit in or credited to the Expense Account shall be used for the purpose of paying that part of the Operation and Maintenance Expenses which are reasonably necessary for the administration of the Debt Service Fund. The Expense Account has been created for the convenience of appropriating such Expenses for the annual budget of the City. Such Expenses shall have the same priority with respect to the use of Gross Revenues as any other Operation and Maintenance Expense.

Section 18.03 *Reserve Fund.* Unless otherwise required by a Resolution of Sale, beginning in the month following the date of the issuance of the Bonds, sixty equal monthly deposits of Net Revenues shall be made into the Reserve Fund until the Reserve Requirement for the Bonds is reached.

The Reserve Fund may be funded with the proceeds of the Bonds and Net Revenues or any combination thereof.

No payments need be made into the Reserve Fund as long as the sum of the money in the Reserve Fund is equal to or greater than the Reserve Requirement. Money in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as provided in

this Section 18.03 and Section 18.04, only to prevent deficiencies in the payment of the principal or interest on the Bonds.

If the amount on deposit in the Debt Service Fund on a payment date and available Net Revenues are not enough to pay the amount becoming due on that date, an amount equal to the deficiency shall be transferred from the Reserve Fund to the Debt Service Fund. A sum equal to the amount in the Reserve Fund used to pay Debt Service Requirements on the Bonds shall be deposited in the Reserve Fund from the first Net Revenues received by the City which are not required by Section 18.01 to be used for another purpose.

Section 18.04 *Termination Upon Deposits to Maturity.* No payments need be made into the Debt Service Fund or Reserve Fund if the sum of the amounts in that Debt Service Fund and Reserve Fund is not less than the Debt Service Requirements due and to become due on and before the final maturity date of the Bonds, both accrued and not accrued. The money retained in those two accounts shall be used only to pay the Debt Service Requirements when due except that any money on deposit in the Debt Service Fund which is not necessary to pay such Debt Service Requirements shall, to the extent lawful, be used as surplus Net Revenues and any money on deposit in the Reserve Fund which is not necessary to pay such Debt Service Requirements (other than proceeds of other bonds of the System) shall be deposited in the Replacement Fund.

Section 18.05 *Subordinated Bonds.* Net Revenues shall be used as required by the applicable authorizing ordinance or resolution of sale authorizing the issuance of Subordinated Bonds and the funding of reserves for Subordinated Bonds and for payment of related Expenses. Subordinated Bonds shall have the order of priority with respect to other Subordinated Bonds as set forth in the applicable authorizing ordinance or resolution of sale or City ordinances authorizing the issuance of Subordinated Bonds.

Section 18.06 *Replacement Fund.* In addition to Net Revenues, the City may deposit in the Replacement Fund all money released from a Reserve Fund in excess of the Reserve Requirement except for any such excess which is designated for another System purpose by resolution or ordinance of the Governing Body or which is proceeds of other bonds of the System.

While the Bonds are outstanding, money on deposit in the Replacement Fund, upon approval of Bond Counsel or as provided in a Resolution of Sale, shall be used only (i) for replacement costs and capital improvements to the System, (ii) for extraordinary charges relating to the financing or refinancing of the System, and (iii) to purchase or otherwise defease, or provide for the defeasance of, the Bonds, provided the monies on deposit in the Replacement Fund shall be used for the purpose described in (i) above on a first priority basis.

Section 18.07 *Rate Stabilization Fund.* Money on deposit in the Rate Stabilization Fund may be withdrawn at any time and used, upon approval of Bond Counsel or as provided in a Resolution of Sale, for any purpose for which Gross Revenues may be used.

ARTICLE XIX
TRANSFERS TO PAY PRINCIPAL OF, PREMIUM, IF ANY,
AND INTEREST ON THE BONDS; PAYMENT OF EXPENSES

Section 19.01 *Transfers to Fiscal Agent.* Unless the City Finance Director is the Paying Agent, the City shall transfer legally available funds for the payment of principal of, premium, if any, and interest on the Bonds to the Paying Agent on or before the date on which each such payment is due.

Section 19.02 *Expenses.* The City or its designee shall pay all Expenses directly to the party entitled thereto from amounts on deposit in the Acquisition Account, the Expense Account and from other legally available revenues and other sources including Net Revenues, as applicable.

ARTICLE XX
GENERAL ADMINISTRATION OF FUNDS

The funds and accounts designated in Articles XVII and XVIII shall be administered as follows:

Section 20.01 *Investment of Money.* To the extent practicable, any money in any such fund or account shall be invested in Permitted Investments within any limitations imposed by this Ordinance or a Resolution of Sale. Obligations purchased as an investment of money in any fund or account shall be deemed at all times to be part of that fund or account, and the interest accruing and any profit realized on those investments shall be credited to that fund or account, unless otherwise stated in this Ordinance, a Resolution of Sale or Related Document (subject to withdrawal at any time for the uses directed and permitted for such money by this Ordinance, a Resolution of Sale and Related Documents), and any loss resulting from such investment shall be charged to that fund or account. The City Finance Director or other custodian of such fund or account shall present for redemption or sale on the prevailing market any Permitted Investment in a fund or account when necessary to provide money to meet a required payment or transfer from that fund or account.

Section 20.02 *Deposits of Funds.* The money and investments which are part of the funds and accounts designated in Articles XVII and XVIII shall be maintained and kept in an Insured Bank or banks or may be held in book-entry form in the name of the City by an agent or custodian of or for the City for the benefit of the City, as permitted by State law. Each payment or deposit shall be made into and credited to the proper fund or account at the designated time, except that when the designated time is not a Business Day, then the payment shall be made on the next succeeding Business Day unless otherwise required in this Ordinance, a Resolution of Sale or Related Documents. The City may establish one or more accounts in Insured Banks for all of the funds and accounts or combine such funds and accounts with any other Insured Bank account or accounts for other funds and accounts of the City.

Section 20.03 *Valuation of Investments.* In the computation of the amount in any account or fund for any purpose under this Ordinance or a Resolution of Sale, except as otherwise expressly provided under the Code and subject to the terms of this Ordinance or a Resolution of Sale, Permitted Investments shall be valued at the cost thereof (including any amount paid as accrued interest) or the principal amount thereof, whichever is less; except that Permitted

Investments purchased at a premium may initially be valued at the cost thereof, but in each year after such purchase shall be valued at a lesser amount determined by ratably amortizing the premium over the remaining term. Bank deposits shall be valued at the amount deposited, exclusive of any accrued interest or any other gain to the City until such gain is realized by the receipt of an interest-earned notice, or otherwise. The valuation of Permitted Investments and bank deposits in any account shall be made not less frequently than annually or as otherwise required by an applicable provision of the Code. Unless otherwise required by an applicable provision of the Code, no loss or profit on Permitted Investments shall be deemed to take place as a result of fluctuations in the market quotations prior to the sale or maturity thereof.

**ARTICLE XXI
[RESERVED]**

**ARTICLE XXII
PLEDGE OF NET REVENUES, LIEN OF THE
BONDS AND EQUALITY OF THE BONDS**

Section 22.01 *Pledge of Net Revenues.* The City hereby pledges and grants a security interest in the Net Revenues, for the payment of principal of premium, if any, and interest on, the Series Bonds and any other amounts due under this Ordinance and a Resolution of Sale, which shall be applied to the payment of such obligations with the priorities set forth in Article XXIII. This Ordinance and a Resolution of Sale constitute an irrevocable and first lien on parity with the lien thereon of the Loan as evidenced by the Loan agreement, but not necessarily an exclusive first lien, on the Net Revenues as set forth herein.

Section 22.02 *[Reserved].*

Section 22.03 *Equality of Bonds.* Except as set forth in this Ordinance, an applicable Authorizing Ordinance, Resolution of Sale or Related Documents, the Bonds payable in whole or in part from Net Proceeds, from time to time outstanding shall not be entitled to any priority one over the other in the application of the Net Revenues, regardless of the time or times of their issuance.

Section 22.04 *Other Pledged Amounts.* The proceeds of the Bonds, pending their application, are hereby pledged for the payment of the Bonds. In addition, Refinancing Proceeds are hereby pledged in payment of the Bonds that are expressly payable from Refinancing Proceeds pursuant to an applicable authorizing ordinance or resolution of sale.

**ARTICLE XXIII
ADDITIONAL BONDS OF THE SYSTEM**

Section 23.01 *Limitations Upon Issuance of the Bonds.* Subject to the limitations of this Article and Article XXV, nothing in this Ordinance shall be construed to prevent the issuance by the City of additional bonds.

Section 23.02 *Parity Bonds.* Subject to the provisions of a Resolution of Sale, Parity Bonds may be issued as additional Bonds of the System, payable in whole or in part from Net Revenues

for System purposes including, but not limited to, financing the costs of improvements to the System and paying the costs incident to the issuance of such Parity Bonds.

The tests required in this Section 23.02 shall be performed without adjustment for payments to or withdrawals from the Rate Stabilization Fund or interest accrued (other than amounts representing capitalized interest) in the Acquisition Fund. Except as permitted herein and by Article XXIV and subject to the provisions of a Resolution of Sale, prior to the issuance of additional Parity Bonds, the City shall be current in making all deposits required by Article XVIII and the following test shall be satisfied:

- (a) the Net Revenues for the Historic Test Period shall have been sufficient to pay an amount representing at least 130% of the maximum combined annual Debt Service Requirements of Outstanding Parity Bonds and the terms of either subparagraphs (b)(i) or (b)(ii) shall be satisfied; and
- (b)
 - (i) Using the fees and rates for use of the System on the date of computation, or assuming that any new schedule of fees and rates approved by the City during or after the Historic Test Period was in effect during the entire Historic Test Period, the Net Revenues which were or would have been received during that Historic Test Period shall have been sufficient to pay an amount representing at least 130% of the maximum combined annual Debt Service Requirement on the Outstanding Parity Bonds and the Parity Bonds proposed to be issued; or
 - (ii) The projected Net Revenues for the Prospective Test Period shall be sufficient to pay an amount representing at least 130% of the maximum combined annual Debt Service Requirements on the Outstanding Parity Bonds and the Parity Bonds proposed to be issued. To determine if the annual Net Revenues are sufficient for the purposes of the preceding sentence, the Net Revenues projected for the applicable Prospective Test Period shall be determined by applying the rates for use of the System approved by the City at the time of computation to be in effect during the Prospective Test Period to the proposed number of connections to the System after giving effect to the purchase, expansion or improvement of the System.

In determining whether additional Parity Bonds may be issued pursuant to this Section 23.02, a written certificate or opinion of an Independent Accountant that states in substance that the Net Revenues are sufficient to pay the amount required shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver additional Parity Bonds. Notwithstanding the foregoing, if all Parity Bonds issued prior to the date hereof are no longer Outstanding, then such a certificate or opinion from an Authorized Officer will satisfy the foregoing requirement. Also, an opinion of a Consulting Engineer as to the estimated completion date of the Project to be financed by the proposed Parity Bonds and the estimated Net Revenues for the Prospective Test Period referred in subsection (b)(ii) above, shall be conclusively presumed to be accurate and the Independent Accountant or Authorized Officer, as the case may be, may conclusively rely upon the written opinion of the Consulting Engineer in making the determinations required by subsections (a), (b)(i) and (b)(ii) above.

Section 23.03 *Superior Obligations Prohibited.* As long as Parity Bonds are outstanding, the City shall not issue additional bonds having a lien on the Net Revenues prior and superior to the lien of Parity Bonds on Net Revenues.

Section 23.04 *Subordinate Obligations Permitted.* Nothing contained in this Ordinance shall be construed to prevent the City from issuing bonds or other obligations with no lien on Net Revenues or a lien on Net Revenues subordinate to the lien of the Parity Bonds on Net Revenues.

ARTICLE XXIV REFUNDING BONDS

The provisions of Article XXIII are subject to the following exceptions:

- (a) *Privilege of Issuing Refunding Obligations.* The City may refund bonds payable in whole or in part from Net Revenues, regardless of whether the priority of the lien on the Net Revenues for the payment of the refunding Bonds payable in whole or in part from Net Revenues, is changed (except as provided in Sections 23.03 and 23.04, and in subsections (b) and (c) of this Article).
- (b) *Limitations Upon Issuance of Refunding Parity Bonds.* No refunding bonds or other refunding obligations shall be issued as Parity Bonds unless:
 - (i) there is delivered a certificate of the Authorized Officer of the City showing that the combined Debt Service Requirements on all Outstanding Parity Bonds payable in whole or in part from Net Revenues for any Fiscal Year after the issuance of refunding Parity Bonds will not exceed the combined Debt Service Requirements on all Outstanding Parity Bonds payable in whole or in part from Net Revenues authorized prior to the issuance of such refunding Parity Bonds, and the City is in current compliance with the Rate Covenant, or
 - (ii) The refunding Parity Bonds are issued in compliance with Section 23.02.
- (c) *Limitations Upon Issuance of Any Refunding Bonds.* Any refunding bonds shall be issued with such details as the Governing Body may provide by appropriate proceedings but without impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of the Bonds to which the refunding was applicable.

ARTICLE XXV PROTECTIVE COVENANTS

Section 25.01 *Use of Proceeds of the Bonds.* The City covenants and agrees that it will promptly apply the proceeds of the Series Bonds, to the Project, and for the other purposes permitted by this Ordinance or a Resolution of Sale.

Section 25.02 *Payment of the Bonds.* The City covenants and agrees that it will promptly pay the Debt Service Requirements on the Bonds at the place, on the dates and in the manner specified in this Ordinance, a Resolution of Sale and Related Documents.

Section 25.03 *Rate Covenant.*

- (a) Unless otherwise provided in a Resolution of Sale, the City covenants that it will at all times fix rates and collect charges for each class of service rendered by the System, and to, from time to time, amend or adjust such rates so that Gross Revenues of the System shall always be sufficient to provide for the payment of the Debt Service Requirements on all Outstanding Bonds of the System, including the Series Bonds, payable in whole or in part from Net Revenues as and when the same become due and payable, to maintain the funds and accounts established in this Ordinance or a Resolution of Sale, to provide for the payment of expenses of administration, Operation and Maintenance Expenses of the System which may be necessary to preserve the same in good repair and working order, including the necessary reserves therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time; and
- (b) Unless otherwise provided in this Ordinance or a Resolution of Sale, the City further covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Net Revenues shall at least equal the greater of (a) the Debt Service Requirements on all Outstanding Bonds of the System, including the Series Bonds payable in whole or in part from Net Revenues in such Fiscal Year and the deposits required by this Ordinance as such requirements may be supplemented and amended by a Resolution of Sale, to be made into the various funds of this Ordinance or Resolution of Sale in such year or (b) 130% of the Debt Service Requirements on all Outstanding bonds of the System, including the Series Bonds, payable in whole or in part from Net Revenues in such Fiscal Year.

Subject to the provisions of this Ordinance or a Resolution of Sale, failure by the City to comply with the foregoing Rate Covenant in any Fiscal Year will not constitute an event of default under this Ordinance or a Resolution of Sale, so long as the City, within 180 days, adopts the schedule of rates and charges recommended or approved by a Consulting Engineer which would bring the City into compliance with the Rate Covenant. Except as provided in a Resolution of Sale, the City is also required under this Ordinance in each Fiscal Year to complete a review of its financial condition for the purpose of estimating whether the Net Revenues for such Fiscal Year and for the next succeeding Fiscal Year will be sufficient to comply with the Rate Covenant set forth above and shall by resolution make a determination with respect thereto. If the City determines that the Net Revenues may not be so sufficient, it shall forthwith cause the Consulting Engineer to make a study for the purpose of recommending a schedule of fees, rates and charges for the System which, in the opinion of the Consulting Engineer, will cause sufficient Gross Revenues to be collected in such Fiscal Year to comply with the Rate Covenant set forth above and will cause additional Gross Revenues to be collected in such Fiscal Year sufficient to eliminate the amount of any deficiency at the earliest practicable time within such Fiscal Year. The City shall as promptly as practicable adopt and place in effect the schedule of

fees, rates and charges recommended or approved by the Consulting Engineer pursuant to this Ordinance. In the alternative of establishing fees, rates and charges necessary to meet the Rate Covenant set forth above, the City may establish a reduction in Operation and Maintenance Expenses for the System.

Section 25.04 *Lien on Lands Serviced by System.* State law grants the City a lien upon each lot or parcel of land for the charges imposed for water utility services supplied by the System to the owner of such lot or parcel (except as otherwise provided in NMSA 1978, Section 3-23-6 (2011)). At the appropriate time, the City will cause each lien to be perfected in accordance with the provisions of NMSA 1978, Section 3-23-6 (2011) and NMSA 1978, Sections 3-36-1 through -5 (2001, as amended). The City will take all necessary steps to enforce the lien against any parcel of property the owner of which is delinquent for more than six months in the payment of charges imposed for the use of the System.

Section 25.05 *Levy of Charges.* The City will fix, establish and levy the rates and charges which are required by Section 25.03 at the time and in the manner specified in this Ordinance or a Resolution of Sale with respect to the Bonds. No reduction in any initial or existing rate schedule for the System may be made unless:

- (a) the City has fully complied with the provisions of Article XVIII for any 12 consecutive months out of the 16 calendar months immediately preceding the reduction of the rate schedule, and
- (b) the audit required by Section 25.09 or a separate certificate by an Independent Accountant for or relating to any 12 consecutive months out of the 16 calendar months immediately preceding any reduction discloses that the estimated Net Revenues resulting from the proposed reduced rate schedule would have been sufficient to meet the Rate Covenant during the applicable 12-month period.

Section 25.06 *Efficient Operation.* The City will maintain the System in efficient operating condition and make such improvements, extensions, enlargements, repairs and betterments to the System as may be necessary or advisable for its economical and efficient operation at all times and to supply reasonable public and private demands for System services within the service area.

Section 25.07 *Records.* So long as the Bonds remain Outstanding, proper books of record and account will be kept by the City, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the System. However, pursuant to Section 6-14-10(E) NMSA 1978, records with regard to the ownership or pledge of the Bonds are not subject to inspection or copying.

Section 25.08 *Right to Inspect.* Owners, or their duly authorized agents, shall have the right to inspect at all reasonable times all reasonable and appropriate records, accounts and data relating to the System.

Section 25.09 *Audits.* Unless otherwise provided in a Resolution of Sale, within 210 days following the close of each Fiscal Year, the City will cause an audit of the books and accounts of the System to be made by an Independent Accountant. Each audit of the System shall include those matters determined to be proper by the Independent Accountant.

Section 25.10 ***Billing Procedure.*** Bills for water utility services or facilities, or any combination, furnished by or through the System shall be rendered to customers on a regular basis each month following the month in which the service was rendered and shall be due as required by City ordinance. If permitted by law, if a bill is not paid within the period of time required by City ordinance, water utility services shall be discontinued as required by City ordinance, and the rates and charges due shall be collected in a lawful manner, including, but not limited to, the cost of disconnection and reconnection.

Section 25.11 ***Charges and Liens Upon System.*** The City will pay when due from Gross Revenues or other legally available funds all taxes and assessments or other municipal or governmental charges, lawfully levied or assessed upon the System and will observe and comply with all valid requirements of any municipal or governmental authority relating to the System. The City will not create or permit any lien or charge upon the System or the Gross Revenues except as permitted by this Ordinance or a Resolution of Sale, or it will make adequate provisions to satisfy and discharge within 60 days after the same accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the System or the Gross Revenues. However, the City shall not be required to pay or cause to be discharged, or make provision for any tax assessment, lien or charge before the time when payment becomes due or so long as the validity thereof is contested in good faith by appropriate legal proceedings and there is no adverse affect on Owners.

Section 25.12 ***Insurance.*** Subject, in each case, to the condition that insurance is obtainable at reasonable rates and upon reasonable terms and conditions, in its operation of the System, and subject further to the provisions of a Resolution of Sale, the City will procure and maintain or cause to be procured and maintained commercial insurance or provide Qualified Self Insurance (as hereinafter defined) with respect to the facilities constituting the System and public liability insurance in the form of commercial insurance or Qualified Self Insurance and, in each case, in such amounts and against such risks as are, in the judgment of the Governing Body, prudent and reasonable taking into account, but not being controlled by, the amounts and types of insurance or self-insured programs provided by municipalities which operate water and wastewater systems. "Qualified Self Insurance" means insurance maintained through a program of self insurance or insurance maintained with a fund, company or association in which the City may have a material interest and of which the City may have control, either singly or with others. Each plan of Qualified Self Insurance shall be established in accordance with law, shall provide that reserves be established or insurance acquired in amounts adequate to provide coverage which the City determines to be reasonable to protect against risks assumed under the Qualified Self Insurance plan, including any potential retained liability in the event of the termination of such plan of Qualified Self Insurance. In the event of property loss or damage to the System, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged and thereafter, any remainder may be used to redeem the Bonds or be treated as Gross Revenues and used in the manner provided in Article XVII.

Section 25.13 ***[Reserved]***

Section 25.14 ***Alienating System.*** While the Bonds are Outstanding, except as provided in this Ordinance or Resolution of Sale, the City shall not sell, lease, mortgage, pledge or otherwise encumber, or in any manner dispose of, or otherwise alienate, any part of the System which in

not replaced by other property of at least equal value, or which ceases to be necessary for the efficient operation of the System. In the event of any sale of System property, the proceeds of such sale which are not used to purchase other System property shall be distributed as Gross Revenues.

Section 25.15 *Extending Interest Payments.* To prevent any accumulation of claims for interest after maturity, except as permitted by this Ordinance or a Resolution of Sale or Related Documents, the City will not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on the Bonds. If the time for payment of interest on the Bonds or any bond is extended contrary to the provisions of this Section, the installments of interest so extended shall not be entitled, in case of an event of default under this Ordinance and Resolution of Sale or Related Documents, to the benefit or security of this Ordinance or a Resolution of Sale or Related Documents until the prior payment in full of the principal and interest on the Bonds then Outstanding.

Section 25.16 *Competent Management.* The City shall employ experienced and competent personnel to manage the System.

Section 25.17 *Performing Duties.* The City will faithfully and punctually perform all duties with respect to the System required by State and City laws, including, but not limited to, making and collecting reasonable and sufficient rates and charges for services rendered or furnished by the System as required by this Section and the proper segregation and application of the Gross Revenues.

Section 25.18 *Other Liens.* Other than as stated in or provided by this Ordinance or a Resolution of Sale or Official Statement, there are no liens or encumbrances of any nature whatsoever, on or against the System or the Gross Revenues or Net Revenues.

Section 25.19 *City's Existence.* The City will maintain its corporate identity and existence as long as the Bonds remain outstanding unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any Owner. However, the City may annex or de-annex land if the City complies with applicable state law and City ordinance requirements and applicable covenants contained in this Ordinance or a Resolution of Sale.

Section 25.20 *Tax Compliance.*

- (a) The City may, in its discretion and upon the advice of Bond Counsel, issue the Bonds as either taxable bonds or bonds, the interest with respect to which is excludable from gross income for federal income tax purposes under Code Section 103(a) ("~~Tax-Exempt Bonds~~"). In the event that the Bonds are to be issued as Tax-Exempt Bonds, the City will comply with the provisions of this Section 25.20 and Article XXVI below with respect to such Bonds. The Series Bonds shall be issued as Tax-Exempt Bonds.
- (b) This Ordinance and a Resolution of Sale for the Bonds contains such covenants, agreements, representations, warranties and undertakings with respect to the purpose of the Bonds and the use, expenditure and investment of the "gross

proceeds," within the meaning of Code Section 148, of the Bonds as Bond Counsel shall determine.

- (c) The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148, or 149 of the Code or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest thereon will not be treated as a preference item under Section 57 of the Code. Concurrently with the issuance and delivery of the Bonds, the City will execute a letter of instructions or similar document as may be provided by Bond Counsel ("Letter of Instructions"), which will set forth the basic parameters by which the City will undertake compliance with the Code provisions referred to above in this subsection (c).
- (d) The City further covenants (a) that it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) that it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowings, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments or payments of alternative amounts in lieu of rebate to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner to the extent necessary to assure such exclusion of that interest under the Code.
- (e) Authorized Officers are hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City as the City is permitted or required to make or give under the federal income tax laws including, without limitation thereto, any of the elections provided for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting in the compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the Authorized Officer, and (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds. In this regard, Authorized Officers charged with the responsibility of issuing the Bonds will make, execute and deliver certifications as to facts,

estimates and circumstances in existence as of the dates such Bonds are issued and stating whether there are any facts, estimates or circumstances that would materially change the City's current expectations with respect to the representations, warranties and covenants contained in this Section 25.20 or in this Ordinance or a Resolution of Sale or Letter of Instructions.

- (f) For purposes of Section 265(b)(3)(B) of the Code, the City may designate an issuance of Bonds as qualified tax-exempt obligations as provided by the Governing Body in a Resolution of Sale.

ARTICLE XXVI REBATE FUND

Based on the provisions of Article XXV, and provided the City complies with such provisions, a separate account of the Rebate Fund should not be required for the Series Bonds.

Notwithstanding the foregoing provision of this Article, if rebate payments are required, the Rebate Fund shall be established for the Series Bonds for compliance with Code Section 148(f) and Sections 1.148-0 through 1.148-11 and 1.150-4 and 1.150-2 of the federal income tax regulations issued thereunder or any successor provision applicable to tax-exempt Bonds (collectively, the "Arbitrage Regulations"). Notwithstanding any other provision in this Ordinance, amounts credited to the Rebate Fund shall be free and clear of any lien under this Ordinance and a Resolution of Sale, and shall be held only for the purposes stated in this Article.

The City shall make payments to the United States in such manner, at such times and in such amounts as required under the Arbitrage Regulations as provided in this Ordinance or a Resolution of Sale and the Letter of Instructions. The City shall keep such records of the computations made pursuant to this Article as are required under Section 148(f) of the Code and the Arbitrage Regulations and the Letter of Instructions.

The City need not make further payments to the Rebate Fund with respect to the Bonds to the extent it satisfies one of the exemptions from rebate set forth in the Arbitrage Regulations or the Letter of Instructions. Any amounts then on deposit in the Rebate Fund may be withdrawn and used as Gross Revenues.

ARTICLE XXVII EVENTS OF DEFAULT

Each of the following events is declared an "event of default" under this Ordinance:

- (a) Failure to pay the principal of the Bonds when due and payable, either at maturity or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due and payable.
- (c) Failure to pay the purchase price of any Bond when such purchase price shall be due and payable upon an optional or mandatory tender date as provided in the Bond.

- (d) For any reason, the City becomes incapable of fulfilling any material obligation under this Ordinance or a Resolution of Sale or a Related Document.
- (e) Default by the City in the due and punctual performance of its covenants, conditions, agreements and provisions contained in the Bonds, in this Ordinance or a Resolution of Sale or in any Related Documents and the continuance of such default (other than a default set forth in subsections (a),(b) and (c) for sixty (60) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the Owners of 25% in principal amount of the Bonds then Outstanding.
- (f) The occurrence of any other event of default as is provided under this Ordinance or under a Resolution of Sale.

ARTICLE XXVIII REMEDIES UPON DEFAULT

Upon the happening and continuance of any of the events of default stated in Article XXVII, the Owners of not less than 66% in principal amount of the Bonds then Outstanding, including but not limited to any trustee or trustees therefor, may proceed against the City, the Governing Body and its agents, officers and employees to:

- (a) protect and enforce the rights of the Owners by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained in this Ordinance or a Resolution of Sale or Related Document or for the enforcement of any proper legal or equitable remedy as those Owners may deem necessary or desirable to protect and enforce their rights;
- (b) to enjoin any act or thing which may be unlawful or in violation of any right of any Owner;
- (c) to require the Governing Body to act as if it were the trustee of an express trust; or
- (d) any combination of those remedies.

All proceedings shall be instituted and maintained for the equal benefit of all Owners of the Bonds then Outstanding, subject to the provisions of Article XVIII of this Ordinance, with respect to the use of Gross Revenues. The Owners by purchasing the Bonds consent to the appointment of a receiver to protect the rights of the Owners, provided the appointment of a receiver is subject to the discretion of the court having jurisdiction in the matter. The receiver may enter and take possession of and operate and maintain the System and shall prescribe rates, fees or charges and collect, receive and apply all Gross Revenues as required by this Ordinance and subject to the additional requirements as may be imposed under a Resolution of Sale. The failure of any Owner to exercise any right granted by this Article shall not relieve the City of any obligation to perform any duty. Each right or privilege of any Owner (or trustee or receiver therefor) is in addition and cumulative to any other right or privilege and the exercise of any

right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege of any Owner.

Notwithstanding any other provision in this Ordinance and subject to any additional requirements as may be imposed under a Resolution of Sale, no recourse shall be had for the payment of any Bond or other obligation arising from any Related Document or for any claim based on any other obligation, consent or agreement contained in this Ordinance, a Resolution of Sale or any Related Document against any past, present or future officer, employee or agent of the City or member of the Governing Body and all such liability of any such officers, employees, agents or member (as such) is released as a condition of and consideration for the adoption of this Ordinance, a Resolution of Sale, the execution of Related Documents and the issuance of Bonds.

ARTICLE XXIX DUTIES UPON DEFAULT

Upon the happening of any of the events of default listed in Article XXVII, the City will do and perform all proper acts on behalf of and for the Owners necessary to protect and preserve the security created for the payment of the Bonds and for the payment of the Debt Service Requirements on the Bonds promptly as the same become due. As long as any of the Bonds are Outstanding, all Gross Revenues shall be distributed and used for the purposes and with the priorities set forth in Article XVIII. If the City fails or refuses to proceed as provided in this Article, the Owners of not less than 66% in principal amount of the Bonds then Outstanding, after demand in writing, may proceed to protect and enforce the rights of the Owners as provided in this Ordinance and a Resolution of Sale.

ARTICLE XXX DEFEASANCE

When all principal, interest and prior redemption premiums, if any, in connection with all or any part of the Bonds have been paid or provided for, the pledge and lien and all obligations under this Ordinance and a Resolution of Sale shall be discharged and those Bonds shall no longer be deemed to be outstanding within the meaning of this Ordinance and a Resolution of Sale.

Without limiting the preceding paragraph, there shall be deemed to be such payment when: (a) the Governing Body has caused to be placed in escrow and in trust with an escrow agent located within or without the State and exercising trust powers, an amount sufficient (including the known minimum yield from Government Obligations in which such amount may be initially invested) to pay all requirements of principal, interest and prior redemption premium, if any, on the Bonds to be defeased as the same become due to their final maturities or upon designated prior redemption dates, and (b) any Bonds to be redeemed prior to maturity shall have been duly called for redemption or irrevocable instructions to call such Bonds for redemption have been given to the Registrar or other appropriate Fiscal Agent. The escrow agent shall have received evidence satisfactory to it that the cash and Government Obligations delivered will be sufficient to provide for the payment of the Bonds to be defeased as stated above. Neither the Government Obligations nor money deposited with the escrow agent shall be withdrawn or used for any purpose other than as provided in the escrow agreement and the Government Obligations and

money shall be segregated and held in trust for the payment of the principal and interest on the Bonds with respect to which such deposit has been made. The Government Obligations shall become due prior to the respective times at which the proceeds are needed in accordance with a schedule established and agreed upon between the Governing Body and the escrow agent at the time of the creation of the escrow, or the Government Obligations shall be subject to redemption but only at the option of the holders or owners thereof to assure the availability of the proceeds as needed to meet the schedule.

If any Bonds are deemed to be paid and discharged pursuant to this Section, within 15 days after the date of defeasance, the City shall cause written notice to be given to each Owner of the Bonds deemed paid and discharged at the address shown on the Bond register for the Bonds on the date on which the Bonds are deemed paid and discharged. The notice shall state the numbers of the Bonds deemed paid and discharged (if less than all Bonds are deemed paid and discharged), describe the Government Obligations and specify any date or dates on which the Bonds defeased are to be called for redemption pursuant to notice of redemption given or irrevocable provisions made for that notice pursuant to this Section.

Notwithstanding the foregoing, any provision of this Ordinance and a Resolution of Sale which relate to indemnification and the payment of fees and expenses, the payment of the principal of and premium of the Bonds at maturity or on a prior redemption date, interest payment and dates thereof, exchange, registration of transfer and registration of the Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of the Bonds, non-presentment of the Bonds, the holding of money in trust, the obligations in this Ordinance and a Resolution of Sale regarding rebate, and the duties of the Registrar, Authenticating Agent and Paying Agent in connection with all of the foregoing shall remain in effect and binding upon the Owners, the Registrar, Authenticating Agent and Paying Agent notwithstanding the release and discharge of this Ordinance and a Resolution of Sale. The provisions of this Section shall survive the release, discharge and satisfaction of this Ordinance and a Resolution of Sale.

ARTICLE XXXI BONDS NOT PRESENTED WHEN DUE

If any Bonds are not duly presented for payment when due at maturity or on any prior redemption date, and if money sufficient for the payment of those Bonds is on deposit with the Paying Agent for those Bonds, and, in the case of Bonds to be redeemed, if notice of redemption has been given as provided in this Ordinance or Resolution of Sale or Related Document, all liability of the City to the Owners of those Bonds shall be discharged, those Bonds shall no longer be Outstanding and it shall be the duty of that Paying Agent to segregate and to hold such money in trust, without liability for interest thereon, for the benefit of the Owners of those Bonds.

ARTICLE XXXII DELEGATED POWERS

The officers of the City are authorized and directed to take all action from time to time which is necessary or appropriate to effectuate the provisions of this Ordinance and a Resolution of Sale, the Bonds or any Related Document including, without limitation, the delivery of a "deemed

final” certificate relating to the disclosure document for each series of Bonds, the publication of a summary of this Ordinance substantially in the form set out in Article XXXV, the publication of a summary of a Resolution of Sale, the distribution of materials related to the Bonds, the printing of the Bonds and the execution of Related Documents and certificates pertaining to the System, the Bonds, the delivery of and security for the Bonds, as may be reasonably required by the Purchaser, any Fiscal Agent, and the execution of such other certificates and documents necessary to preserve that the interest paid on the Bonds is excluded from gross income for federal income tax purposes. The officers of the City are authorized and directed to take all action from time to time which is desirable or necessary for the City with respect to arbitrage rebate requirements under Section 148(f) of the Code.

**ARTICLE XXXIII
AMENDMENT OF THE ORDINANCE OR RESOLUTION OF SALE**

Section 33.01 *Limitations upon Amendments.* This Ordinance and a Resolution of Sale may be amended by ordinance of the Governing Body without the consent of Owners:

- (a) To cure any ambiguity, or to cure, correct or supplement any defect or inconsistent provision contained in this Ordinance or a Resolution of Sale;
- (b) To grant to the Owners any additional rights, remedies, powers or authority that may lawfully be granted to them;
- (c) If applicable, to obtain or maintain a rating on the Bonds from any rating agency which amendment, in the judgment of Bond Counsel, does not materially adversely affect the Owners of the Bonds;
- (d) To achieve compliance with federal securities or tax laws;
- (e) To make any other changes in this Ordinance or a Resolution of Sale in connection with the issuance of the Bonds or otherwise which, in the opinion of Bond Counsel, is not materially adverse to the Owners; and
- (f) To make any changes required by the rating agencies.

Section 33.02 *Additional Amendments.* Except as provided above, this Ordinance and Resolution of Sale may only be amended or supplemented by ordinance adopted by the Governing Body in accordance with the laws of the State, without receipt by the City of any additional consideration, but with the written consent of the Owners of a majority of the principal amount of each series of Bonds then Outstanding which are affected by the amendment or supplement (not including Bonds which are then owned by or for the account of the City); provided, however, that no such ordinances shall have the effect of permitting without the consent of all of the Owners of the affected Bonds:

- (a) An extension of the maturity of any Bond; or
- (b) A reduction in the principal amount of, purchase price or interest rate on any Bond; or

- (c) The creation of a lien on or a pledge of Net Revenues ranking prior to the lien or pledge of Parity Bonds on Net Revenues; or
- (d) A reduction of the principal amount of Bonds required for consent to such amendment or supplement.

Section 33.03 *Proof of Instruments.* The fact and date of the execution of any instrument under the provisions of this Article may be proved by the certificate of any officer in any jurisdiction who by the laws of the jurisdiction is authorized to take acknowledgments of deeds within that jurisdiction that the person signing the instrument acknowledged before him the execution of that instrument, or may be proved by an affidavit of a witness to the execution sworn to before such officer.

Section 33.04 *Proof of Bonds.* The principal amount of and numbers of Bonds owned by any person executing such instrument and the date of holding that instrument may be proved by a certificate executed by a bank or trust company showing that on the date mentioned that person had on deposit with the bank or trust company the Bonds described in the certificate.

ARTICLE XXXIV ORDINANCE IRREPEALABLE

After any of the Bonds are issued, this Ordinance shall be and remain irrepealable until the Debt Service Requirements on the Bonds are fully paid, canceled and discharged, as provided in this Ordinance, subject to the provisions of a Resolution of Sale or there has been defeasance of all Bonds as provided in this Ordinance and a Resolution of Sale.

ARTICLE XXXV NOTICE OF PRIOR REDEMPTION

Section 35.01 *The Refunded Loan Obligations.* The City has elected and does hereby declare its intent to exercise on behalf of and in the name of the City on a date to be determined by the City, at its option, as may be set forth in the this Ordinance and/or Resolution of Sale ("Redemption Date") to prior redeem the outstanding Loan as evidenced by the Loan Agreement at a redemption price equal to the principal amount of the Refunded Loan Obligations to be redeemed (as of the Redemption Date), plus accrued interest to the Redemption Date. Promptly upon issuance of the Bonds and not less than forty-five (45) days prior to the Redemption Date, the City shall mail such notice of prepayment and redemption of the Loan Agreement (Loan # _____) by first-class mail (return receipt requested) to the NMFA. Such notice may be in substantially the form attached as an exhibit to a Resolution of Sale.

Section 35.02 *Contingency.* The provisions of this Article XXXV are specifically subject to the further approval of the refunding of the Refunded Loan Obligations in a Resolution of Sale.

ARTICLE XXXVI EFFECTIVE DATE AND GENERAL SUMMARY FOR PUBLICATION

Upon due adoption of this Ordinance, it shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk or a Deputy City Clerk, and the seal

of the City impressed thereon, and the title and a general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which intains an office and is of general circulation in the City and this Ordinance shall be in full force and effect five (5) days after its publication in accordance with law.

Pursuant to Section 3-17-5 NMSA, 1978, as amended, the title and a general summary of the subject matter contained in the Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

CITY OF LAS VEGAS, NEW MEXICO

NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance (the " Ordinance"), duly adopted and approved by the City Council of the City of Las Vegas, New Mexico, on November 19, 2012. Complete copies of this Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, 1700 North Grand Avenue, Las Vegas, New Mexico, 87701.

The title of the Ordinance is:

CITY OF LAS VEGAS, NEW MEXICO
ORDINANCE

ORDINANCE NO. 12-16

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS VEGAS, NEW MEXICO WATER UTILITY REFUNDING AND SYSTEM IMPROVEMENT REVENUE BONDS, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWENTY FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00) FOR THE PURPOSE OF DEFRAYING THE COST OF REFUNDING, PAYING; REFINANCING AND DISCHARGING LOAN AGREEMENTS BETWEEN THE CITY AND THE NEW MEXICO FINANCE AUTHORITY AND FOR THE CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS TO THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

The title sets forth a general summary of the subject matter contained in the Ordinance.

This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Summary of Ordinance for Publication)

**ARTICLE XXXVII
GOVERNING LAW**

All rights and obligations of the parties with respect to the Bonds and this Ordinance and a Resolution of Sale shall be construed, enforced, and interpreted according to the laws of the State. Venue with regard to any action relating to the Bonds or this Ordinance shall be in federal or state district court in the State.

**ARTICLE XXXVIII
SEVERABILITY CLAUSE**

If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not, affect any of the remaining provisions of this Ordinance.

**ARTICLE XXXIX
REPEALER CLAUSE**

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance, subject to the provisions of a Resolution of Sale, are repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

**ARTICLE XL
INTERESTED PARTIES**

Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Registrar, the Paying Agent, the Purchaser and the owners of the Bonds, any right, remedy, or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof.

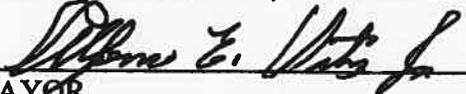
**ARTICLE XLI
LIMITATION OF CITY'S LIABILITY**

Notwithstanding any provision of this Ordinance to the contrary, the obligations of the City under this Ordinance are special limited obligations of the City payable solely from the Pledged Revenues. Neither the faith and credit, nor the taxing power of the State of New Mexico or any of its political subdivisions, including the City, is pledged to the payment or performance of such obligations. No agreements or provisions contained in this Ordinance, the provisions of a Resolution of Sale, or any other document or instrument related to the Bonds shall give rise to

any pecuniary liability of the City, its officers, its employees or members of its Council or constitute a charge against the City's general credit, or obligate the City financially in any way, except with respect to the Pledged Revenues, and their application as provided in this Ordinance and a Resolution of Sale. No failure of the City to comply with any terms, covenants, or agreements in this Ordinance or any other document or instrument related to the Bonds shall subject the City, its officers, its employees or members of its Council to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Pledged Revenues.

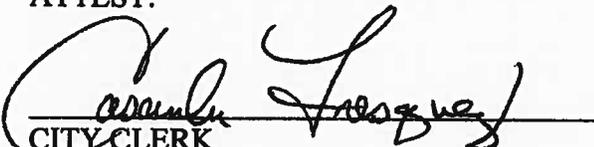
PASSED, APPROVED, AND ADOPTED THIS 19TH DAY OF NOVEMBER, 2012.

CITY OF LAS VEGAS, NEW MEXICO


MAYOR

[SEAL]

ATTEST:


CITY CLERK

Councilor Vincent Howell moved for the adoption of the foregoing City Ordinance No. 12-16, and the motion was duly seconded by Councilor David Romero

The motion to adopt said ordinance, upon being put to a vote, was passed and adopted on the following recorded vote:

Those Voting Aye:

Councilor Joey Herrera
Councilor Vincent Howell
Councilor David Romero.

Those Voting Nay:

Councilor Tonita Gurule-Giron'

Those Absent:

Four Councilors having voted in favor of said motion, City Clerk Freguez declared said motion carried by a vote of at least three-quarters (3/4) of the full membership, and said ordinance adopted, whereupon the Mayor and City Clerk signed the ordinance upon the records of the minutes of the Council.

After consideration of the matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

Dated this 19th day of November, 2012.


Mayor

[SEAL]

ATTEST:



CITY CLERK

STATE OF NEW MEXICO)
COUNTY OF SAN MIGUEL) ss.
CITY OF LAS VEGAS)

I, Casandra Fresquez, the duly qualified, and acting City Clerk of Las Vegas, New Mexico (the "City"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council of Las Vegas, New Mexico (the "Council"), constituting the Governing Body of the City, had and taken at a duly called, open meeting held in the Council Room in Council Chambers at 1700 North Grand Avenue, Las Vegas, New Mexico, 87701, on November 19, 2012, at the hour of 6:00 p.m. insofar as the same relate to the proposed bond issue, a copy of which is set forth in the official records of the proceedings of the City kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given by publishing the notice in a newspaper in general circulation within the City. Such notice constitutes compliance with one of the permitted methods of giving notice of special meetings of the Council as required by the open meetings standards presently in effect, i.e., City Resolution No. 12-16.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of November, 2012.



CITY CLERK

[SEAL]

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 06/12/14

DEPT: Utilities Dept.

MEETING DATE: 06/16/14

ITEM/TOPIC: Resolution No. 14-39 to submit an application for funding assistance to the New Mexico Finance Authority for the Bradner Reservoir project and the Raw Water Conveyance Project.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution No. 14-39.

BACKGROUND/RATIONALE: This resolution will allow the City of Las Vegas to submit their application to the NM Finance Authority Drinking Water State Revolving Loan Fund for the Bradner Reservoir/Raw Water Conveyance project. This project will assist the City in moving water more effectively, increasing its water supply storage and meeting demand during times of drought and wildfire. Portions of the conveyance system are over 50 years old and their design life is not expected to extend beyond the planning period. Therefore, these improvements are critical to the viability of the City's water system. The City will not have sufficient water to satisfy municipal demands without system improvements or modifications.

The City will be applying for funding in the amount of \$20,000,000 for this project.

STAFF RECOMMENDATION: Approval of Resolution No. 14-39.

COMMITTEE RECOMMENDATION: This item was discussed at the June 10, 2014 Utility Advisory Committee Meeting. The committee concurs with staff recommendation.

THIS REQUEST FORM MUST BE SUBMITTED TO THE CITY MANAGER'S OFFICE NO LATER THAN 10:00 A.M. ON FRIDAY ONE AND A HALF WEEKS PRIOR TO THE CITY COUNCIL MEETING.



SUBMITTER'S SIGNATURE

REVIEWED AND APPROVED BY:



ALFONSO E. ORTIZ, JR.
MAYOR



CITY MANAGER, Acting

ANN MARIE GALLEGOS
FINANCE DIRECTOR

PURCHASING AGENT
(FOR BID AWARD ONLY)

DAVE ROMERO
CITY ATTORNEY

Approved as to Legal Sufficiency Only
(If Box is Initialed by City Mngr., Review and Sign)

**CITY OF LAS VEGAS
RESOLUTION NO. 14-39**

AUTHORIZING AND APPROVING THE SUBMISSION OF A COMPLETED APPLICATION FOR FINANCIAL ASSISTANCE AND PROJECT APPROVAL TO THE NEW MEXICO FINANCE AUTHORITY

WHEREAS, the City of Las Vegas (“Borrower”) is a qualified entity under the Drinking water State Revolving Loan Act, Section 6-21A-1 et seq., NMSA 1978 (“Act”), and the Governing Body is authorized to borrow funds and/or issue bonds for financing of public projects for benefit of the Borrower and the public; and

WHEREAS, the New Mexico Finance Authority (“Authority”) has instituted a program for financing of projects from the Drinking Water State Revolving Loan Fund created under the Act, and has developed an application procedure whereby the Governing Body may submit an application (“Application”) for financial assistance from the Authority for drinking water projects; and

WHEREAS, the Governing Body intends to undertake acquisition, construction and improvement of the Bradner Reservoir and the Raw Water Conveyance the (“Projects”) for the benefit of the Borrower and its citizens (or members as applicable); and

WHEREAS the application prescribed by the Authority has been completed and submitted to the Governing Body and this resolution approving submission of the completed Application to the Authority for its consideration and review is required as part of the Application.

NOW THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAS VEGAS:

Section 1. That all action (not consistent with the provision hereof) heretofore taken by the Governing Body and the officers and employees thereof directed toward the Application and the Projects, be hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body be hereby approved and confirmed.

Section 3. That the officers and employees of the Governing Body are hereby directed and requested to submit the completed Application to the Authority for its review and are further authorized to take such other action as may be requested by the Authority in its consideration and review of the Application and to further proceed with arrangements for financing the Project.

Section 4. All acts and resolutions in conflict with this resolution are hereby rescinded, annulled, and repealed.

Section 5. This resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED this _____ day of _____, 2014.

Mayor Alfonso E. Ortiz, Jr.

ATTEST:

Casandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY ONLY

Dave Romero Jr., City Attorney



NMFA Use Only:

App. #:	-DW
FA assigned:	
Fundable Priority	

DRINKING WATER STATE REVOLVING LOAN FUND
APPLICATION FOR FINANCIAL ASSISTANCE

I. GENERAL INFORMATION

A. Applicant /Entity

				Application Date:	06/06/2014
Applicant/Entity:		City of Las Vegas			
Address, City, State, Zip (basic five-digit code plus four additional digits):		1700 North Grand Ave, Las Vegas NM 87701			
County:		San Miguel	Census Tract:		
Legislative District number:		Senate:	8	House:	70
Phone:	505-454-1401	Fax:	505-425-7335	Email Address:	kgarcia@ci.las-vegas.nm.us
Individual Completing Application:		Kenneth L. Garcia			
Address, City, State, Zip (basic five-digit code plus four additional digits):		905 12th Street, Las Vegas NM 87701			
Phone:	505-426-3314	Fax:	505-454-1632	Email Address:	kgarcia@ci.las-vegas.nm.us
DUNS number:	01-123-2723	Public Water System number:		NM 3518025	

B. Consulting Professionals (Bond/Legal Counsel, Architect, Engineer, etc., if available)

Name:	URS- Ed Toms RBC- Paul Cassidy				
Address, City, State, Zip:	URS-8181 East Tufts Ave, Denver, CO 80237 (303) 694-2770 RBC- 6301 Uptown Blvd NE Albuquerque, NM 87110 (505) 321-5966 paul.cassidy@rbccm.com				
Phone:	303-694-2770	Fax:	303-694-3946	Email Address:	ed.toms@urs.com

C. Primary Contact Person

Name:	Kenneth L. Garcia				
Address, City, State, Zip:	905 12th Street, Las Vegas, NM 87701				
Phone:	505-426-3314	Fax:	505-454-1632	Email Address:	kgarcia@ci.kas-vegas.nm.us

II. PROJECT SUMMARY

A. Project Description

Complete the following information, using additional paper if necessary. Include any additional documents that may be useful in reviewing this project (i.e. architectural designs, feasibility studies, a business plan, etc.)

Description of the project:

The City of Las Vegas (City) developed a Bradner Reservoir Preliminary Engineering Report (PER) that was completed in January 2014. The PER analyzed the City's demographics and water supply system, and examined the current conditions of the Bradner Reservoir area and existing facilities, in addition to the Purpose and Need of the Bradner Enlargement and Raw Water Conveyance Project (Project), and the Project configuration. The purpose of the Project is to assist in meeting the City's present water demand. Bradner Reservoir is a critical component of the City's water supply and treatment system and will provide approximately 60 percent of its raw water storage capacity once the enlargement is completed. Enlarging Bradner Reservoir will enable the City to store a total of 2,300 acre-feet (AF) of water, increasing its present storage from about 3 months to 12 months of critically needed storage under current demand conditions. The Project includes the construction of; 1) New rock filled embankment (130 feet high) and rock filled containment embankment (55 feet high), with appurtenant structures (i.e. spillway, intake tower, and outlet works), forming the new reservoir; and 2) 48-inch diameter raw water conveyance pipeline that will fill and drain the reservoir. The pipeline will more importantly supply raw water to the City's water treatment plant (WTP) located on the same property that the reservoir is located. The raw water conveyance pipeline system that will fill and drain Bradner Reservoir, and supply water to the WTP is the downstream segment of the future 48-inch pipeline replacement of existing raw water conveyance pipeline. The existing and future replacement of the pipeline starts at the Gallinas River intake structure to the WTP. The pipeline will remain 48-inch through the WTP yard piping and into the Bradner Reservoir. The pipeline will be constructed with the Bradner Reservoir; in parallel with the Bradner Reservoir discharge piping and will be included in the same concrete encasement through the dam embankment. Beyond the tower, the pipeline will extend along the the bottom of the reservoir to a submerged discharge point.

Proposed Project Start Date: December 2014

Proposed Project Completion Date: February 2016

When does the system need NMFA funds available?

August 2014

2. How will the ongoing maintenance, operation, and replacement of this project be funded?

User Fee net revenues

3. Does the system have a certified operator(s)? Yes No

If YES, how many? 13

4. Will this project require right-of-way acquisition? Yes No

If YES, specify any right-of-way needs and whether acquisition may or may not delay the project.

5. Who will hold title to the land where the project is to be located?

City of Las Vegas

If this is land owned by the Bureau of Land Management or State Land Office or is Tribal Land, please attach lease agreements. If there is no clear title, attach an explanation of ownership arrangements.

6. Does this project require a joint powers agreement (JPA)? Yes No

If YES, provide a copy of the JPA, which should include a list of the current membership.

7. Does the system expect an increase in service demand that would impact the capacity of the system as a result of this project? Yes No

If YES, please explain.

B. Total Project Cost and Sources of Funds Detail

	DWSRLF Funds Requested	Other Public Funds*	Private Funds	TOTAL Funds
Construction Activities				
Planning and Design		\$ 3,000,000 (1)	\$ 229,110	\$ 3,229,110 (2)
Construction	\$ 20,000,000	\$ 14,000,000		\$ 34,000,000 (3)
Equipment				
Infrastructure Activities				
Facility Acquisition				0
Land Acquisition				0
Utilities (Electric, Gas, Water, etc.)				
Engineering and Architectural				
Contingencies	\$			\$
Other				
TOTALS	NaN	\$ 17,000,000		\$ 37,229,110

* Specify any other public funds to be used for this project and amounts and terms of those funds, i.e. FmHA, CDBG, EPA, etc.

Source	Amount	Terms / No. of Years
SRF	\$ 1,200,000	75/25 grant/loan 22 Years @ 0.25 %
2013/2014 Legislature	\$ 11 800,000	Capital Grant
WTB	\$ 4,000,000	T B D
TOTALS	\$ 17,000,000	

Attach a letter verifying that each non-DWSRLF funding source for this project has been approved or is in the process of being approved. Explain any exceptions.

- 1) Public funds include \$1.8 million for the 2013 legislative appropriation and \$1.2 million from SRF for raw water conveyance
- 2) Planning and Design funding has been received and obligated
- 3) Construction costs include construction and engineering phase services as well as contingencies. The cost is \$19.5 Million for the Reservoir and \$14.5 Million for the Raw Water Conveyance

III. FINANCING

A. Revenue

1. Specify the revenue to be pledged as security for the DWSRLF loan (a revenue source must be pledged for this type of project).

- Municipal Local Option GRT – please specify _____
- County Option GRT – please specify _____
- State-Shared GRT _____
- Net System Revenues User Fees
- Other Revenue _____

2. Is there an alternative revenue source available to pledge to pay debt service in the event that the primary pledged revenue is unavailable or insufficient? Yes No

If YES, please specify.

GRT proceeds

3. Preferred financing term: 10-20 years.

B. Debt

Is any debt being repaid from the revenue source(s) referenced in A(1)? Yes No

If YES, provide bond or loan documents and payment schedule(s) for any existing debt service being paid from the same revenues that are pledged as security for the DWSRLF loan.

C. Customers and Rates

1. What are the current number of customers and the current rates for the following classifications?

	No. of Customers	Rate per 6,000 gallons	Revenue Generated
Residential	6039	See attached	See attached
Commercial	824	Rate study	Rate study
Industrial	0		
Bulk	0		

2. When were the system's water rates last adjusted?

2013

3. Please describe the system's rate review process and frequency of review (proposed or existing)

Please see attached rate study executive summary & City Ordinance 12-13

4. Is the system metered? Yes No

If YES, what is the percentage of fully operating meters?

100%

5. Are any significant changes in operational revenues or expenditures expected in the next three fiscal years that would impact the system's overall operating budget? Yes No

If YES, please describe.

Rates will increase again in August of 2014 & August of 2015

Fiscal Year 2014-15 has a rate increase of 3%

Fiscal Year 2015-16 has a rate increase of 3%

All rates after FY 2016 shall be adjusted annually according to the Consumer Price Index, unless a new ordinance is passed declaring otherwise.

IV. READINESS-TO-PROCEED CHECKLIST

A. In addition, the following items are required prior to closing or disbursement of DWSRLF funds:

- Categorical Execution Checklist (see Appendix D *Categorical Exclusion Checklist*)
- A signed Authorizing Resolution (see Appendix C *Authorizing Resolution*)
- A detailed drawdown schedule for project payments
- Final technical information for the project, stamped and approved by a registered engineer
- Cost breakdown of the project, certified by either an engineer or architect
- Preliminary Engineering Report (PER) approved by the NMFA (if applicable)
- Environmental Information Document (EID; see Appendix A) approved by the NMFA (if CE is not applicable)
- Disclosure questionnaire (if applicable)
- Area map, site map, and floor map
- Documentation showing status of right-of-way acquisition (if applicable)
- List of and copies of all required permits and licenses necessary to complete the project. Detail the status of each item, a plan of action, and time frame for completing incomplete permits and licenses.
- Is there litigation pending that would have a bearing on the project or applicant?

Yes No

If YES, attach a summary of all circumstances relating to such litigation.

- Regular meeting dates for the system's governing body(ies) that authorized this project.

V. CERTIFICATION

The undersigned, certify that:

Each has the authority to request and incur the debt described in this application and, upon award, will enter into a contract for the repayment of any NMFA loans and/or bonds.

Each will comply with all applicable state and federal regulations and requirements. To the best knowledge of each of the undersigned, all information contained in this application is valid and accurate and the submission of this application has been authorized by the governing body of the undersigned jurisdiction.

Jurisdiction _____

Highest Elected Official

Signature

Print Name

Print Title

Date

Finance Officer/Director

Signature

Print Name

Print Title

Date

APPENDIX C

Authorizing Resolution

**CITY OF LAS VEGAS
RESOLUTION NO. 13-56**

A RESOLUTION OF THE CITY OF LAS VEGAS, NEW MEXICO, ADOPTING THE RECOMMENDED ALTERNATIVES BY URS FOR BRADNER RESERVOIR AND INCLUDE THESE ALTERNATIVES IN THE CITY'S PRELIMINARY ENGINEERING REPORT.

WHEREAS, the City completed several studies on water demands and availability for present and future conditions; and

WHEREAS, these studies found that the City is in need of additional raw water storage to meet its current and future water supply needs and to mitigate susceptibility to flooding, drought, wildfire, and the resulting effect of fire ash; and

WHEREAS, the City hired URS as the record engineer for the project and URS conducted a Preliminary Engineering Report analysis study; and

WHEREAS, URS has determined enlarging Peterson Reservoir that was the recommended alternative to meet the City's raw water needs is not suitable due to unfavorable geologic conditions at the site it is considered to be a cost prohibitive option at this time; and

WHEREAS, URS has recommended the change to enlarge Bradner Reservoir instead of Peterson Reservoir based on their consideration of the alternatives presented in the Preliminary Engineering Report analysis dated September 2011; and

WHEREAS, URS produced a number of different alternatives for enlarging Bradner Reservoir and has recommended an alternative to the City; and

WHEREAS, the recommended alternative of the Bradner Reservoir enlargement project would include the following:

- The existing main and auxiliary dams would be demolished.
- A new 120-foot high main embankment dam approximately 400 feet upstream of the existing main dam would be constructed.
- A new 40-foot high containment embankment dam approximately 2,800 feet upstream of the new main dam would also be constructed so the entire reservoir would be constructed on City property.
- The storage would be increased from about 300 acre-feet to 2,100 acre-feet.
- The new dams would be constructed using earthen fill and filler materials.

; and

WHEREAS, the engineering services include geotechnical investigations and other engineering studies conducted for Bradner Dam; and

WHEREAS, the environmental permitting services include obtaining the appropriate state and federal required environmental clearances; and

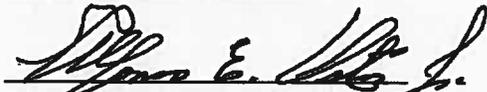
WHEREAS, the City must complete all requirements for the project including revision to the Preliminary Engineering Report to obtain loan funding and the applicable EPA waiver; and

WHEREAS, URS conducted a presentation on the project at the December 3, 2013 Council Work Session to obtain comments from the governing body and the public;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE City of Las Vegas that the City adopts the recommended alternative for the Bradner Dam and Reservoir improvement and enlargement and include the revision in the City's PER.

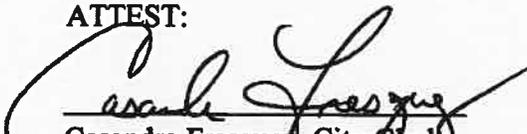
PASSED, APPROVED, AND ADOPTED this 11th day of December, 2013.

CITY OF LAS VEGAS

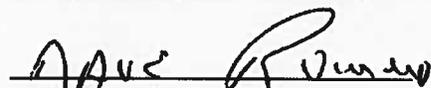

Mayor Alfonso E. Ortiz, Jr.

(Seal)

ATTEST:


Casandra Fresquez, City Clerk

REVIEWED AND APPROVED AS TO LEGAL SUFFICIENCY ONLY:


Dave Romero Jr., City Attorney

Description	Int Rate	Maturity Date	Servicing Institution	Fund	Original Issue/Principal Amount	Balance 6/30/14	PRINCIPAL Reductions	Adj	Interest expense	Current payment due in 2015	Adjusted balance as of 6/30/15	Adjusted for current payment
NMFA WTB-286 Water Storage, Conveyance and Delivery - Fund 645	0.25%	5/9/14- 6/1/34	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	72,200		3,514		192	3,514	68,686	65,172
NMFA DW-2727 - Fund 645	0.25%	6/1/13- 6/1/2034	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	275,000		13,426		688	13,426	261,574	248,148
NMFA DW-2878 - Fund 645	0.25%	6/1/13- 6/1/2034	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	400,000		19,529		1,000	19,529	380,471	360,942
NMFA DW-2910 - Fund 645	0.25%	12/1/13- 6/01/2035	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	305,525		-		764	-	305,525	305,525
NMFA DW-2911 - Fund 645	0.25%	12/01/13- 6/01/2035	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	305,689		-		765	-	305,689	305,689
NMFA WTB-287 Water Storage, Conveyance and Delivery - Fund 645	0.25%	6/1/2034	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	87,800		-		220	-	87,800	87,800
NMFA DW-3043 - Water Tank Rehab Construction Fund 645	0.25%	6/1/2036	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	222,200		-		556	-	222,200	222,200
NMFA DW-3046 - WTP Building Repairs Construction Fund 645	0.25%	6/01/3/2036	NM Finance Authority St. Michaels Drive Santa Fe, NM 87505	Water	43,682		-		109	-	43,652	43,652
			TOTAL		1,712,096		36,469		4,294	36,469	1,675,597	1,639,128