



# 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  
February 29, 2016–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. **MAYOR’S APPOINTMENTS/REPORTS**
- VII. **PUBLIC INPUT (not to exceed 5 minutes per person and persons must sign up at least fifteen (15) minutes prior to meeting.)**
- VIII. **BUSINESS ITEMS**

1. Approval/Disapproval of Resolution No. 16-09.

*Ken Garcia/Utilities Director* The City has been in ongoing negotiations with the Storrie Project Water Users Association to draft an agreement that is mutually beneficial to both parties for water storage, purchase of bulk water and settling long-standing protests to the City’s water storage applications before the Office of the State Engineer. Both parties have tentatively reached an agreement for permanent perpetual water storage, purchase of bulk water and settlement of protests.

2. Approval/Disapproval of Resolution No. 16-10

***Ken Garcia/Utilities Director*** The New Mexico Finance Authority has a program allowing submission of an application to include borrowing funds and/or issuing bonds for assistance to finance projects from the public project revolving fund. The City has been in ongoing negotiations with the Storrie Project Water Users Association to draft an agreement that is mutually beneficial to both parties for water storage. Both parties have tentatively reached an agreement for permanent perpetual water storage. The City intends to cash purchase bulk water. The City will acquire permanent water storage for the municipal water system under this NMFA program.

## **IX. EXECUTIVE SESSION**

**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.**

## **X. 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 877013

**SUMMARY OF SETTLEMENT PROVISIONS AMONG THE CITY OF LAS VEGAS, STORRIE PROJECT WATER  
USERS ASSOCIATION AND UNITED STATES**

The ***Settlement Agreement*** among the City of Las Vegas, Storrie Project Water Users Association (SPWUA) and the United States Fish and Wildlife Service and the ***Purchase and Sale of a Storage Easement and Bulk Water*** accomplish several objectives the City has been pursuing for many years. Together these ***Agreements*** will (1) provide the City with permanent additional water storage of 2,300 acre feet (AF) in Storrie Lake for storage of the City's water; (2) provide 1,200 AF of bulk water now stored in Storrie Lake that will be available for use by the City as needed and which can be stored in Storrie Lake until that time; (3) settle long-standing and expensive litigation among the parties as to the City's water rights and water storage applications before the Office of the State Engineer (OSE) and in the Courts. The primary elements of the settlement documents are as follows:

**Settlement Agreement**

- The ***Settlement Agreement*** is among the City, SPWUA and the United States
- On Closing of the ***Purchase and Sale of a Storage Easement and Bulk Water***, once the City has received a Permit from the OSE to store 2,300 AF of City water in Storrie Lake, SPWUA and the United States will:
  - Withdraw their protests to the City's Application to expand Bradner Reservoir now before the OSE
  - Withdraw their protests to the City's Application for an Aquifer Storage Recovery Project now before the OSE
  - File notice with the Court in the Las Vegas Remand that they have resolved their potential disputed issues with the City and will not be filing any additional briefing
  - Agree that the City can store up to 3,300 AF of water diverted from the Gallinas River in any storage facility available to the City and can divert up to 3,300 AF per year from the Gallinas into storage **prior to SPWUA's diversion of water from the Gallinas**
  - Agree that the City can store reclaimed water, groundwater from the Taylor Well Field, or other water not hydrologically connected to the Gallinas River
  - Agree that the City can expand its existing diversion structure from the Gallinas River from 14.2 cubic feet per second (CFS) to 40 CFS
  - Agree to limit their protests to future applications the City files to transfer irrigation rights into the City's water system
- The ***Settlement Agreement*** will be executed by the SPWUA Board of Directors and the Regional Director of the United States Fish and Wildlife Service and approved and ratified by SPWUA shareholders owning 83 1/3 % shares of SPWUA

**Purchase and Sale Agreement**

- The City will purchase a "Storage Easement" in Storrie Reservoir consisting of 2300 acre feet of water storage capacity.
- Purchase price is \$12 Million.

- The money is **payable only upon issuance** to the City of a final Storage Permit for Storrie Reservoir by the Office of State Engineer (OSE), in a form acceptable to the City.
- The City's Storage Easement:
  - Is a **permanent interest in real property**.
  - Storage Easement will be recorded in the county land records upon conveyance.
  - The Storage Easement will "run with the land" as **an encumbrance** on Storrie Reservoir.
  - Will be located **above the elevation of the dead pool**; that is, above the outlet works where the City's water can be released by positive gravity flow.
  - City may store water from any combination of the City's water rights and water owned or leased by the City.
  - City may **fill and refill** and carry over storage from year to year limited to 2300 acre feet at any one time.
  - City may **release water** at its **discretion** with 2-days notice.
- The City to also purchase 1200 acre feet of Bulk Water in Storrie Reservoir
  - Will allow **prompt use and benefit** of the City's Storage Capacity
  - One-time Purchase Price of Bulk Water is \$360,000.00
  - Money is **payable only upon issuance** of either a Temporary or Final Bulk Water Permit from OSE in form acceptable to the City
  - Pending the closing of Storage Easement **only**, temporary storage costs for Bulk Water \$5217.39 monthly
  - Favorable temporary storage cost compared with cost of prior leases
  - This cost to be paid exclusively from funds derived from City's water service operations.
- **Authority of SPWUA to Grant Storage Easement**
  - **Unanimous** vote of Board of Directors Required plus
  - Affirmative vote of **831/3<sup>rd</sup> Percent of SPWUA Shareholders** who must sign Corporate Resolution in their representative and **individual capacities**, to authorize, ratify and consent to the Settlement Agreement, the Purchase Agreement and the Storage Easement.
  - Storage Easement to be conveyed to City free and clear of any title issue or encumbrance as confirmed by Title Report
- **SPWUA's Standards of Operation of the Reservoir**
  - SPWUA has a duty to operate the Reservoir in a safe and effective manner and to work cooperatively and in good faith to ensure that the City can recover its stored water.
  - SPWUA is under a duty of good faith and reasonable care to **prevent** causing the City's water from **dropping into the "dead pool."**
  - If that should occur, SPWUA agrees to fill the Reservoir to the volume of water the City is entitled to have based upon its water storage account plus the estimated volume of the "dead pool."
  - **Evaporation losses** are assessed to the City at an annual rate of 2.83 acre feet according to a monthly distribution formula.
  - SPWUA to comply with all dam safety regulations and certifications.
  - SPWUA to maintain comprehensive liability insurance.
- **City's Share of Capital Improvements, Ordinary and Necessary Maintenance and Repair Costs**
  - Limited to City's proportional share (10.72%) based on City's storage capacity (2300 acre feet) compared to total active volume of storage (21,447 acre feet)
  - These costs to be paid exclusively from funds derived from City's water service operations.

- **Purchase Agreement will terminate** if certain conditions do not occur:
  - Issuance of final Storrie Storage Permit by OSE in acceptable form by December 31, 2017 unless date is extended by written mutual agreement.
  - Funding approvals for Acquisition of Storage Easement must be given as required by law.
  - Tax Certification Opinion by SPWUA's tax specialist.
  - Amendment of SPWUA Article of Incorporation making SPWUA a perpetual corporation
- **Purchase Price Escalation** if Closing does not occur by **September 30, 2016**
  - Purchase price for Storage Easement (\$12 Million) increases by 1% per annum (approximately the CPI) prorated monthly after September 30, 2016 until Closing of Storage Easement purchase.
  - Purchase price for Bulk Water (\$360,000.00) increases by 1% per annum (approximately the CPI) prorated monthly after September 30, 2016 until Closing of Bulk Water purchase.
- **SPWUA's temporary use of the City's unused storage space until needed by the City**
  - SPWUA may temporarily use that portion of City's 2300 acre feet of storage space **that is not being used by the City** until the City needs that storage capacity.
  - SPWUA's temporary use shall not affect the amount of water the City has in storage or the right of the City to store 2300 acre feet of water at any time.

## Special Council Meeting-02/29/16

- I. Agenda Request-Resolution No. 16-09**
  - A. Resolution No. 16-09-Settle Protests and Enter into Agreement with Storrie
    - 1. Agreement 0175 with Storrie (historical document)
    - 2. Agreement 1979-09 with Storrie (historical document)
    - 3. Agreement 2072-10 Amendment #1 with Storrie (historical document)
    - 4. Agreement 2072-10 Amendment #2 with Storrie (historical document)
    - 5. Resolution No. 13-15 Joint Efforts between City and Storrie (ref. in Res. 16-09)
    - 6. Ordinance 14-10 Bond Ordinance (ref. in Res. 16-09)
  - B. Settlement Agreement with Storrie
  - C. Purchase Agreement with Storrie
    - 1. Index to Appendices of Purchase Agreement
      - 1. Storage Easement
      - 2. Legal Description
      - 3. Bill of Sale
      - 4. A. Storrie Storage Application Alternative A
      - 4. B. Storrie Storage Application Alternative B
      - 5. Bulk Water Application
      - 6. Corporate Resolution and Consent
      - 7. Council Resolution
- II. Agenda Request-Resolution 16-10**
  - A. Resolution 16-10-Submission of Application for Financial Assistance
    - 1. Lease vs. Acquisition Costs
    - 2. Pledged Revenue Coverage

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 02/19/16

**DEPT:** Utilities Dept.

**MEETING DATE:** 02/29/16

**ITEM/TOPIC:** Request approval of Resolution 16-09 authorizing the Mayor and City Manager to settle protests and enter into an agreement with the Storrie Project Water Users Association.

**ACTION REQUESTED OF COUNCIL:** Approval/Disapproval of Resolution No. 16-09.

**BACKGROUND/RATIONALE:** The City has been in ongoing negotiations with the Storrie Project Water Users Association to draft an agreement that is mutually beneficial to both parties for water storage, purchase of bulk water and settling long-standing protests to the City's water storage applications before the Office of the State Engineer. Both parties have tentatively reached an agreement for permanent perpetual water storage, purchase of bulk water and settlement of protests.

**STAFF RECOMMENDATION:** Approval of Resolution No. 16-09.

**COMMITTEE RECOMMENDATION:** This item will be discussed at the regular Utility Advisory Committee meeting on March 8, 2016.

**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



ELMER MARTINEZ  
CITY MANAGER

ANN MARIE GALLEGOS  
FINANCE DIRECTOR  
(PROCUREMENT)

PURCHASING AGENT  
(FOR BID AWARD ONLY)



DAVE ROMERO  
CITY ATTORNEY  
(ALL CONTRACTS MUST BE  
REVIEWED)

Approved to form 1-26-15

CITY OF LAS VEGAS  
RESOLUTION NO. 16-09

A CITY RESOLUTION AUTHORIZING THE MAYOR AND THE CITY MANAGER TO SETTLE PROTESTS AND ENTER INTO AN AGREEMENT WITH THE STORRIE PROJECT WATER USERS ASSOCIATION TO PURCHASE 2300 ACRE FEET OF PERMANENT WATER STORAGE AND 1200 ACRE FEET OF BULK WATER.

WHEREAS, on July 25, 1989, the City of Las Vegas (City) entered into an agreement (#0175-A) with the Storrie Project Water Users Association (SPWUA) to lease 500 acre feet of water storage capacity at a rate of \$37,500.00 (\$75.00/AF) adjusted for CPI annually; and

WHEREAS, agreement #0175-A was for a period of twenty years and expired on December 31, 2009 at a final rate of \$61,760.44 (\$123.00/AF); and

WHEREAS, both parties extended the lease agreement effective January 1, 2010 for a one year period with a one-time cash sum of \$100,000 (\$200.00/AF); and

WHEREAS, a second extension to the lease agreement went into effect January 2, 2011 for a term of 3 years payable at \$100,000 the first year, \$125,000 (\$250.00/AF) the second year and \$150,000 (\$300.00/AF) the third year totaling \$375,000; and

WHEREAS, on March 20, 2013 the Governing Body adopted Resolution No. 13-15 as a joint effort between the SPWUA and the City to promote water efficiency and water conservation and to improve water storage and conveyance; and

WHEREAS, the City and the SPWUA have been in negotiations since that March 20, 2013 to draft an agreement that is mutually beneficial to both parties; and

WHEREAS, the City, SPWUA and the United States Fish and Wildlife Service have generally agreed to settle ongoing protests to various water storage applications by the City and the City has agreed generally to the following terms and conditions with SPWUA:

1. Purchase by the City of a perpetual and permanent water storage easement for 2300 acre feet of storage capacity at Storrie Reservoir commencing at the level where the water stored by the City can be released by gravity through the City's outlet works.
2. The payment of twelve million dollars (\$12,000,000 or, \$5,217.39/AF) to be paid at closing of the storage easement contingent upon the approval of a joint storage permit application by the Office of the State Engineer.
3. Purchase by the City of 1200 acre feet of bulk water in Storrie Reservoir for the purchase price of three hundred sixty thousand dollars (\$360,000), together with interim storage for the bulk water at the rate of five thousand two hundred seventeen dollars and thirty nine cents (\$5,217.39) per month pending closing of the City's storage easement.

4. Closing of the bulk water agreement will occur upon approval of a joint temporary bulk water permit application or final bulk water permit application by the Office of the State Engineer.
5. The purchase price for the storage easement and the bulk water purchase shall escalate at the rate of 1% per annum commencing after September 30, 2016 until closing of each of these purchase transactions.
6. Authorization and consent by 83 1/3<sup>rd</sup> percent of SPWUA shareholders to these transactions.

WHEREAS, Ordinance No. 14-10 for Bond Water System Improvements was adopted on February 18, 2015 and will allow the City to finance the acquisition of storage with debt capacity; and

WHEREAS, the City will submit an application to the New Mexico Finance Authority for financing under the Public Project Revolving Fund and/or seek financing through the open bond market; and

WHEREAS, the City will use water fund cash to purchase the bulk water and the interim storage costs for the bulk water. Such funds are included in the City's FY 16 budget.

WHEREAS, the City will finance the transactions through existing water rates.

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the City of Las Vegas that the Mayor and the City Manager are authorized to settle ongoing protests to the City's various storage applications and to enter in to an agreement with the Storrie Project Water Users Association for 2300 acre feet of storage for the amount of \$12,000,000.00 and 1200 acre feet of bulk water for \$360,000, with temporary storage costs as provided above.

BE IT FURTHER RESOLVED that the agreement shall be deemed ratified by the governing body upon execution by the Mayor.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor Alfonso E. Ortiz, Jr.

Attest:

\_\_\_\_\_  
Casandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY ONLY

\_\_\_\_\_  
Dave Romero Jr., City Attorney

BULK WATER SALE AGREEMENT

THIS AGREEMENT is executed in duplicate originals this 11th day of July, 1989 by and between the City of Las Vegas, a municipal corporation of the State of New Mexico ("City"), and the Storrie Project Water Users Association, a corporation ("Storrie");

WITNESSETH:

1. Due to the critically inadequate streamflow in the Gallinas River reaching the City's points of diversion, the City is experiencing a draw-down of its reservoirs at a rate that endangers the City's ability to supply the water needs of its citizens;
2. The City, recognizing its present water supply emergency, has instituted a broad and rigidly enforced program of mandatory water conservation affecting water users from the municipal system;
3. The City believes, on the advice of its engineers and consultants, that a one-time emergency bulk water purchase is necessary for the health and welfare of its citizens, provided that such water can be made available to the City in the immediate future;
4. Storrie Reservoir is physically adjacent to the City and presently contains quantities of water which Storrie is willing to sell to the City and which the City believes can be transported to the City's water supply system at feasible cost and in time to avoid worsening of the present drought situation;

NOW THEREFORE, IT IS AGREED:

I. PREMISES AND SALE

Storrie agrees to sell to the City for immediate delivery at the Reservoir 400 acre feet of surplus water presently in storage in the Reservoir ("City water"). Storrie further agrees to sell up to an additional 275 acre feet of water to the City if the City, in its exclusive judgment, elects to exercise the option therefor within a period not exceeding 6 months from the effective date of this contract. The City may take delivery of the City water by such means, system, pumping, and diversion out of the Reservoir, and at such rate of diversion as the City shall determine in its exclusive judgment.

II.

It is assumed by parties hereto that pursuant to a separate contemporaneous agreement, the City shall lease from Storrie 500 acre feet of storage capacity commencing January 1, 1990. In the event that any part of the water purchased under this agreement remains unused in the reservoir as of December 31, 1989, it shall immediately thereafter become City water stored for and subject to the use by the City pursuant to this agreement and the storage lease agreement. If no such storage lease agreement be in effect on December 31, 1989, and if some of such water remain unused in the reservoir, then the City and Storrie will cooperate to effect the removal and use by City of said remaining water at the earliest practicable time.

### III.

Parties agree that prior to the end of the six-month period, they will exchange such information as necessary to determine evaporation losses proportionately attributable to the City's purchased water, and in the event they are unable to agree to the proper amount of evaporation loss, the matter will be referred to the Technical Division of the State Engineer's Office for their binding determination.

### IV. TEMPORARY STORAGE PRIVILEGE AND TERM

Storrie agrees to allow the City to store the water herein purchased within Storrie's reservoir for a period not exceeding 6 months from the effective date of this agreement, with appropriate loss by evaporation, as further provided in this agreement.

### V. PURCHASE PRICE AND PAYMENTS

The agreed upon purchase price for the City water and storage privilege thereof is \$200.00 per acre foot, or \$80,000.00 for the minimum quantity of water sold hereunder. Further, the City agrees to pay an option premium of \$5,000.00 for the right to purchase up to an additional 275 acre feet within the six-month period, as set out above. The City agrees to pay the said \$85,000.00 purchase and option price by means of a minimum payment of \$50,000.00 upon the effective date of this agreement, with the balance to be paid no later than 90 days thereafter. In the event that the City shall exercise its option to take up to an additional 275 acre feet as provided in this agreement, it shall pay for

such quantity at the rate of \$200.00 per acre foot within 60 days after giving written notice of its exercise of the said option to purchase.

#### VI.

The City will be responsible for obtaining any administrative or other legal approvals that may in its judgment be necessary to effectuate this purchase agreement and the City's transportation and use of water thereunder ["decision"]. Storrie agrees to provide, upon the request of the City, any legal or other support, assistance, agreement, or other action that may prove to be necessary and within its power to enable the City to obtain any such administrative approval. In the event that any court may finally determine that the City failed to apply for or obtain any administrative action that is determined to be necessary, the City hereby agrees to hold Storrie harmless from any damage, loss, cost, attorneys fees and penalties, pretention, claim or injury arising from such decision.

#### VII. REPRESENTATIONS AND WARRANTIES

##### STORRIE REPRESENTS AND WARRANTS:

A. That it is the owner of the Reservoir as shown by Exhibit "A" attached hereto, and the water that is the subject of this agreement, and has full right and authority to enter into a contract for the premises.

B. That the water sold herein has been determined by Storrie to be water surplus to the needs of its

shareholders and that Storrie is therefore legally empowered to sell such water to City.

C. That all requirements of law and action necessary by the corporation, have been met and performed by Storrie for this agreement.

D. There is no impediment, lien, or encumbrance to the sale and delivery of water and license for the temporary storage privilege.

E. That there is at this time within the boundaries of the Storrie Project at least 900 acres of fallow or presently non-irrigated water right land, that is, declared appurtenant land having valid water rights entitled to be served by the Storrie Project, and that Storrie is authorized to and does hereby reserve and dedicate the said 900 acres to remain unirrigated through the balance of the 1989 calendar year, for the purpose of satisfying any such condition as may hereafter be applied by lawful and final administrative action.

**THE CITY REPRESENTS AND WARRANTS:**

F. That it has full authority pursuant to Section 3-27-2 of the New Mexico Statutes Annotated to acquire the water and temporary storage privilege as provided in this agreement, and to expend and pay public monies and funds therefore to Storrie.

G. That prior to delivery of the water, all requirements of New Mexico law have been or will be complied with and requisite consents of all persons, authorities, and officials obtained.

H. That other than as herein specifically set forth, the City will exercise its right to store, take, transport, and use the said water in such a way as to avoid harm, damage, or infringement upon any of the property, irrigation rights, water, water deliveries, irrigation rules, and structures of Storrie, to the greatest practicable extent.

#### VIII. MISCELLANEOUS

A. The City shall install recording-type water meters, as recommended by the State Engineer, for the measurement of all water diverted by it out of the reservoir. Storrie shall be given copies of all such meter readings, at least weekly.

B. The City shall pay for all fees, permits, licenses, gross receipt or other excise taxes, and costs of the City's performance under this contract, incident to the right to remove, and the diversion of, the water from the reservoir.

C. "Storrie" and the "City" shall be defined to mean each corporation, its agent, employees, successors, and assigns. This agreement is binding on all such entities.

D. This contract contains all of the covenants, terms, promises, and conditions of the agreement between the parties, and there can be no change, addition, or alteration of any of same, unless reduced to writing, signed by the parties, and appended hereto.

E. This agreement is binding upon the parties, their successors, and assigns.

F. Storrie grants to the City all rights and easements as to, upon and across, Storrie's property to enable efficient performance hereunder, during the term hereof.

G. Notwithstanding any terms or provisions of this contract, interpreted to the contrary, this agreement is a short-term license to store and a sale of bulk water under capture by Storrie. It is not a sale or lease of any part of Storrie's water rights or reservoir.

IX. DEFAULT AND REMEDIES

Time is of the essence hereunder and in the event of a default or breach herein, not cured within 30 days written notice thereof, the aggrieved party shall have, at its option, either the remedy of specific performance, or the remedy of termination of this contract, together with costs and attorneys' fees incident thereto.

DATED the year and day above set forth.

STORRIE PROJECT WATER USERS  
ASSOCIATION

CITY OF LAS VEGAS

By: Robert M. Quintana  
Its President

By: Tony Martinez Jr.  
Its Mayor

Attest:

Attest:

Edou Smith  
Its ~~Secretary~~  
Vice President

Carmen Rojas  
Its City Clerk

EXHIBIT "A"

The Reservoir heretofore constructed pursuant to that certain Contract dated May 31st, 1916, recorded in Book 72 at page 321 of the Miscellaneous Records of San Miguel County, between the party of the first part herein, and R. C. Storrie and Company, together with all the lands on which said Reservoir is situate, lying in Sections 27, 28, 33 and 34, Township 17 North, Range 16 East, and containing approximately 1349.9 acres, the same being bounded by the 6600-foot contour line, as delineated on the maps of the Sanguijuela Irrigation Project filed with the State Engineer of the State of New Mexico, and approved by him on November 5th, 1921.

(DB 145, page 74)

Agreement / Contract  
No. 1979-09  
City of Las Vegas  
Date

2009 JUN -2 PM 4:23

**OFFICE OF THE STATE ENGINEER  
STATE OF NEW MEXICO  
BEFORE THE ADMINISTRATIVE HEARINGS UNIT**

OFFICE OF THE  
STATE ENGINEER  
HEARINGS UNIT  
SANTA FE, NM

In the Matter of the Application by the )	File 341
City of Las Vegas for a Permit to Change )	No. SP-0341-14-14 in SD-
)	02662
The Point of Diversion and/or Place of )	Gallinas River, Tributary to the Pecos
Use of Surface Waters )	River

**STIPULATION BY AND BETWEEN THE CITY OF LAS VEGAS AND  
STORRIE PROJECT WATER USERS ASSOCIATION**

Applicant City of Las Vegas ("City") and Protestant Storrie Project Water Users Association ("Storrie") (collectively "the Parties") hereby stipulate that they have settled all issues between them as to this application for transfer of Permit No. 341 into SD-02662 ("Application") as set forth herein:

The Parties agree as follows:

1. Water Rights subject to Transfer Application. The water rights which are the subject of this Application ("Water Rights") are appurtenant to the 37.5 acres identified in Attachment I ("Franken Property"). The Water Rights are part of the water rights adjudicated to Storrie and its shareholders, including the storage component in Storrie Reservoir, as defined, limited and confirmed and expressly subject to the Findings and Decretal paragraphs as set forth and adjudicated in the "Judgment and Decree Re Water Storage Rights - Storrie Project," filed February 10, 1997, and in the "Partial Decision, Judgment, and Decree as to Storrie Project Water Users Association and Its Shareholders," filed October 24, 1995, in the case of State of New Mexico ex rel. v. L.T. Lewis, et al., Nos. 20294 and 22600, Court File No. CV-WA-01472,

of the Chaves County District, State of New Mexico ("Storrie Decrees").

2. Point for Delivery. The only Point for Delivery ("PFD") of the Water Rights from storage in Storrie Reservoir for delivery to the City shall be the City's current point of delivery located at the toe-of-the dam and head of the main canal of Storrie. At this time, the City's existing facilities for taking delivery of the Water Rights at the PFD are adequate. However, the Parties anticipate that the City may need to rehabilitate the existing facilities or construct new facilities for taking delivery of the Water Rights at the PFD in the future. Any rehabilitated or new diversion works shall be constructed at the City's expense and shall be designed so as to allow accurate measurement of water deliveries, and shall not interfere with Storrie's normal operation. The facility plans and specifications for any future rehabilitation or construction shall require approval by the Board prior to construction, which approval shall not be unreasonably withheld.

3. Point of Measurement. Delivery of water under the Water Rights shall be measured at the PFD.

4. Annual Quantity of Water Delivered. The City's annual allocation for delivery to the PFD shall be the quantity of water that would have been delivered to the farm headgate of the Franken Property ("Annual Allocation"). The City shall not obtain the benefit of any carriage loss, return flow or seepage that is saved by delivering the water to the PFD, other than the City's prorata share of saved losses that may be realized by Storrie as a whole. Therefore, any Order granting the Application ("Transfer Permit") shall limit the annual quantity of water to be delivered from Storrie Reservoir for delivery to the City under the Water Rights to the City's prorata portion of the annual allocation, if any, as determined by the Board of Directors of Storrie

("Board") to Storrie shareholders for that year, including consideration of return flow, carriage loss and seepage.

5. Season of Delivery. The season of delivery of the Water Rights shall be same as for other members of Storrie, that is, March 1 through October 31. The City may order deliveries from Storrie Reservoir to the PFD in the same manner as other members of Storrie under the delivery policy of the Board.

6. Lease of Storage Space in Storrie Reservoir. The City has an existing lease with Storrie for 500 acre feet of storage space in Storrie Reservoir and may negotiate other storage space leases with Storrie in the future. The City may transfer all or part of its Annual Allocation to any such leased space in Storrie Reservoir as provided in paragraph 7, below.

7. Deliveries to City. The City shall have the option of taking delivery of its Annual Allocation under Paragraph 4.a above by either: (a) taking into its distribution and storage system all or part of its Annual Allocation; or (b) by November 1 of each year, transferring all or part of its remaining Annual Allocation to storage space leased by the City in Storrie Reservoir under existing or future storage space leases, if any, for later delivery to the City. Any portion of the Annual Allocation not taken into the City's distribution and storage system by November 1 of each year shall be automatically transferred into available storage space leased by the City in Storrie Reservoir under existing or future storage space leases, if any. Any such water transferred to the City's leased storage space shall be subject to evaporation and seepage losses from the date of such storage as described in the storage space lease.

8. Storrie Board's Administration of Storrie System. Nothing in this Stipulation or in the Transfer Permit shall affect the manner in which the Board determines the annual

allocation of water to its members, taking into account the need to reserve appropriate amounts of water in order to afford efficient storage and a continuing balanced supply of water. The Board, and not the Office of the New Mexico State Engineer ("OSE"), shall continue to determine the annual allocation of water to its members and the manner in which Storrie Reservoir will be operated.

9. Return Flow Plan. The Parties recognize that a return flow plan, approved by the OSE, will be necessary prior to full implementation of the change of use sought by the Application ("Return Flow Plan"). The Return Flow Plan shall protect other water rights from impairment due to change in the amount, location or timing of return flows to the river. A Return Flow Plan has not been developed or approved by the OSE as of the date of this Stipulation. The Parties agree that, if the OSE approves this Application subject to approval of a Return Flow Plan, the City is entitled to and may, if approved by the OSE, take delivery of 50% of its Annual Allocation. The Parties agree that the Return Flow Plan shall ensure that consumptive use of the Water Rights as transferred to the City shall not exceed 50% of the Annual Allocation. Deliveries of up to, but not exceeding the Annual Allocation, will be made after approval of the Return Flow Plan.

10. Dry-up of Franken Property. The Water Rights appurtenant to the Franken Property shall be severed from that property and the Franken Property shall not be irrigated, unless and to the extent the owner of the Franken Property purchases or leases other Storrie shares for irrigation of the Franken Property and provides for appropriate dry-up of the lands to which the purchased or leased shares were previously appurtenant, all with the approval of the Board.

11. Water to be Considered Delivered to Land with Appurtenant Water Rights.

Delivery of water to the City at the PFD under this Application shall be considered to be a delivery of water to land with appurtenant water rights. The City shall provide Storrie with a copy of the map on file with the OSE that shows the City's place of use ("POU").

12. Other Conditions to be Included in Transfer Permit. The City agrees that it shall request that the OSE include in the Transfer Permit the following additional conditions of approval, and that the City shall comply with all conditions of approval set forth in the Transfer Permit:

a. The Transfer Permit shall include the condition that the administration of the storage component of the Water Rights, as transferred to the City, shall be in full compliance with the Storrie Decrees, including the condition that diversions, other than as decreed, are enjoined and that the delivery amount to Storrie shareholders and lessees will be managed and administered by Storrie so that consumptive use at the City's POU shall not exceed 50% of the Annual Allocation.

b. The Transfer Permit shall include the condition that the Transfer Permit shall not be exercised to the detriment of valid existing water rights or in a manner that is contrary to the conservation of water within the state or detrimental to the public welfare of the State of New Mexico.

13. Approval of Transfer Permit Not to Impair Storrie Rights. Neither approval of the Transfer Permit, nor exercise of the Water Rights as transferred to the City, shall in any way impair the water rights of Storrie and/or its members, including the decreed point of diversion (GR-18A and GR-18B), decreed point of delivery (GR-18), and October 7, 1909 priority date.

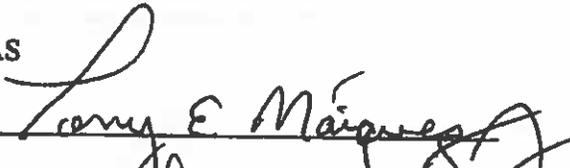
14. Inclusion of Terms of Stipulation in Transfer Permit. The Parties agree to file this Stipulation with the Water Rights Division ("WRD") of the OSE and to request the WRD to include the terms of paragraphs 2-5 and 9-12 of this Stipulation in the Transfer Permit. If the WRD does not include all those stipulated conditions of approval in the Transfer Permit or makes a recommendation inconsistent with the terms of this Stipulation, either party may, at its option, and upon written notice to the OSE, the WRD and the other party, elect to proceed with and present evidence at an evidentiary hearing on the Application. If the OSE grants a Transfer Permit which authorizes diversion or use of the Water Rights in a manner inconsistent with the terms of this Stipulation, either party may, at its option, either: (a) accept the Transfer Permit; or (b) appeal the Transfer Permit decision in accordance with applicable statutes and regulations.

15. Future Applications for Transfer of Storrie Rights. Storrie will be a joint applicant with the City for any future applications for transfer of other Storrie Project rights acquired by the City for the purpose of ensuring consistency of such applications, and the OSE permit approving such application, with the Franken Stipulation. Storrie will not file an aggrievance or request a hearing pursuant to NMSA §7-2-16, appeal or otherwise object to any OSE permit approving such applications, provided the permits are consistent with the Franken Stipulation. Storrie will use its best efforts to persuade its members not to protest any such future transfer applications consistent with the Franken Stipulation.

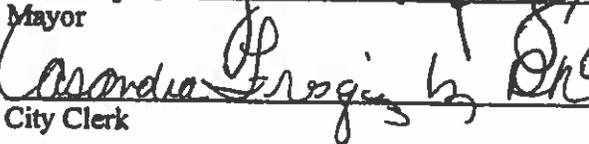
The foregoing Stipulation was executed by and between the Parties in the City of Las Vegas, New Mexico, on the 27<sup>th</sup> day of May, 2009.

CITY OF LAS VEGAS

By:

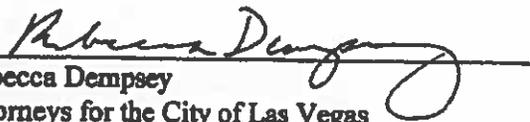
  
\_\_\_\_\_  
Mayor

Attest:

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

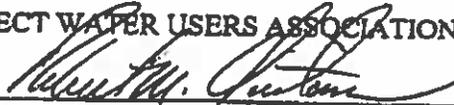
CUDDY & MCCARTHY, LLP

By:

  
\_\_\_\_\_  
Rebecca Dempsey  
Attorneys for the City of Las Vegas  
Post Office Box 4160  
Santa Fe, New Mexico 87502 4160  
(505) 988-4476  
(866) 679-4476 (toll free)  
(505) 954 7373 (fax)  
rdempsey@cuddymccarthy.com

STORRIE PROJECT WATER USERS ASSOCIATION

By:

  
\_\_\_\_\_  
Robert Quintana, President

KASTLER LAW OFFICES, LTD.

By:

  
\_\_\_\_\_  
Paul A. Kastler  
Attorney for Storrie Project Water Users Association  
Post Office Box 130; 188 Hospital Drive  
Raton, NM 87740  
Telephone (505) 445-1065  
Facsimile (505) 445-1055  
klo@bscavalley.com

**AGREEMENT/CONTRACT**

NO. 2072-10

**CITY OF LAS VEGAS**

**EXTENSION OF AGREEMENT FOR LEASE OF RESERVOIR STORAGE  
BETWEEN STORRIE PROJECT WATER USERS ASSOCIATION, A CORPORATION  
AND  
THE CITY OF LAS VEGAS, A NEW MEXICO MUNICIPAL CORPORATION**

THIS EXTENSION OF LEASE AGREEMENT is executed in duplicate originals on the dates of execution hereafter set forth by each party, to be effective on the 1<sup>st</sup> day of January, 2010, by and between Storrie Project Water Users Association, a New Mexico corporation ("Storrie") and the City of Las Vegas, a New Mexico municipal corporation ("City");

- WHEREAS:**
1. Storrie and the City entered into an Agreement for Lease of Reservoir Storage dated July 25, 1989 ("Lease") and that Lease expired by its terms on December 31, 2009; and
  2. The parties have agreed to Extend that Lease for a period of One (1) year only effective January 1, 2010 with some specific modifications herein set forth in this "Extension Agreement".

NOW THEREFORE, it is agreed:

**1. Extension Agreement:**

The City and Storrie herewith extend the terms, provisions, covenants and agreements contained in the Lease, effective January 1, 2010, for a term of only one (1) year, subject to and excepting the modifications of the terms of the Lease set out hereafter in Paragraph 2.

**2. Modifications and Exceptions to the Lease:**

The Lease is modified by this Extension Agreement in the following particulars and the parties agree to the modifications as follows:

- 2.1 The term of the Lease is modified to be for One (1) year only, to commence on January 1, 2010.
- 2.2 This Extension Agreement does not contain, and the City does not have any privilege or right to, any Options to further extend the term of the Lease, such as Lease Paragraphs II(D); and III. All provisions of the Lease referring to Options to Extend the Lease and for any Notices or privileges as to extensions of the Lease are void and of no effect.
- 2.3 The full Lease consideration and compensation shall be the payment from the City to Storrie of the cash sum of \$100,000.00 (One hundred thousand dollars), payable on or before February 20, 2010. If the said consideration and compensation of \$100,000.00 is not paid by 5 :00 p.m. on the 20<sup>th</sup> of February, both the Lease and this Extension Agreement are void and of no effect.

**3. Remaining Terms:**

All of the other, remaining, terms, provisions, covenants and conditions of the Lease are in full effect for a period of one (1) year only.

Dated this year and date first above set forth.

STORRIE PROJECT WATER USERS  
ASSOCIATION

By

  
Its President

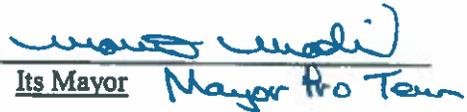
Attest:

By

  
Its Secretary

CITY OF LAS VEGAS

By

  
Its Mayor Mayor Pro Tem

Attest:

By

  
Its City Clerk

SECOND EXTENSION AGREEMENT FOR LEASE  
OF RESERVOIR STORAGE BETWEEN  
STORRIE PROJECT WATER USERS ASSOCIATION CORPORATION  
AND  
THE CITY OF LAS VEGAS, A NEW MEXICO MUNICIPAL CORPORATION

THIS EXTENSION OF LEASE AGREEMENT is executed in duplicate originals on the dates of execution hereafter set forth by each party, to be effective on the 1<sup>st</sup> day of January, 2011, by and between Storrie Project Water Users Association, a New Mexico corporation ("Storrie") and the City of Las Vegas, a New Mexico municipal corporation ("City");

- WHEREAS: 1. Storrie and the City entered into an Agreement for Lease of Reservoir Storage dated July 25, 1989 ("Lease") and that Lease expired by its terms on December 31, 2009; and
2. In the first Extension Agreement the parties agreed to Extend that Lease for a period of One (1) year only effective January 1, 2010 with some specific modifications; and
3. The parties have agreed upon an extension of the Lease for the calendar years 2011, 2012 and 2013.

NOW THEREFORE, it is agreed:

1. **Extension Agreement:**

The City and Storrie herewith extend the terms, provisions, covenants and agreements contained in the Lease, effective January 1, 2011, for a term of three (3) years commencing January 1, 2011, subject to the modifications of the terms of the Lease set out hereafter in Paragraph 2.

2. **Modifications and Exceptions to the Lease:**

The Lease is modified by this Extension Agreement in the following particulars and the parties agree to the modifications as follows:

- 2.1 The term of the Lease is modified to be for Three (3) years, to commence on January 1, 2011 and to be effective for the calendar years 2011, 2012 and 2013.

- 2.2 This Extension Agreement does not contain, and the City does not have any privilege or right to, any Options to further extend the term of the Lease, such as Lease Paragraphs II(D); and III. . All provisions of the Lease referring to Options to Extend the Lease and for any Notices or privileges as to extensions of the Lease are void and of no effect.
- 2.3 The full lease consideration and compensation shall be the payment from the City to Storrie of the lump sum cash: (1) of \$100,000.00 (One hundred thousand dollars) on or before February 20, 2011, for the lease consideration for the calendar year 2011; (2) of \$125,000 (One hundred twenty five thousand dollars) payable on or before February 20, 2012, for the lease consideration for the calendar year 2012; and (3) of \$150,000.00 (One hundred fifty thousand dollars) payable on or before February 20, 2013, for the lease consideration for the calendar year 2013. If the said consideration and compensation each year is not paid by 5:00 p.m. on the 20<sup>th</sup> of February of each year, both the Lease and this Extension Agreement are void and of no effect.
- 2.4 All covenants of consideration and increases thereof in the Lease are terminated and void.

**3. Remaining Terms:**

All of the other, remaining, terms, provisions, covenants and conditions of the Lease are in full effect for a period of this lease extension.

Dated this year and date first above set forth.

**SIGNATURE PAGE FOLLOWS**

STORRIE PROJECT WATER USERS  
ASSOCIATION

By 

Its President

Date 10-15-10

Attest:

By 

~~Its Secretary~~ VICE PRESIDENT

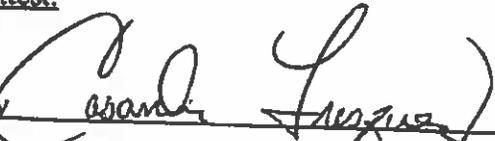
CITY OF LAS VEGAS

By 

Its Mayor

Date 10-14-10

Attest:

By 

Its City Clerk

**RESOLUTION 13-15**

**A RESOLUTION PROMOTING JOINT EFFORTS BETWEEN THE STORRIE LAKE PROJECT WATER USERS ASSOCIATION AND THE CITY OF LAS VEGAS TO PROMOTE WATER EFFICIENCY AND WATER CONSERVATION**

**WHEREAS**, the City of Las Vegas strongly encourages cooperation between the major stakeholders of the region to improve limited water supply and to make the most efficient use of water to preserve this life sustaining commodity for our community; and

**WHEREAS**, improved water conservation and efficiency increases water supply available for the entire community; and

**WHEREAS**, the Storrie Lake Project Water Users Association is a private entity which owns water in Storrie Lake and where the City of Las Vegas leases water storage; and

**WHEREAS**, the City of Las Vegas is in need of additional water and water storage to meet current and future needs of its residents.

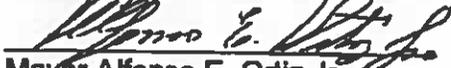
**WHEREAS**, both Storrie Lake Project Water Users Association and the City of Las Vegas understand the economic, agricultural and benefit to quality of life that Storrie Lake, McAllister Lake and the National Wildlife Refuge have on our community; and

**WHEREAS**, there is a need for improving the conveyance system to increase water available in storage and management of water storage for both the City of Las Vegas and Storrie Lake; and

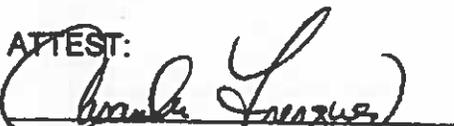
**WHEREAS**, a cooperative effort is needed to jointly request funding to develop plans for the improvements to the Storrie conveyance system; and

**NOW, THEREFORE, BE IT RESOLVED**, the City of Las Vegas agrees to a public/private partnership with the Storrie Lake Project Water Users Association, to work together to improve the conveyance system for the Storrie Lake Project Water Users Association and work towards establishing permanent supply and storage for the City of Las Vegas at Storrie Lake.

Passed, Approved and Adopted this 20 day of March, 2013

  
Mayor Alfonso E. Ortiz Jr.

ATTEST:

  
Casandra Fresquez, City Clerk

Ordinance No. 14-10

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 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 meeting held on the 18<sup>th</sup> day of February, 2015, 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 Elmer J. Martinez  
City Attorney Dave Romero  
City Clerk Casandra Freguez  
\_\_\_\_\_

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

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CITY OF LAS VEGAS, NEW MEXICO  
ORDINANCE NO. 14-10  
(repealing and replacing Ordinance No. 12-16)

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS VEGAS, NEW MEXICO WATER UTILITY SYSTEM IMPROVEMENT REVENUE BONDS, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWENTY MILLION AND 00/100 DOLLARS (\$20,000,000.00) FOR THE PURPOSE OF DEFRAYING THE COST OF, 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, 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 may issue bonds to finance outstanding bonds"); and

WHEREAS, the City 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 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 \$20,000,000 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;
- (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.

**“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 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 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.

**“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.

**“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 \$20,000,000, 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 Bonds constitute a Parity Obligation within the meaning of any Loan Agreements.

## **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 \$20,000,000. 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 VIII  
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 any outstanding loans or bonds 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 therefore 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 too 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 any outstanding bonds or outstanding loans obligating at a redemption price equal to the principal amount of the amount 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 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 maintains 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. 14-10  
(repealing and replacing Ordinance No. 12-16)

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS VEGAS, NEW MEXICO WATER UTILITY SYSTEM IMPROVEMENT REVENUE BONDS, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWENTY MILLION AND 00/100 DOLLARS (\$20,000,000.00) FOR THE PURPOSE OF DEFRAYING THE COST OF 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 18<sup>th</sup> DAY OF February, 2015.

CITY OF LAS VEGAS, NEW MEXICO

  
\_\_\_\_\_  
Mayor Alfonso E. Ortiz, Jr.

[SEAL]

ATTEST:

  
\_\_\_\_\_  
Casandra Fresquez, City Clerk

Councilor Vincent Howell moved for the adoption of the foregoing City Ordinance No. 14-10, and the motion was duly seconded by Councilor David L. 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 Vincent Howell  
Councilor Tonita Gurule-Giron  
Councilor David L. Romero

Those Voting Nay:

\_\_\_\_\_  
\_\_\_\_\_

Those Absent:

Councilor Joey Herrera stepped out of  
away from his seat and missed voting on Item

3 Councilors having voted in favor of said motion, City Clerk Fresno 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 18<sup>th</sup> day of February, 2015.

Alfonso E. Ortiz, Jr.  
Mayor Alfonso E. Ortiz, Jr.

[SEAL]

ATTEST:

Casandra Fresquez  
Casandra Fresquez, City Clerk

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

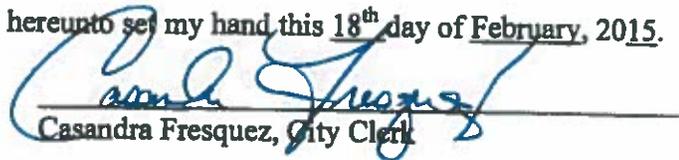
I, Casandra Fresquez, the duly qualified, and acting City Clerk of Las Vegas, New Mexico (the "City"), do hereby certify:

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 February 18<sup>th</sup>, 2015, 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. 14-10.

IN WITNESS WHEREOF, I have hereunto set my hand this 18<sup>th</sup> day of February, 2015.

  
Casandra Fresquez, City Clerk

[SEAL]

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 02/05/15

**DEPT:** Utilities

**MEETING DATE:** 02/18/15

**ITEM/TOPIC:** Conduct a public hearing and adopt Ordinance No. 14-10 Bond Water System improvements.

**ACTION REQUESTED OF COUNCIL:** Approval/Disapproval to conduct a public hearing and adopt Ordinance No. 14-10.

**BACKGROUND/RATIONALE:** Ordinance No. 14-10 will repeal and replace Ordinance 12-16 which was approved at the November 19, 2012 City Council Meeting. This is a bond ordinance in the maximum aggregate principal amount of \$20,000,000 and will authorize the issuance of one or more series of the New Mexico water utility loan system improvement revenue bonds based on the agreement between the City and the NM Finance Authority and for improving the City's water utility system. Bond Ordinance 12-16 expired on November 19, 2014 and needs to be extended.

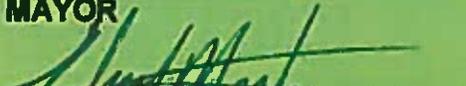
**STAFF RECOMMENDATION:** Conduct a public hearing and adopt ordinance.

**COMMITTEE RECOMMENDATION:** This item will be discussed at the regular Utility Advisory Committee meeting on February 10, 2015. Their recommendation will be provided at the Council Meeting.

**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

  
ELMER J. MARTINEZ  
CITY MANAGER

\_\_\_\_\_  
**PURCHASING AGENT  
(FOR BID/RFP AWARD)**

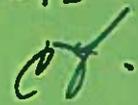
Approved to form 1-28-15

  
SUBMITTER'S SIGNATURE

\_\_\_\_\_  
ANN MARIE GALLEGOS  
FINANCE DIRECTOR  
(PROCUREMENT)

\_\_\_\_\_  
DAVE ROMERO  
CITY ATTORNEY  
(ALL CONTRACTS MUST BE  
REVIEWED)

Approved on 2-18-15  
Published on 2-23-15.  
Effective on 2-28-15



Scanned to Shawn/Utilities.

publish monday  
2/23/15

## SETTLEMENT AGREEMENT

This Settlement Agreement (sometimes hereinafter referred to as the “Agreement”) is entered into this \_\_\_\_ day of February, 2016, by and between the **Storrie Project Water Users Association**, a New Mexico Non-profit Corporation, (hereinafter referred to as “SPWUA”), the **United States of America, on behalf of the United States Fish and Wildlife Service** (hereinafter referred to as the “United States”), and the **City of Las Vegas, New Mexico**, a New Mexico municipal corporation (hereinafter referred to as the “City”). SPWUA, the United States and the City are sometimes hereinafter referred to collectively as the “Parties.”

### RECITALS

A. The City currently owns surface water rights for the diversion of 2,785.36 acre-feet per year from the Gallinas River (2,600 acre-feet per year with a priority date of 1881, and 185.36 acre-feet per year of transferred irrigation rights), and groundwater rights with a diversion amount of 1,500 acre-feet per year; and

B. The City currently has rights to store 294 acre-feet of water in its Bradner Reservoir and 1,415 acre-feet in its Peterson Reservoir (hereinafter referred to as the “City’s Reservoirs”); and

C. The City has filed with the Office of the New Mexico State Engineer (“OSE”) an Application for a Permit to Enlarge Bradner Reservoir to a capacity of 2,300 acre-feet, Application No. SP-2662, (hereinafter referred to as the “City’s Bradner Application”); and

D. The City has filed with the OSE an Application for a Permit for Aquifer Storage and Recovery of Water from the Gallinas River System with a requested capacity of 500 acre-feet per year, OSE File No. SP-2662 (hereinafter referred to as the “City’s ASR Application”); and

E. SPWUA and the United States, among others, have filed written protests with the OSE in response to the City’s Bradner Application and the City’s ASR Application; and

F. As part of the protest process, litigation related to the City’s Bradner Permit Application is ongoing before the OSE’s Hearings Unit, HU No. 14-064; and

G. The Proceeding on Remand from the *Martinez* case is pending in the District Court, *State of New Mexico ex. rel. State Engineer and Pecos Valley Conservancy District v. L.T. Lewis, et al. and United States of America, and State of New Mexico ex. rel. State Engineer and Pecos Valley Conservancy District v. Hagerman Canal Co., et al.*, Nos. 20294 and 22600 Consolidated, CV-WB-0001-000061, Subfile Nos. 14.1, *et al.*, and CV-WA-006-000093, Subfile Nos. 8.39-8.45 (“Remand Proceeding”);

H. The Parties previously entered an Agreement to resolve SPWUA’s and the United States’ objections to the City’s claim in the Remand Proceeding (“2009 Remand Agreement”);

I. A potential dispute has arisen among the Parties concerning the City's Amended Statement of Claim on Remand;

J. The City, SPWUA, the United States, the Water Rights Division of the OSE, and others have participated in a formal mediation process under the supervision of a mediator from the OSE's Hearings Unit in an effort to settle the ongoing and pending administrative and judicial litigation among the parties;

K. As a result of that mediation process and further direct negotiations among the Parties, the Parties have agreed to settlement terms that would provide for: (1) SPWUA to sell and for the City to purchase permanent storage capacity in Storrie Reservoir for the purchase price and pursuant to the other terms and conditions of the Agreement for the Purchase and Sale of a Storage Easement and Bulk Water in Storrie Reservoir (hereinafter referred to as the "Purchase and Sale Agreement") entered into concurrently with this Agreement and the Storage Easement in Storrie Reservoir to be conveyed by SPWUA to the City at the closing on that Purchase and Sale Agreement ("Closing"); (2) SPWUA to sell and the City to purchase 1,200 acre-feet of bulk water in Storrie Reservoir for the purchase price and pursuant to the other terms and conditions of the Purchase and Sale Agreement; and (3) settlement of the pending administrative and judicial litigation among the Parties under the terms of this Settlement Agreement upon Closing on the Purchase and Sale Agreement;

L. In support of this Agreement, on December 7, 2015, the Parties obtained an order from the OSE's Hearings Unit staying proceedings on the City's Bradner Application pending completion of this Agreement.

### **TERMS OF AGREEMENT**

The Parties agree to carry out the following actions and abide by the following covenants and conditions:

1. City's Bradner Application.
  - a. Within ten days following execution of this Agreement, the Parties shall jointly request the OSE's Hearings Unit to extend the stay on the City's Bradner Application until Closing on the Purchase and Sale Agreement.
  - b. Upon Closing on the Purchase and Sale Agreement, SPWUA and the United States shall withdraw their protests to the City's Bradner Application. Subsequent to Closing on the Purchase and Sale Agreement, SPWUA and the United States will cooperate in good faith with the City in taking actions to assist the City in obtaining the Bradner Permit.
2. City's ASR Application.
  - a. Within ten days following execution of this Agreement, SPWUA and the United States shall file notice advising the OSE that they waive any objection to the City

proceeding with the pilot project associated with the City's ASR Application, and the Parties shall jointly request the OSE to stay further proceedings on the remaining aspects of the City's ASR Application until Closing on the Purchase and Sale Agreement.

- b. Upon Closing on the Purchase and Sale Agreement, SPWUA and the United States shall withdraw their protests to the City's ASR Application.

3. Remand Proceeding.

- a. Within ten days following execution of this Agreement, the Parties shall: (1) jointly notify the Special Master that they have resolved their potential disputed issues regarding the City's Amended Statement of Claim on Remand, contingent on the Closing on the Purchase and Sale Agreement; and (2) request the Special Master to stay filing of proposed findings of fact and conclusions of law and briefing on the potential disputed issues between the Parties to this Settlement Agreement in the Remand Proceeding until Closing on the Purchase and Sale Agreement. If the Special Master declines to grant the requested stay, the Parties shall confer and seek a resolution consistent with the goals and objectives of this Agreement and the Purchase and Sale Agreement.

- b. Upon Closing on the Purchase and Sale Agreement, SPWUA and the United States shall file and serve upon the Special Master assigned to the Remand Proceeding a notice that the Parties have resolved their potential disputed issues regarding the City's Amended Statement of Claim on Remand and that the Parties will not be filing any further briefing.

4. City's storage of up to 3,300 acre-feet of Gallinas River water. Upon Closing on the Purchase and Sale Agreement:

- a. SPWUA and the United States agree that the City can store in any available storage facility, up to 3,300 acre-feet of water diverted from the Gallinas River and its tributaries (inclusive of the City's existing storage water rights, permits and licenses, and the storage right sought by the City's Bradner Application and the Storage Easement to be conveyed to the City pursuant to the Purchase and Sale Agreement), prior to SPWUA's diversion and storage of water from the Gallinas River, with the right to fill and refill such storage without limitation as to the rate and timing of the City's diversions into storage, and that SPWUA and the United States will not assert that any such diversions into storage would be detrimental to or impair the water rights or storage rights of SPWUA or the United States, would be contrary to the conservation of water within the state, or would be detrimental to the public welfare of the state.

- b. SPWUA and the United States agree that they waive and release all protests, contentions, defenses, claims and objections they may have to, and will not oppose on any grounds in any forum or proceeding, including but not limited to

the Bradner Application, other pending and future storage or water right applications filed with the OSE by the City or other administrative actions or proceedings by the OSE, storage by the City in any available storage facility of up to 3,300 acre-feet of water diverted from the Gallinas River or its tributaries, with the right to fill and refill such storage without limitation as to the rate and timing of the City's diversions into storage.

- c. To the extent permitted in paragraphs 8 and 9, below, SPWUA and the United States retain the right to protest any future applications by the City for permits to change the place, purpose, or point of diversion of water rights for diversions from the Gallinas River or its tributaries to the City's municipal water system, including the right to store the transferred water in Storrie Reservoir, as well as any future applications by the City for permits to appropriate surface water of the Gallinas River or its tributaries, including the right to store the transferred water in Storrie Reservoir.
- d. The Parties agree that they will work proactively and in good faith with the OSE to ensure that the City's diversions of Gallinas River water into storage will be administered through development of Active Water Resources Management ("AWRM") protocols that are consistent with this Agreement.

5. City's applications for storage exceeding 3,300 acre-feet of Gallinas River water.

- a. The City may file future applications with the OSE to store more than 3,300 acre-feet of water diverted from the Gallinas River. SPWUA and the United States shall retain the right to protest, on any and all grounds, any future applications by the City for permits for storage of more than 3,300 acre-feet diverted from the Gallinas River.
- b. SPWUA and the United States agree that bulk water purchased from SPWUA or its shareholders, including the 1,200 acre-feet of bulk water the City is purchasing pursuant to the Purchase and Sale Agreement, reclaimed water, groundwater pumped through wells in the City's existing Taylor Well Field, and water diverted from sources other than the Gallinas River, its tributaries or hydrologically connected groundwater sources, shall not be considered to be water diverted from the Gallinas River for purposes of this Agreement.

6. City's applications for storage of non-Gallinas River water. Upon Closing on the Purchase and Sale Agreement:

- a. SPWUA and the United States agree that they waive any and all objections that they have to the City's storage of water which is not diverted from the Gallinas River, its tributaries, or hydrologically connected groundwater sources (including reclaimed water, water diverted from other river basins, and groundwater pumped through wells in the City's existing Taylor Well Field and delivered into storage) in any of the City's available storage facilities, including in Storrie Reservoir

under the terms of the Purchase and Sale Agreement and the Storage Easement, and that they will not protest any future applications by the City for permits for such storage. Notwithstanding the right generally reserved by SPWUA and the United States to object to and protest future applications by the City to store groundwater from sources hydrologically connected to the Gallinas River and its tributaries, SPWUA and the United States waive any and all objections concerning the City's storage of groundwater pumped through wells in the City's existing Taylor Well Field and delivered into storage, provided that the water quality limitations of subsection 8.02 of the Purchase and Sale Agreement and paragraph 6.c. below are satisfied.

- b. The boundaries of the City's existing Taylor Well Field incorporate the entirety of the City-owned Taylor Ranch property situated west of the "Creston" and within the Abeyta Canyon and Agua Zarca watersheds as shown on United States Geological Survey 7.5 Minute Series Ojitos Frios and Las Vegas Quadrangle maps.
  - c. The City agrees that, as required by subsection 8.02 of the Purchase and Sale Agreement, except for water the City owns based upon its ownership of shares in SPWUA, bulk water purchased from water in storage in Storrie Reservoir, water diverted from the Gallinas River upstream from SPWUA's intake canal and stored in Bradner and/or Peterson Reservoirs and later delivered from those reservoirs to Storrie Reservoir, and water diverted from the Gallinas River upstream from SPWUA's intake canal, all other water stored by the City in Storrie Reservoir, including reclaimed water, shall meet or exceed applicable numeric ground water standards established by agencies having jurisdiction, which standards are currently set forth at NMAC 20.6.2.3103.
  - d. As addressed in paragraph 10, below, SPWUA and the United States retain the right to protest, on any and all grounds, any future applications by the City for permits for new appropriations of groundwater, or to change the place, purpose, or point of diversion of groundwater rights, including the right to store such groundwater, outside the boundaries of the City's existing Taylor Well Field.
7. City's enlargement of diversion and delivery capacity for water diverted from Gallinas River. Upon Closing on the Purchase and Sale Agreement, SPWUA and the United States agree not to protest or oppose the City increasing the capacity of its diversion and delivery of water from the Gallinas River to any and all of the City's storage facilities from 14.2 cubic feet per second ("cfs") to 40 cfs, provided that any modification, improvement or enlargement of the City's inlet facilities into Storrie Reservoir shall be subject to the provisions of subsections 10.02 to 10.04, 14.01 to 14.04, and 14.07 of the Purchase and Sale Agreement.
8. Protest of City's applications to change water rights to municipal use. Upon Closing on the Purchase and Sale Agreement:

- a. Limited protests of change of water right applications for up to 3,300 acre-feet of storage of Gallinas River water. SPWUA and the United States retain the right to protest any future applications by the City for permits to change the place, purpose, or point of diversion of water rights for diversions from the Gallinas River or its tributaries to the City's municipal water system, including the right to store the transferred water in any of the City's available storage facilities, including in Storrie Reservoir, provided that, to the extent such future applications are within the 3,300 acre-feet of storage of Gallinas River water for which the Parties have agreed the City may seek approval, the grounds of any such protest shall be limited as follows. SPWUA and the United States may protest any such future applications only on the grounds that the underlying water rights are not valid, and/or that the proposed change would be detrimental to or would impair existing water rights, including the claim that the amount of the diversion and consumptive use proposed for transfer is not supported by the water right's historic beneficial use. Any such protest by SPWUA or the United States may not, however, include any claim, argument or defense that:
- i. the priority of the City's diversions into storage should have a priority date as of the date of the storage application, or that the City's right to store such water should be based on the priority dates of the City's storage rights or reservoirs rather than the priority date of the City's underlying diversion rights;
  - ii. City storage of water in excess of the amount adjudicated in the City's 2011 Amended Judgment, or diversions of water to storage at a greater diversion rate or different timing of diversion, with a priority senior to October 7, 1909, or based on the priority date of the City's underlying diversion rights rather than the priority dates of the City's storage rights or reservoirs, would:
    1. be detrimental to existing water rights;
    2. be contrary to the doctrine of prior appropriation, the conservation of water within the state, or the public welfare of the state.
- b. Unlimited protests of change of water right applications for storage exceeding 3,300 acre-feet of Gallinas River water. SPWUA and the United States retain the right to protest, on any and all grounds, any future applications by the City for permits to change the place, purpose, or point of diversion of water rights from the Gallinas River or its tributaries to the City's municipal water system, including the right to store the transferred water in Storrie Reservoir, to the extent such future applications are for storage of an amount that would (cumulative with the City's existing rights and applications) exceed the 3,300 acre-feet of storage of Gallinas River water which the Parties have agreed the City may seek approval with limited retained right to protest by SPWUA and the United States as addressed in subparagraph a. above.

9. Protest of City's applications to appropriate new surface water rights. Upon Closing on the Purchase and Sale Agreement, SPWUA and the United States retain the right to protest, on any and all grounds, any future applications by the City for permits for new appropriations of surface water, except as otherwise provided in paragraphs 5, 6 and 8 above).
10. Protest of City's applications to appropriate or change groundwater rights. Upon Closing on the Purchase and Sale Agreement, SPWUA and the United States retain the right to protest, on any and all grounds, any future applications by the City for permits for new appropriations of groundwater, or to change the place, purpose, or point of diversion of groundwater rights, outside the boundaries of the City's existing Taylor Well Field.
11. Good faith attempt to resolve disputes and avoid protests. Upon Closing on the Purchase and Sale Agreement:
  - a. As to water rights that may in the future be appropriated, purchased or leased by the City for storage in any of the City's reservoirs, or in the City's storage space in Storrie Reservoir, or by SPWUA or the United States for storage in Storrie Reservoir, each party shall provide notice to the other party of its intention to transfer that water right for storage in the reservoir.
  - b. To the extent protests are permitted by this Agreement, any party proposing to protest an application by the other party to shall first consult with the other party or parties prior to filing such a protest. The parties shall attempt in good faith to resolve the dispute and avoid the need for the filing of the protest.
12. SPWUA's Authority to Execute and Implement Agreement. Pursuant to the Corporate Resolution and Consent attached as Appendix 6 to the Purchase and Sale Agreement, which was adopted by the unanimous vote of SPWUA's Board of Directors, and approved and ratified by an affirmative vote of shareholders owning no less than eighty-three and one-third percent (83 1/3 %) of the outstanding shares in SPWUA, each of whom has signed and consented to the Corporate Resolution and Consent in their representative and individual capacities, SPWUA represents and warrants that SPWUA, through its President, is fully authorized to execute this Agreement and to abide by the covenants and carry out actions described in this Agreement.
13. City's Authority to Execute and Implement Agreement. Pursuant to the Council Resolution attached as Appendix 7 to the Purchase and Sale Agreement, the City represents and warrants that the City, through its Mayor, is fully authorized to execute this Purchase Agreement and to abide by the covenants and carry out the actions described in this Agreement.
14. Termination of Agreement. If, for any reason, the Closing on the Purchase and Sale Agreement does not occur by December 31, 2017, this Agreement will terminate, unless the Parties agree in writing to extend this Agreement. If this Agreement terminates, the

Parties will request that the stays be lifted on the City's Bradner Application, the City's ASR Application, and the Remand Proceeding, and request that litigation resume on those matters.

15. Agreement not to be used against Parties. The Parties acknowledge and agree that this Agreement has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including ongoing administrative and judicial litigation, by compromise and settlement, and that nothing in this Agreement or in the Purchase and Sale Agreement, or any documents agreed to or filed by the Parties in order to implement this Agreement or the Purchase and Sale Agreement, or any offers, compromises, statements, documents, submittals and communications made or tendered in the course of negotiating or implementing this Agreement or the Purchase and Sale Agreement, shall be construed as admissions of fact or theory of law or tendered or used as evidence or in support of legal argument to support or oppose any Party's claims, applications, objections or protests in any administrative or judicial litigation, other than for interpretation or enforcement of this Agreement, including enforcement of the releases and waivers specified herein, or for any purpose permitted by N.M.R.E. 408 or F.R.E. 408.
16. Execution of further documents necessary to implement Agreement. The Parties agree to enter into and execute such other and further documents and instruments as may be reasonably necessary to carry out the terms of this Agreement.
17. Survival. The terms of this Agreement shall survive the Closing on the Purchase and Sale Agreement.
18. Amendment. This Agreement may be amended only upon such terms and conditions as shall be agreed upon by the Parties in writing, subject to all required approvals and ratifications by the City Council for the City of Las Vegas and the SPWUA Board of Directors and, if required, the signatory shareholders to the Corporate Resolution and Consent in their representative and individual capacities.
19. Captions. Any captions or headings in this Agreement are solely for purposes of organization and the convenience of the Parties, are not a part of the agreements reached by the Parties and shall not be used for the interpretation or determination of the validity of the Agreement or any provision thereof.
20. Severability. In case any one or more of the provisions of this Agreement or the application thereof shall be invalid or unenforceable in any respect, the validity and enforcement of the remaining provisions and any other application thereof shall not in any way be affected or impaired.
21. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with and governed by the laws of the State of New Mexico.

22. Litigation Costs.In the event of litigation or other legal action between the City and SPWUA and/or the United States, the non-prevailing party in the litigation or other legal action shall pay any necessary costs, including reasonable attorneys' fees, expenses, costs of collection, and other costs which the prevailing party shall incur in enforcing this Agreement.

EXECUTED on the dates written below:

**Storrie Project Water Users Association**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert Quintana  
President  
Storrie Project Water Users Association

**United States Fish and Wildlife Service**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Aaron Archibeque  
Regional Chief  
National Wildlife Refuge System  
United States Fish and Wildlife Service

**City of Las Vegas**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor  
City of Las Vegas

**AGREEMENT FOR THE PURCHASE AND SALE OF A STORAGE EASEMENT  
AND BULK WATER IN STORRIE RESERVOIR**

This Agreement for the Purchase and Sale of a Storage Easement and Bulk Water in Storrie Reservoir (“Purchase Agreement”) is entered into this \_\_\_\_ day of February, 2015, by and between the **City of Las Vegas, New Mexico**, a New Mexico municipal corporation (the “City”), and the **Storrie Project Water Users Association**, a New Mexico non-profit corporation organized as a mutual benefit reservoir company (“SPWUA”) (the City and SPWUA sometimes hereinafter referred to individually as the “Party” and collectively as the “Parties).

SPWUA and the City hereby agree as follows:

**Section 1. Purchase and Sale of Storage Easement.**

- 1.01 The City agrees to purchase from SPWUA and SPWUA agrees to sell and convey to the City a permanent storage easement in Storrie Lake Reservoir located near Las Vegas, New Mexico (“Storrie Reservoir” or the “Reservoir”).
- 1.02 The purchase price for the storage easement shall be Twelve Million Dollars (\$12,000,000), plus any escalation in the purchase price pursuant to subsection 7.06 below, payable in full by the City to SPWUA at closing as described and conditioned in subsection 7.07 below.
- 1.03 The storage easement shall be created and conveyed in the form and content of the instrument attached hereto and incorporated herein by reference as Appendix 1 (“Storage Easement”), shall constitute an interest in real property, and shall grant the City the right to deliver and store up to 2,300 acre feet of water in Storrie Reservoir on a permanent basis, and the right to fill and refill and to release such water in the City’s sole discretion, all in accordance with the terms of this Purchase Agreement.

- 1.04 The Storage Easement shall grant the City the right to store up to 2,300 acre feet of water above the elevation of the “Dead Pool,” as defined in subsection 16.01 below.
- 1.05 The Storage Easement shall be recorded in the land records of San Miguel County and shall constitute notice to the world of the existence, conveyance, permanent nature and scope of the City’s rights under the Storage Easement and this Purchase Agreement.
- 1.06 The Storage Easement shall attach to the real property comprising Storrie Reservoir owned by SPWUA, the legal description of which is attached hereto and incorporated herein as Appendix 2 (the “Land”).
- 1.07 The Storage Easement shall run with the Land in the sense that the rights of the City to deliver, store and release its water as provided in the Storage Easement and this Purchase Agreement shall permanently burden and encumber the Land.

**Section 2. Purchase and Sale of Bulk Water.**

- 2.01 The City agrees to purchase from SPWUA and SPWUA agrees to sell to the City 1,200 acre feet of bulk water stored in Storrie Reservoir.
- 2.02 The purchase price for the bulk water shall be Three Hundred Sixty Thousand Dollars (\$360,000), plus any escalation in the purchase price pursuant to subsection 7.06 below, payable in full by the City to SPWUA at closing as described in subsection 4.03 and subsection 7.08 below.
- 2.03 The sale of bulk water shall be documented by an executed bill of sale in the form and content of the instrument attached hereto and incorporated herein as Appendix 3 (“Bill of Sale”), which shall grant the City 1,200 acre feet of water

stored in Storrie Reservoir, and the right to release such water in accordance with the terms of this Purchase Agreement.

**Section 3. Settlement Agreement.**

- 3.01 Concurrently with the execution of this Purchase Agreement, the City, SPWUA and the United States of America, on behalf of the United States Fish and Wildlife Service (the “United States”), have executed a Settlement Agreement among those three parties (the “Settlement Agreement”). This Purchase Agreement and the Settlement Agreement are conditioned and dependent upon each other. The two agreements are to be read together to support an outcome that is consistent with the rights and obligations contained in the two agreements, including the City’s right to store water in Storrie Reservoir under the terms of the agreements.
- 3.02 The Settlement Agreement sets forth terms for settlement of ongoing and pending administrative and judicial litigation among the parties to that Settlement Agreement.
- 3.03 The Settlement Agreement also specifies limitations on and retained rights of SPWUA and the United States to protest future applications by the City.
- 3.04 The Settlement Agreement provides that, if for any reason the closing on this Purchase Agreement does not occur by December 31, 2017, the Settlement Agreement will terminate unless the Parties mutually agree to extend the closing date and that, in the event of termination of the Settlement Agreement, the Parties shall have no further rights or obligations under the Settlement Agreement.
- 3.05 Pursuant to subsection 7.05 below, this Purchase Agreement will likewise terminate if closing does not occur by December 31, 2017, unless the Parties

mutually agree to extend the closing date, and in the event of termination of this Purchase Agreement, the Parties shall have no further rights or obligations under this Purchase Agreement.

**Section 4. Permits for City's Use of Storrie Reservoir.**

4.01 **Storage Permit.** Within ten (10) days following execution of this Purchase Agreement, the Parties shall file a joint application with the Office of the State Engineer ("OSE"), substantially in the form attached hereto as Appendix 4, Alternative A or B ("Storrie Storage Application"), for a permit for the City's storage of water in Storrie Reservoir ("Storrie Permit"). As addressed in subsection 7.01(a) below, issuance of the final non-appealable Storrie Storage Permit in a form acceptable to the City and to SPWUA is a condition precedent to their obligations to close on the purchase of the Storage Easement from SPWUA as described in subsection 7.07 below. Subject to a duty of good faith and fair dealing, if at any stage of the proceedings on the Storrie Storage Application before the OSE or in the district court, it becomes apparent that a permit would be denied, or a permit would be issued that would not allow the City to fully exercise its rights to deliver, store and release water in and from Storrie Reservoir as provided by this Purchase Agreement, including administration by the OSE in a manner that would be acceptable to the City, the City shall have the right to terminate this Purchase Agreement.

4.02 **Bulk Water Permit.** Within ten (10) days following execution of this Purchase Agreement, the Parties shall file a joint application with the OSE, substantially in the form attached hereto as Appendix 5 ("Bulk Water Application"), for a final

non-appealable permit for the City's use of bulk water stored in Storrie Reservoir ("Bulk Water Permit"). The Bulk Water Application will seek Emergency Approval for the City's use of bulk water stored in Storrie Reservoir ("Temporary Bulk Water Permit"). As addressed in subsection 7.02(a) below, issuance of either the Temporary Bulk Water Permit, if it is issued, or the Bulk Water Permit, in a form acceptable to the City, is a condition precedent to the City's obligation to close on its purchase of 1,200 acre feet of bulk water from SPWUA as described in subsection 7.08 below. Issuance of a Temporary Bulk Water Permit, or of a final Bulk Water Permit, in a form acceptable to the City, is not a condition precedent to the closing of the purchase and sale of the Storage Easement described in subsection 7.01 below.

- 4.03 **Consideration for City's Storage of Bulk Water.** Upon the OSE's issuance of the Temporary Bulk Water Permit, or the Bulk Water Permit, in a form acceptable to the City, the City shall close on its purchase of 1,200 acre feet of bulk water from SPWUA as described in subsection 7.08 below and, as consideration for the right to store that bulk water in Storrie Reservoir, the City shall pay SPWUA the sum of \$62,608.70 per year (prorated monthly at \$5,217.39 per month and daily at \$170.00 per day), commencing on the date the City begins to store the bulk water in Storrie Reservoir and ending: (a) on the conveyance of the Storage Easement to the City under the terms of this Purchase Agreement, (b) if this Purchase Agreement is terminated, ending on the date the City's right to store bulk water expires or terminates under the Temporary Bulk Water Permit, or the Bulk Water Permit, (c) under subsection 4.04 of this Purchase Agreement, or, (d) at the

election of the City, the date the City releases all of the bulk water from Storrie Reservoir. The cost of temporary storage of the bulk water shall accrue monthly on a calendar month basis and shall be invoiced by SPWUA and paid by the City on a quarterly basis. The funds to be budgeted and used by the City for payment of the right to temporarily store bulk water in Storrie Reservoir shall be funds exclusively derived from sale of, or charges levied for, water to the City's customers ("revenue"). SPWUA expressly agrees that it will look only to such budgeted revenue for the satisfaction of the payment obligations of the City under this subsection.

- 4.04 **City's Use of Bulk Water Stored under Temporary Bulk Water Permit if Final Bulk Water Permit Not Issued on Terms Acceptable to the City.** In the event the City closes on its purchase of 1,200 acre feet from SPWUA based on the OSE's issuance of an Temporary Bulk Water Permit, and the OSE ultimately denies the Bulk Water Application or issues a permit on that application that is not acceptable to the City, the City may, if acceptable to the OSE, continue to store until released by the City into its water system any water then stored in Storrie Reservoir in accordance with the Temporary Bulk Water Permit and the terms of this Purchase Agreement, provided that the City's right to continue to store water in the Reservoir shall terminate no later than thirty-six (36) months after termination of this Purchase Agreement.
- 4.05 **Good Faith Cooperation in Prosecuting Applications with OSE.** The Parties will cooperate in good faith in seeking OSE approval of the Storrie Storage Application and the Bulk Water Application and the issuance of the Storage

Permit and the Bulk Water Permit in forms acceptable to the City. Each Party shall be responsible for its own costs in preparing, filing and prosecuting the applications.

**Section 5. SPWUA's Authority to Execute and Implement Purchase Agreement.**

- 5.01 Pursuant to the Corporate Resolution and Consent dated March 7, 2016, a signed copy of which shall be attached hereto as Appendix 6, which Corporate Resolution and Consent has been adopted by the unanimous vote of SPWUA's Board of Directors, and ratified by an affirmative vote of shareholders owning no less than eighty-three and one-third percent (83 1/3 %) of the outstanding shares in SPWUA, each of whom has signed and consented to the Corporate Resolution and Consent in their representative and individual capacities, SPWUA represents and warrants that SPWUA, through its President, is fully authorized to execute this Purchase Agreement and to carry out the purchase and sale transactions described in this Purchase Agreement.
- 5.02 A title commitment provided to the City by SPWUA will confirm that title to the Land on which Storrie Reservoir is located is free and clear of any lien or encumbrance, and that the Storage Easement will be conveyed to the City at closing free and clear of any liens or encumbrances on the title to the Land and the Reservoir. SPWUA represents and warrants that it has the authority and right to provide the City with the required access, access easements, rights-of-way, licenses, and other required approvals, over or under its lands, specified in Sections 15.04 and 15.06.

5.03 Pursuant to the Corporate Resolution and Consent attached hereto as Appendix 6, SPWUA represents and warrants that SPWUA is fully authorized to sell and convey the Storage Easement to the City, conveying the permanent right to the City to store 2,300 acre feet of water in available storage capacity in Storrie Reservoir without causing detriment to SPWUA's business and without impairing the rights or interests of SPWUA's shareholders.

5.04 Pursuant to the Corporate Resolution and Consent attached hereto as Appendix 6, SPWUA represents and warrants that SPWUA is fully authorized to sell and transfer to the City 1,200 acre feet of bulk water in Storrie Reservoir, which bulk water is available for sale to the City pursuant to the terms of this Purchase Agreement without causing detriment to SPWUA's business and without impairing the rights or interests of SPWUA's shareholders.

**Section 6. City's Authority to Execute and Implement Purchase Agreement.**

6.01 The City is a New Mexico municipal corporation.

6.02 Pursuant to the Council Resolution dated February 29, 2016, a signed copy of which is shall be hereto as Appendix 7, the City represents and warrants that the City, through its Mayor, is fully authorized to execute this Purchase Agreement and to carry out the purchase and sale transactions described in this Purchase Agreement.

6.03 The City represents and warrants that it will promptly prepare and process all required submissions for funding and to take all steps required by law to obtain the funding necessary for the City to perform its purchase obligations under this Purchase Agreement and, conditioned upon obtaining the funding approvals

required under New Mexico law, the City will have sufficient funds available on the closing date to perform the City's purchase obligations under this Purchase Agreement.

**Section 7. Closing.**

**7.01 Conditions Precedent to Closing on Purchase and Sale of Storage Easement.**

The following events must occur prior to closing on the purchase and sale of the Storage Easement:

- (a) Issuance of the final non-appealable Storrie Storage Permit by the OSE in a form acceptable to the City and SPWUA.
- (b) The City obtaining the approvals required by law for the funding necessary for the City to purchase the Storage Easement.
- (c) Issuance of an opinion by a certified tax specialist demonstrating that there would be no adverse tax consequences to the SPWUA shareholders caused by SPWUA's acceptance of the purchase price for the Storage Easement.
- (d) SPWUA shall amend Article XII of SPWUA's Articles of Incorporation to provide that SPWUA is a perpetual non-profit corporation under New Mexico law.

**7.02 Conditions Precedent to Closing on Purchase and Sale of Bulk Water.**

The following events must occur prior to closing on the purchase and sale of bulk water:

- (a) Issuance of a Temporary Bulk Water Permit, or the Bulk Water Permit, by the OSE in a form acceptable to the City.

(b) The City obtaining the approvals required by law for the funding necessary for the City to purchase the bulk water.

- 7.03 **Closing Location.** The closing shall take place at the office of the Mayor for the City of Las Vegas.
- 7.04 **Closing Date.** The closing on the purchase and sale of the Storage Easement, and the purchase and sale of bulk water if it has not already occurred, shall take place not later than thirty (30) days after the Storrie Storage Permit becomes a final non-appealable permit, and not later than December 31, 2017, unless the Parties mutually agree in writing to extend the closing date.
- 7.05 **Failure to Meet Conditions Precedent to Closing.** In the event that any of the conditions specified in subsection 7.01 cannot reasonably be accomplished despite the good faith cooperation of the Parties, either Party may elect to terminate this Purchase Agreement without incurring any liability to the other Party. If closing has not occurred by December 31, 2017, this Purchase Agreement shall terminate unless the Parties mutually agree to extend the closing date.
- 7.06 **Escalation of Purchase Price if Closing Date Extended.** In the event that closing does not occur by September 30, 2016, the purchase price for the Storage Easement (\$12 Million) and the purchase price of the bulk water (\$360,000.00), if closing on the purchase of the bulk water has not already occurred, shall be escalated by an annualized factor of one-percent (1.00 %) per annum, applied by a prorata calculation of the period of time commencing on September 30, 2016 and

concluding on the date of closing on the purchase and sale of the Storage Easement, and the date of closing on the purchase and sale of bulk water.

**7.07 Closing of Sale of Storage Easement.** At the closing on the City's purchase of the Storage Easement from SPWUA, the following consideration and documents shall be delivered and filed as appropriate:

- (a) The purchase price for the Storage Easement of Twelve Million Dollars (\$12,000,000), plus any escalation in the purchase price pursuant to subsection 7.06 above shall be delivered by the City to SPWUA;
- (b) SPWUA shall execute and deliver to the City the Storage Easement in the form of Appendix 1;
- (c) SPWUA shall file and deliver to the City the withdrawals of the protests of SPWUA and the United States to the City's Bradner Application in accordance with paragraph 1.b. of the Settlement Agreement;
- (d) SPWUA shall file and deliver to the City the withdrawals of the protests of SPWUA and the United States to the City's ASR Application in accordance with paragraph 2.b. of the Settlement Agreement;

**7.08 Closing on Sale of Bulk Water.** At the closing on the City's purchase of the bulk water from SPWUA, the following consideration and documents shall be delivered:

- (a) The purchase price for the bulk water of Three Hundred Sixty Thousand Dollars (\$360,000), plus any escalation in the purchase price pursuant to subsection 7.06 above, shall be paid by the City to SPWUA.

- (b) SPWUA shall execute and deliver to the City the Bill of Sale in the form of Appendix 3.

**Section 8. City's Right to Store Water.**

- 8.01 The City shall have the right to store water in Storrie Reservoir from any combination of the City's water rights and water owned or leased by the City, including but not limited to water stored in Bradner or Peterson Reservoirs or any future storage facility constructed or purchased by the City, reclaimed water owned by the City which meets the water quality standards described in subsection 8.02 immediately below, water acquired by the City by bulk purchase, and water or water rights from any other source.
- 8.02 Other than water the City owns based upon its ownership of shares in SPWUA, bulk water purchased from water in Storrie Reservoir, water diverted from the Gallinas River upstream from SPWUA's intake canal and stored in Bradner and/or Peterson Reservoir and later delivered from those reservoirs to Storrie Reservoir, and water diverted from the Gallinas River upstream from SPWUA's intake canal, all water stored by the City pursuant to the Storage Easement and this Purchase Agreement shall meet or exceed applicable numeric ground water quality standards established by agencies having jurisdiction; those standards are currently compiled at NMAC 20.6.2.3103.
- 8.03 SPWUA agrees that the City shall not be required to deliver, store or maintain any specific volume or amount of water in connection with the Storage Easement in order to preserve or maintain the City's rights thereunder, and any failure by the City to deliver, store or maintain any specific volume or amount of water shall not

be considered or construed as an abandonment of the City's permanent Storage Easement or the City's rights under this Purchase Agreement.

**Section 9. City's Right to Fill and Refill Its Storage Space and to Carry-Over Storage.**

9.01 The City may fill and refill the City's storage space at Storrie Reservoir to the extent that the City owns or acquires a sufficient quantity of water rights or water to do so, and the City may carry-over storage from one year to the next in the City's storage space, provided that the amount of the City's stored water at any time is limited to 2,300 acre-feet and this amount shall not be exceeded.

9.02 The City's right to carry-over storage from one year to the next includes the right to transfer all or part of the City's remaining prorata portion of its annual allocation of water based on its current and future ownership of shares in SPWUA, as addressed by the Stipulation By and Between the City of Las Vegas and Storrie Project Water Users Association in the matter of File No. SP-0341-14-14 in SD-02662 filed with the OSE on June 2, 2009, provided that the amount of the City's stored water at any time under the Storage Easement and this Purchase Agreement is limited to 2,300 acre feet and this amount shall not be exceeded.

**Section 10. City's Use of its Inlet and Outlet Facilities to Divert Water into and Deliver Water from Storrie Reservoir.**

10.01 Water to be stored by the City pursuant to the Storage Easement and this Purchase Agreement, excepting any bulk water purchased from water in storage in Storrie Reservoir and water the City owns based upon its ownership of shares in SPWUA under OSE File SP-341, shall be diverted into Storrie Reservoir through the City's owned diversion facilities.

- 10.02 Deliveries of the City's stored water from Storrie Reservoir to the City shall be through the City's existing Storrie Reservoir outlet facilities, provided, however, that the City may modify, improve, add to or replace the City's outlet facilities through which it takes delivery of its stored water as permitted and conditioned by Section 15 below.
- 10.03 The City shall be responsible for obtaining any regulatory approvals that are necessary to modify its Storrie Reservoir inlet or outlet facilities from county or state building officials, the OSE, or any other entity having jurisdiction.
- 10.04 SPWUA agrees to be bound by a duty of good faith and fair dealing and to cooperate with and support the City's efforts to modify or improve its inlet or outlet facilities at Storrie Reservoir, provided, however, that the City's modifications shall not adversely affect SPWUA's operation or maintenance of the Reservoir. Any consent required of SPWUA under this subsection shall not be unreasonably withheld.

**Section 11. Releases of City's Stored Water.**

- 11.01 The City shall have the right to release water stored by the City in Storrie Reservoir whenever the City, in its sole discretion, determines this should take place. The City may order deliveries of its water from the Reservoir at any time by providing SPWUA with written notice at least 2 (two) days prior to the time of the proposed release, and SPWUA shall release said water at the requested time no later than two days after receipt of such written notice.
- 11.02 SPWUA agrees that, subject only to *force majeure* acts, as addressed in subsection 13.04 below, the City's storage space in Storrie Reservoir will be

lawfully and physically available to the City at all times under to the Storage Easement and this Purchase Agreement, and that the entire volume of water stored by the City in the Reservoir is capable of being released by means of the City's diversion structures existing as of the date of the closing or as hereafter improved, replaced or modified, or by emergency delivery systems installed in the Reservoir pursuant to subsections 15.05 and 15.06 below, such as stationary or floating pumps as needed to effectuate the City's ability to take delivery of its water.

11.03 SPWUA shall not release or spill any of the water held in storage by the City in Storrie Reservoir without the prior, written consent of the City.

11.04 In the event SPWUA spills or releases water stored by the City without the City's written authorization, SPWUA shall within thirty (30) days replace or "payback" the amount of water which was released or spilled with an equal amount of water stored in Storrie Reservoir.

**Section 12. SPWUA's Use of City's Storage Space.**

12.01 SPWUA shall have the right to use any portion of the City's 2,300 acre feet of storage space in Storrie Reservoir that is not being used by the City. SPWUA shall only be entitled to use the City's unused storage space in the Reservoir until the City needs that capacity, and SPWUA's temporary use of the City's storage space shall in no way affect the amount of water the City has in storage in the Reservoir, or the right of the City to store 2,300 acre feet of water in the Reservoir at any time.

**Section 13. Reservoir Operations.**

- 13.01 SPWUA shall retain the sole responsibility for operation and management of Storrie Reservoir and shall operate and manage the Reservoir in accordance with the terms of the Storage Easement and this Purchase Agreement, and in accordance with the licenses, permits and decrees pertaining to Storrie Reservoir.
- 13.02 SPWUA shall operate and maintain Storrie Reservoir in a safe and effective manner and shall work cooperatively with the City, in good faith, to ensure that the City can recover all of the water the City holds in storage in Storrie Reservoir, less evaporative losses calculated and allocated to the City as described in Section 17 below.
- 13.03 SPWUA shall be responsible for maintaining its Storrie Reservoir intake and outlet facilities and canals and keeping the same in good repair and operation. The City shall have no responsibility for maintaining SPWUA's intake facilities and canals and shall have no liability for maintenance, capital improvements or repair of such facilities or improvements.
- 13.04 Subject to a duty of good faith and fair dealing, SPWUA shall not be obligated to provide storage space for the City during any time that insufficient storage space is available for the amount of water the City is entitled to store in Storrie Reservoir under the Storage Easement and this Purchase Agreement due to *force majeure* acts or conditions, provided, however, that *force majeure* acts or conditions shall not relieve SPWUA of its affirmative obligations to undertake whatever reasonable actions are necessary at the earliest time possible to reestablish the City's ability to store and recover its water on a timely basis.

**Section 14. Regulatory Requirements.**

14.01 In addition to the Storrie Storage Permit addressed in subsection 4.01 above, the right to store water granted by the Storage Easement and this Purchase Agreement may be subject to other applicable statutory and regulatory requirements of the OSE, the Gallinas Water Master, the adjudication court, or other agencies having jurisdiction, and the City and SPWUA agree to work cooperatively and in good faith with one another to ensure that any regulatory approvals and requirements necessary for the City to store water in Storrie Reservoir and to release that water are satisfied.

14.02 SPWUA agrees to concur and join in any required applications or requests for permits, licenses, regulatory approvals or easements for establishing the City's rights to store and withdraw water from Storrie Reservoir. The City and SPWUA shall each be solely responsible for the costs, attorneys' fees, and expenses incurred by each of them for establishing the City's right to store and release water from Storrie Reservoir under its various permits, licenses and decrees.

**Section 15. Improvements, Modifications to the Delivery or Release Infrastructure.**

15.01 If the City is required to repair or construct new facilities located at Storrie Reservoir for delivery of its water into the Reservoir or for releasing its water from the Reservoir, subject to the conditions provided in this Section, the City shall have the right to design and construct such improvements or modifications at the City's sole cost and expense, whether at the present location of the City's facilities or at an alternate location, provided that the improvements or modifications are designed to allow accurate measurement of water deliveries and

releases and the improvements or modifications will not unreasonably interfere with SPWUA's normal operation of the Reservoir.

- 15.02 The plans and specifications for any future improvement, modification, replacement or relocation of the City's facilities located at Storrie Reservoir shall comply with all governmental permitting requirements and shall further require approval by SPWUA prior to construction, which approvals shall not be unreasonably withheld.
- 15.03 All improvements, additions or modifications to the City's diversion structures shall be maintained by the City at the City's sole expense, and shall be accomplished in a manner that will not unreasonably impair or impede SPWUA's ability to store and release water for the City or for SPWUA's shareholders, and such improvements, additions or modifications shall adhere to applicable standards of engineering practice.
- 15.04 SPWUA shall provide, at no cost to the City, required access, access easements, rights-of-way, licenses, and other required approvals, over or under its lands, as necessary for the City to store its water and to improve, construct, repair, replace or relocate the City's inlet or outlet facilities. To the maximum extent practicable, the City shall make use of utility or other easements already available to it, and any facilities connected therewith, so as to not unreasonably burden or impact Storrie Reservoir or unreasonably interfere with SPWUA's operation of the Reservoir.
- 15.05 In the event the City cannot fully take delivery of its water through the City's outlet works, whether due to low Reservoir water levels or other adverse

condition, SPWUA shall allow the City to install emergency delivery systems in the Reservoir, such as stationary or floating pumps, as needed to effectuate the City's ability to take timely delivery of its water. The plans and specifications for any emergency delivery systems shall require approval by SPWUA prior to installation, which approval shall not be unreasonably withheld.

- 15.06 SPWUA shall provide, at no cost to the City, all access, access easements, rights-of-way, licenses, and other required approvals, over or under its lands, as necessary for the City, in its sole discretion, to implement emergency delivery systems. To the maximum extent practicable, the City shall make use of utility or other easements already available to it, and any facilities connected therewith, in such a way as to not unreasonably burden or impact Storrie Reservoir or unreasonably interfere with SPWUA's operation of the Reservoir.
- 15.07 The City may increase the capacity of its diversion and delivery of water from the Gallinas River System to its storage facilities, including its storage capacity in Storrie Reservoir under the Storage Easement and this Purchase Agreement, from 14.2 cubic feet per second to 40 cubic feet per second.
- 15.08 The City agrees that any improvements, repairs or modifications that it may make to the City's facilities for taking delivery of its water out of the Reservoir shall not cause an increase in the volume of the "Dead Pool," *i.e.*, the volume below the existing outlet works of the Reservoir as addressed in Section 16 below.
- 15.09 SPWUA may repair its inlet and outlet works from time to time as needed, but SPWUA shall notify the City in advance that repairs are being made (unless an

emergency exists that requires immediate repairs without consultation), and the nature and duration of the repairs.

- 15.10 The improvements or repairs made by SPWUA to its inlet and outlet facilities shall be designed, planned and constructed in such a manner so as not to adversely affect the City's rights under the Storage Easement and this Purchase Agreement, or the efficient operation of the City's inlet and outlet works. SPWUA intends to modify and replace its delivery canal by constructing a pipeline for delivery of water from Storrie Reservoir to its shareholders. Construction of this pipeline will require the City to modify its outlet works to receive water through that pipeline, and the City shall bear the costs of those particular modifications provided, however, that the City is first provided with SPWUA's plans and specification for review and approval, which approval shall not be unreasonably withheld.

**Section 16. Operations Pertaining to Dead Pool.**

- 16.01 The Parties agree that Reservoir operations pertaining to the "Dead Pool" shall be as described in this Section and subsection 15.08. The elevation of the Storrie Reservoir outlet works is such that not all water can be released from storage by gravity. The volume of storage in the Reservoir located below the elevation of the Storrie Reservoir outlet works is referred to as the "Dead Pool." The actual volume of the Dead Pool is not known by the Parties at this time, however, the Parties currently estimate that the volume of the Dead Pool is 300 acre feet. The estimated volume of the Dead Pool may be adjusted based upon future surveys approved by SPWUA and the City.

- 16.02 SPWUA agrees that it shall not release water from the Reservoir for use by its shareholders or for any other purpose such that the volume of water in the Reservoir would drop below the volume of water that the City has in storage in the Reservoir, plus the estimated volume of the Dead Pool, *i.e.*, the currently estimated volume of 300 acre feet or as adjusted by future surveys. SPWUA will exercise good faith and reasonable care in operating the Reservoir in a manner that avoids causing the volume of water in the Reservoir to drop below the volume that the City has in storage, plus the estimated volume of the Dead Pool. If despite SPWUA's exercise of good faith and reasonable care, the Reservoir level drops to a volume less than the volume of water the City has in storage, plus the estimated volume of the Dead Pool, that condition shall not constitute a breach of SPWUA's obligation under this subsection of this Purchase Agreement or an encroachment on the City's Storage Easement, however, SPWUA shall nevertheless perform its obligations under Section 16.03 below. The Parties acknowledge that, during times of low storage contents in the Reservoir, the water level could fall below the elevation of the outlet works such that the City would not be able to release its water by gravity. At such times, the City may use emergency delivery systems in the Reservoir to release its water, as described in subsections 11.02 and 15.05 & 15.06 above. SPWUA, however, shall not be entitled to use such delivery systems to release any of its water when the water level in the Reservoir has dropped below the elevation of the outlet works.
- 16.03 In the event that the volume of water in the Reservoir drops below the volume of water that the City has in storage, plus the estimated volume of the Dead Pool,

SPWUA agrees to fill the Reservoir to the volume of water that the City is entitled to have in storage based upon its storage account, plus the estimated volume of the Dead Pool with water diverted under SPWUA's water rights and water storage rights at the first opportunity when water is legally and physically available for diversion into storage by SPWUA.

**Section 17. Evaporation Losses.**

17.01 Evaporation losses shall be assessed against the volume of water stored by the City in Storrie Reservoir using the following procedure. Evaporation losses shall be assessed at the annual rate of 2.83 feet per year, according to the following monthly distribution:

Monthly Evaporation in Storrie Reservoir, in feet:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
0.025	0.025	0.14	0.26	0.40	0.48	0.45	0.40	0.34	0.17	0.08	0.06

17.02 The City's storage account shall be assessed evaporation losses at the end of each month by multiplying the incremental average monthly water surface area of the Reservoir attributable to the volume of water the City had in the Reservoir that month (in acres), times the appropriate monthly evaporation loss from the table in subsection 17.01 immediately above. The incremental water surface area attributable to the volume of water stored by the City in the Reservoir shall be determined as the additional water surface area resulting from the storage of the City's water in the Reservoir, *i.e.*, the total water surface area (in acres), minus the water surface area attributable to the volume of water SPWUA has in storage,

including the Dead Pool, all as calculated based on the most current reservoir area/content relationship available.

- 17.03 The above-described incremental method of calculating evaporation losses attributable to the City's storage of water in the Reservoir shall apply at all times when there is water in SPWUA's account in the Reservoir, including in the Dead Pool. If at any time SPWUA has no water in the Reservoir, and the only water stored in the Reservoir is the City's water, the City's storage account shall be assessed actual evaporation.
- 17.04 The incremental method of calculating evaporation losses attributable to the City's storage of water in the Reservoir, as described in subsections 17.01 and 17.02 above, shall continue to apply at times when the volume of water in SPWUA's account falls below the estimated volume of the Dead Pool, *i.e.*, the currently estimated volume of 300 acre feet or as adjusted by future surveys, as long as any of the water in the Dead Pool is water in SPWUA's account.

**Section 18. Records of Diversions and Releases.**

- 18.01 The City and SPWUA shall each maintain accurate records of all water stored and released in and from Storrie Reservoir by each Party, and shall provide such records to the other Party monthly, or more frequently upon request. At any time that the total volume of water stored in the Reservoir is less than 3,000 acre feet, such records shall be maintained by the Parties on a daily basis.
- 18.02 The City and SPWUA shall meter and record all diversions into and releases by the City into and from Storrie Reservoir pursuant to this Purchase Agreement. The City shall meter and record all of its deliveries from Storrie Reservoir using

the City's existing totalizing flow meter located at the toe of the Reservoir, or using such replacement equipment as may be installed by the City from time to time. Such data shall be provided to SPWUA monthly, or more frequently upon request of SPWUA.

- 18.03 SPWUA shall be responsible for incorporating the readings provided by the City into any required filings with the OSE or the adjudication court or other entities. SPWUA shall provide the City final drafts of such filings at least five (5) business days prior to filing.
- 18.04 The City shall keep its totalizing flow meter in good operating condition and shall routinely check the accuracy of the meter. SPWUA shall be entitled, upon prior request to the City, to check the meter and confirm its accuracy.
- 18.05 SPWUA shall be responsible for maintaining a running total of the amount of water stored in and released by the City from Storrie Reservoir pursuant to this Purchase Agreement, including the City's evaporative losses, in addition to maintaining ongoing records of SPWUA's Reservoir storage levels and diversions into and releases from the Reservoir, including daily records of storage levels and diversions into and from the Reservoir during times that the total volume of water stored in the Reservoir is less than 3,000 acre feet.
- 18.06 SPWUA shall provide the data specified in subsection 18.05 above, to the City monthly, or more frequently upon request of the City.
- 18.07 SPWUA shall prepare and file all required reports to the OSE concerning the operation of the Reservoir.

**Section 19. Capital Improvements and Repairs.**

19.01 The City shall pay its proportional share of capital improvement and repair costs incurred in the operation of Storrie Reservoir as specified below, provided the following terms are satisfied:

- (a) SPWUA provides the City with prior written notice detailing the proposed capital improvement or repair costs; and
- (b) The capital improvement and repair costs are reasonably necessary to maintain, improve or safeguard the City's storage capacity in Storrie Reservoir, and are not for the sole benefit of SPWUA or its shareholders.

19.02 Capital improvement and repair costs are generally repairs or replacements of major capital infrastructure. Prior to undertaking any capital improvement or repair pursuant this Section, SPWUA shall consult with the City on a timely basis concerning the proposed improvement or repair, and shall cooperate with the City as to the timing of or payment for such improvement or repair to allow the City to include the cost of such improvement or repair into the City's annual budget. The funds to be budgeted and used by the City for its share of the capital improvement and repair costs shall be funds exclusively derived from sale of, or charges levied for, water to the City's consumers ("revenue"). SPWUA expressly agrees that it will look only to such budgeted revenue for the satisfaction of the payment obligations of the City under this Section.

19.03 For purposes of determining the proportional responsibility of the City and SPWUA's shareholders for capital improvement and repair costs, the total active volume of storage in Storrie Reservoir shall be 21,447 acre feet, the City's storage space shall be 2,300 acre feet, and SPWUA's storage space shall be 19,147 acre

feet, resulting in the proportional responsibility of the City for capital and repair costs of 10.72%, and SPWUA's proportional responsibility of 89.28%.

19.04 If future surveys approved by the City and SPWUA determine that the total volume of active storage in the Reservoir has changed, the Parties' proportional responsibility for capital improvements will change proportionally.

**Section 20. Operation and Maintenance Expenses.**

20.01 The City shall pay its proportional share of ordinary and necessary maintenance costs incurred by SPWUA in the operation of Storrie Reservoir, as specified below, provided that such ordinary maintenance costs are reasonably necessary to operate the Reservoir, to maintain or safeguard the City's storage capacity or water stored in the Reservoir, and are not for the sole benefit of SPWUA or its shareholders. Such ordinary maintenance costs could include, but are not limited to, the costs of dam upkeep and maintenance, including woody vegetation control, rodent control, maintenance of rip-rap, maintenance of Reservoir outlet works, and any other maintenance required by the OSE.

20.02 SPWUA shall confer with the City in a timely manner regarding anticipated maintenance costs for the applicable year. SPWUA shall invoice the City at the end of each year for the City's allocable share of ordinary and necessary maintenance expenses incurred during that year. The funds to be budgeted and used by the City for payment of its share of ordinary and necessary maintenance costs shall be funds exclusively derived from sale of, or charges levied for, water to the City's consumers ("revenue"). SPWUA expressly agrees that it will look

only to such budgeted revenue for the satisfaction of the payment obligations of the City under this Section.

20.03 For purposes of determining the proportional responsibility of the City and SPWUA's shareholders for ordinary and necessary maintenance costs, the total active volume of storage in Storrie Reservoir shall be 21,447 acre feet, City's storage space shall be 2,300 acre fee, and SPWUA's storage space shall be 19,147 acre feet, resulting in the proportional responsibility of the City for ordinary and necessary maintenance costs of 10.72%, and SPWUA's proportional responsibility of 89.28%.

20.04 If future surveys approved by the City and SPWUA determine that the total volume of active storage in the Reservoir has changed, the Parties' proportional responsibility for ordinary and necessary maintenance costs will change proportionally.

**Section 21. Dam Safety, Insurance and Indemnification by SPWUA.**

21.01 SPWUA's operation of Storrie Reservoir shall at all times be in compliance with all applicable dam safety certifications and other applicable regulatory requirements pertaining to the operation and safety of the Reservoir, provided, however, that SPWUA shall not be obligated to provide storage space to the City during any time when less than 2,300 acre feet of storage capacity is available in the Reservoir as a result of physical or regulatory limitations or dam safety considerations which, by a good faith determination, are reasonably outside the control of SPWUA.

- 21.02 Regulatory limitations or dam safety considerations which are outside the control of SPWUA shall not relieve SPWUA of its affirmative obligations to undertake whatever reasonable corrective actions are necessary at the earliest time possible to reestablish the City's ability to store and recover its water on a timely basis.
- 21.03 SPWUA agrees that it shall at all times maintain comprehensive liability insurance coverage with an insurer licensed to do business in New Mexico, with coverage limits in an amount not less than One Million Dollars (\$1,000,000) per person, and Three Million Dollars (\$3,000,000) in the aggregate for all claims resulting from a single occurrence, to protect against any insurable claims that may be brought arising out of SPWUA's operation of the Reservoir, and the City shall be named as a Co-Insured on SPWUA's insurance policy.
- 21.04 In addition, SPWUA agrees to defend, indemnify and hold harmless the City from and against any and all liabilities, claims, losses, damages, actions and judgments, including court costs and legal or other expenses (including, without limitation, defense costs, attorneys' fees and expenses) which the City may incur as a consequence of any acts or omissions of SPWUA or its lessees (*e.g.*, New Mexico State Parks Division and New Mexico Department of Fish and Game) in the operation, maintenance, security or any other aspect of managing, operating or maintaining Storrie Reservoir, provided, however, that this provision shall not apply to acts or omissions of the City, including its employees, contractors, representatives or agents.

**Section 22. Existing Uses of Storrie Reservoir.**

- 22.01 The Parties acknowledge that the Reservoir is used for:

- (a) the storage and delivery of water to an irrigation system of the shareholders of SPWUA;
- (b) public fishing as established in a grant to the State of New Mexico; and
- (c) park and public recreation purposes under a lease with the State of New Mexico, State Parks Division, including but not limited to power and sail boating, water skiing, sail boarding, camping, swimming, picnicking, public park and other public uses.

22.02 The Parties acknowledge and agree that all the aforementioned existing uses may continue and shall be unaffected by the Storage Easement and this Purchase Agreement, except to the extent necessary to provide the City the rights and benefits provided under the Storage Easement and the Purchase Agreement. Neither the City nor SPWUA shall act or fail to act in such a manner as to foreseeably harm, damage, or infringe upon said existing uses.

**Section 23. Catastrophic Damage to Storrie Reservoir.**

23.01 In the event of a major event that destroys or affects the capacity of the Storrie Reservoir to retain water and that requires capital improvements to restore the ability of the Reservoir to retain water for the City, SPWUA or its shareholders, the Parties agree to pay a proportionate cost of such repairs calculated as provided in Section 19 above, provided that such repairs are not covered by insurance, are economically reasonable, and sufficient funds are authorized and available to the City.

**Section 24. State and Federal Grants.**

24.01 To the extent permitted by the particular funding agency, the Parties agree to jointly apply for state and federal grants as necessary or advisable to maintain the capacity of Storrie Reservoir for the benefit of the City, SPWUA and its shareholders, and to explore such other reasonable opportunities as may be available to maintain the capacity of Storrie Reservoir for their mutual benefit.

**Section 25. Breach and Remedies.**

25.01 Subject to the procedural requirements of this Section, in the event of a breach of either Party to this Purchase Agreement, including any breach prior to closing, such as the failure or refusal to close on the purchases specified herein upon fulfillment of the conditions precedent, the Party alleging breach may seek any remedy provided by law or equity, including damages and specific performance.

25.02 In the event of a breach by either Party to this Purchase Agreement, including any failure or refusal by SPWUA to operate and maintain Storrie Reservoir in such a manner that the City may continue to realize the rights and benefits provided by the Storage Easement and this Purchase Agreement, the Party alleging a breach shall notify the other Party in writing of the particulars constituting the alleged breach, including a recitation of specific actions that the Party believes are necessary to remedy the breach, and providing an opportunity to cure the alleged breach in no less than thirty (30) days from the date of the notice.

25.03 If the alleged breach remains unresolved, the Party alleging the breach may, after thirty (30) days of the written notice of the alleged breach, invoke its right to mandatory mediation, in which case the Parties shall promptly mediate the dispute prior to taking any other action with respect to the breach, before an experienced

mediator agreed to by the Parties. The Parties shall share the costs of the mediator on a 50% / 50% basis, and shall bear their own costs and attorneys' fees

25.04 If the Parties fail to reach resolution of the issue before the mediator, the aggrieved Party may file a complaint in the Fourth Judicial District Court, State of New Mexico seeking relief. The Parties may seek any remedy provided by law or equity, including claims for damages, specific performance and such other equitable relief as may be required and appropriate to assure continued diversion, storage and delivery of water on behalf of the City as provided by the Storage Easement and this Purchase Agreement.

25.05 The Party filing the complaint shall have the burden of proof. The other Party shall have the right to raise all defenses available to it in law and equity in response to such a complaint. The prevailing Party shall be entitled to recover reasonable attorneys' fees and litigation costs from the non-prevailing Party.

25.06 Nothing herein stated shall prevent the City from seeking emergency injunctive relief from the Fourth Judicial District Court in the event of a breach of this Purchase Agreement or a violation of the terms of the Storage Easement which immediately threatens the City's water supply stored or to be stored in Storrie Reservoir, or substantially impairs the City's ability to meet its water service obligations to its customers.

**Section 26. Survival.**

26.01 The terms of this Purchase Agreement shall survive closing and be perpetual in nature.

**Section 27. Amendment.**

27.01 This Purchase Agreement may be amended only upon such terms and conditions as shall be agreed upon by the Parties in writing, subject to all required approvals and ratifications by the City Council for the City of Las Vegas and the SPWUA Board of Directors and, if required, the signatory shareholders to the Corporate Resolution and Consent.

**Section 28. Captions.**

28.01 Any captions or headings in this Purchase Agreement are solely for purposes of organization and the convenience of the Parties, are not a part of the agreements reached by the Parties and shall not be used for the interpretation or determination of the validity of the Purchase Agreement or any provision thereof.

**Section 29. Severability.**

29.01 In case any one or more of the provisions of this Purchase Agreement or the application thereof shall be invalid or unenforceable in any respect, the validity and enforcement of the remaining provisions and any other application thereof shall not in any way be affected or impaired.

**Section 30. Governing Law.**

30.01 The Storage Easement and this Purchase Agreement shall be construed, enforced and interpreted in accordance with and governed by the laws of the State of New Mexico.

**Section 31. Litigation Costs.**

31.01 In the event of litigation or other legal action between the City and SPWUA, the non-prevailing party in the litigation or other legal action shall pay any necessary costs, including reasonable attorneys' fees, expenses, costs of collection, and

other costs which the prevailing party shall incur in enforcing this Purchase Agreement.

**Effective on the date first set forth above.**

THE CITY OF LAS VEGAS,  
a New Mexico Municipal Corporation

STORRIE PROJECT WATER USERS  
ASSOCIATION, Inc., a New Mexico  
Non-Profit Corporation,

\_\_\_\_\_  
By Its Mayor

\_\_\_\_\_  
By Robert Quintana, President

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# Appendix 1 (Storage Easement)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

**STORAGE EASEMENT**

This Storage Easement is sold, granted and conveyed this \_\_\_\_ day of \_\_\_\_\_ 2016, by the Grantor, the Storrie Project Water Users Association, a New Mexico non-profit corporation organized as a mutual benefit reservoir company (hereinafter "SPWUA"), for the benefit of and to the Grantee, the City of Las Vegas, New Mexico, a New Mexico municipal corporation (hereinafter "the City"), as follows:

FOR CONSIDERATION PAID by the City, the receipt and sufficiency of which is hereby acknowledged by SPWUA;

NOW, THEREFORE:

1. SPWUA does hereby sell, grant and convey to the City a permanent Storage Easement within Storrie Lake Reservoir located near Las Vegas, New Mexico (hereinafter "Storrie Reservoir" or the "Reservoir"), vesting in the City a perpetual right to store up to 2,300 acre feet of the City's water from any combination of the City's water rights or water owned or leased by the City, including but not limited to water stored in Bradner or Peterson Reservoirs or any future storage facility constructed or purchased by the City, reclaimed water, and water rights or water from other sources, together with the specific rights and benefits that were granted to the City by that certain Agreement for the Purchase and Sale of a Storage Easement and Bulk Water in Storrie Reservoir (hereinafter "Purchase Agreement"), entered into on the \_\_\_\_ day of February 2016, by the City and SPWUA an executed copy of which is attached hereto as Exhibit "A" and incorporated into this Storage Easement by reference as if fully set forth herein.

2. This Storage Easement constitutes an interest in real property and grants and conveys to the City the right to deliver and store up to 2,300 acre feet of water in Storrie

Reservoir on a permanent basis, and the right to fill and refill and to release such water in the City's sole discretion, all in accordance with the terms of the Purchase Agreement.

3. This Storage Easement grants and conveys to the City the right to store up to 2,300 acre feet of water above the elevation of the "Dead Pool", as defined by subsection 16.01 of the Purchase Agreement. SPWUA agrees to operate Storrie Reservoir as described, without limitation, in subsections 16.02 and 16.03 of the Purchase Agreement in order to maintain the water the City has in storage in the Reservoir above the elevation of the Dead Pool.

4. As set forth and limited by Section 12 of the Purchase Agreement, SPWUA retains the right to use any portion of the City's 2,300 acre feet of storage space in Storrie Reservoir that is not being used by the City.

5. This Storage Easement shall attach to that certain real property comprising Storrie Reservoir owned by SPWUA, the legal description of which is described in Appendix 2 to the Purchase Agreement (the "Land").

6. The Storage Easement shall run with the Land in the sense that the rights of the City to deliver, store and release its water as provided herein and in the Purchase Agreement shall permanently burden and encumber the Land.

7. The execution and delivery of this Storage Easement has been authorized by a Corporate Resolution and Consent adopted by unanimous vote of SPWUA's Board of Directors, and was authorized and ratified by an affirmative vote of shareholders owning no less than eighty-three and one-third percent (83 1/3 %) of the outstanding shares in SPWUA, each of whom signed the Corporate Resolution and Consent and consented to this Storage Easement in their representative and individual capacities (hereinafter "Corporate Resolution"), which document has been recorded in the land records of San Miguel County New Mexico.

8. The executed original of this Storage Easement and Exhibit A shall be recorded in the land records of San Miguel County New Mexico.

**Granted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.**

Storrie Project Water Users Association, a New Mexico Non-Profit Corporation,

\_\_\_\_\_  
By Robert Quintana  
Its President

**Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_**

The City of Las Vegas, New Mexico, a New Mexico Municipal Corporation,

\_\_\_\_\_  
By \_\_\_\_\_  
Its Mayor



Appendix 2  
(Legal Description)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

## APPENDIX 2

### LEGAL DESCRIPTION

**The reservoir, dam and outlet works and the portion of the Sanguijuela Intake Canal being located in Section 27, Section 28, the northwest quarter and east half of Section 33, the west half and the northeast quarter of Section 34. All in projected Township 17 North, Range 16 East of the New Mexico Principal Meridian. The maximum storage capacity being approximately 21,747 acre feet encompassed within approximately the 6600 foot elevation contour.**

# Appendix 3 (Bill of Sale)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir



Appendix 4(A)  
(Storrie Storage Application -  
Alternative A)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

DRAFT

File No.

NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT (Non 72-12-1)

(check applicable boxes):



For fees, see State Engineer website: http://www.ose.state.nm.us/

Form with checkboxes for Change Purpose of Use, Change Place of Use, Change Point of Diversion (POD), and Additional Groundwater/Surface Water Point of Diversion.

1. APPLICANT(S) (Required) Note: water-right owner must be listed as an applicant.

Table with applicant information for Storrie Project Water Users Association and City of Las Vegas.

2. CURRENT OSE FILE INFORMATION (Required)

Form with OSE File No(s) and Priority Date.

3. CURRENT PURPOSE OF USE AND AMOUNT OF WATER (Required)

Form with checkboxes for use types (Domestic, Municipal, etc.) and water amount details (Diversion, Consumptive Use).

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 12/14/11

Form for internal use with fields for File Number, Trn Number, Trans Description, Sub-Basin, PCW/LOG Due Date, and PBU Due Date.

# DRAFT

**4. COUNTY WHERE WATER RIGHT IS CURRENTLY USED (Required)**

San Miguel

**5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT**

City currently has the right to store 294.0 acre-feet of Gallinas River water in Bradner Reservoir and 1415.0 acre-feet of Gallinas River water in Peterson Reservoir.

The City's water rights currently comprise of the following:

File SP-2662: 2785.36 AFY diversionary and 2161.36 consumptive use

File UP-124: 1500 AFY diversionary and 1140 AFY consumptive use

**6. CURRENT or MOVE-FROM POINT(S) OF DIVERSION (POD) (Required)**

<input checked="" type="checkbox"/> <b>Surface POD</b> OR <input checked="" type="checkbox"/> <b>Ground Water POD (Well)</b>			
Name of ditch, acequia, or spring: <b>City of Las Vegas Diversion and Taylor well field</b>			
Stream or water course: <b>Gallinas River</b>		Tributary of: <b>Pecos River</b>	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input checked="" type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
<b>POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84)</b>			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <ul style="list-style-type: none"> <li><input type="checkbox"/> NM West Zone</li> <li><input type="checkbox"/> NM East Zone</li> <li><input type="checkbox"/> NM Central Zone</li> </ul>		<input checked="" type="checkbox"/> UTM (NAD83) (Meters) <ul style="list-style-type: none"> <li><input type="checkbox"/> Zone 12N</li> <li><input checked="" type="checkbox"/> Zone 13N</li> </ul>	
		<input type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 <sup>th</sup> of second)	
POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Optional: Complete boxes labeled "Other" below with PLSS (Public Land Survey System, i.e. Quarters, Section, Township, Range); Hydrographic Survey Map & Tract; Lot, Block & Subdivision; OR Land Grant Name if known.
GR-14	471343	3944872	City of Las Vegas Diversion; H.S. map sheet 7
UP-124-S	477614	3935992	City well TW-2
UP124POD23	477551	3936045	City well TW-2R
UP124-S2	477552	3935497	City well TW-4
UP-124-S3	477251	3937183	City well TW-5
UP-124-S4	477425	3936473	City well TW-6
UP-124-POD22	477550	3935500	City well TW-7
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)			
Additional point of diversion descriptions are attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      If yes, how many _____			
Point of Diversion is on Land Owned by: <b>City Of Las Vegas</b>			
Other description relating point of diversion to common landmarks, streets, or other: <b>City Gallinas River diversion is located approximately 2 miles above Montezuma. Wells are all located within the Taylor Well Field.</b>			

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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# DRAFT

## 7. CURRENT or MOVE-FROM PLACE(S) OF USE (Required)

The land is legally described by (check all that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> Public Land Survey System (PLSS) (quarters, section, township, range)<br><input type="checkbox"/> Irrigation or Conservation District Map | <input type="checkbox"/> Hydrographic Survey Report or Map<br><input type="checkbox"/> Subdivision<br><input checked="" type="checkbox"/> Grant |
|--|---|

**Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):**

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
<b>Total Acres:</b>				<b>6000+/-</b>	
Other description relating place of use to common landmarks, streets, or other: <b>The territory incorporated within the City of Las Vegas and the area served by the City's municipal water supply system outside of the municipal boundary, Las Vegas Grant, San Miguel County.</b>					

Place of use is on land owned by (required): **Various**

Are there other sources of water for these lands? No  Yes  describe by OSE file number:

**Note: If on Federal or State Land, please provide copy of lease.**

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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# DRAFT

**8. MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER** (Complete this section ONLY if the purpose of use is changing)

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input type="checkbox"/> Irrigation <input type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Other Use (specify): _____  Describe a specific use If applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section.  Diversion: _____ Consumptive Use: _____ Other (include units): _____
---	--

**ADDITIONAL STORAGE**

**9. MOVE-TO POINTS OF DIVERSION (POD)** (Complete this section ONLY if adding or replacing a POD)

<input type="checkbox"/> Surface POD    OR <input type="checkbox"/> Ground Water POD (Well)			
Name of ditch, acequia, or spring: <b>Reservoir: Storrie Lake</b>			
Stream or water course: <b>Gallinas River</b>		Tributary of: <b>Pecos River</b>	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input checked="" type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
<b>POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84)</b>			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <input type="checkbox"/> NM West Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/> NM Central Zone	<input type="checkbox"/> UTM (NAD83) (Meters) <input type="checkbox"/> Zone 12N <input type="checkbox"/> Zone 13N	<input type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 <sup>th</sup> of second)	
POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Optional: Complete below with PLSS (Public Land Survey System, i.e. Quarters, Section, Township, Range); Hydrographic Survey Map & Tract; Lot, Block & Subdivision, OR Land Grant Name if known.
See Attachment 2 and Additional Statements and Explanations.			
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions) Additional POD descriptions are attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      If yes, how many _____			
Other description relating point(s) of diversion to common landmarks, streets, or other:			
Point of Diversion is on Land Owned by: <b>Storrie Project Water Users Association</b>			
Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.			
Approximate depth of well (feet):		Outside diameter of well casing (inches):	
Driller Name:		Driller License Number:	

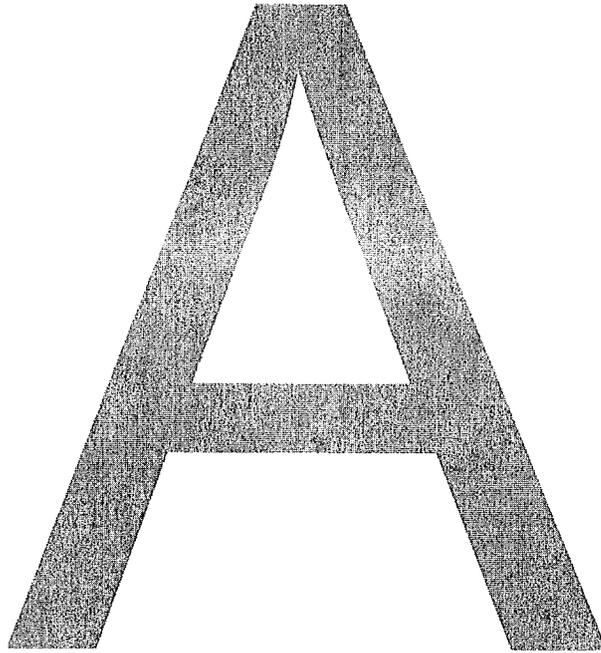
FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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If replacing the current well, is the current well to be plugged?  Yes  No  Not Applicable  
If No, state for what use it is retained:



FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

# DRAFT

**10. MOVE-TO PLACE(S) OF USE (Complete this section ONLY if adding or changing a place of use)**

List each individually

The land is legally described by (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> Public Land Survey System (PLSS) (quarters, section, township, range)<br><input type="checkbox"/> Irrigation or Conservation District Map | <input type="checkbox"/> Hydrographic Survey Report or Map<br><input type="checkbox"/> Subdivision<br><input type="checkbox"/> Grant |
|--|--|

**Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):**

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
<b>Total Acres:</b>					
Other description relating place of use to common landmarks, streets, or other:					
Place of use is on land owned by (required):					
Are there other sources of water for these lands? No <input type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:					

**Note: If on Federal or State Land, please provide copy of lease.**

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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**DRAFT**  
**NEW MEXICO OFFICE OF THE STATE ENGINEER**  
 GALLINAS RIVER SOURCE  
**ATTACHMENT 2**



**DIVERSION AND STORAGE DAM INFORMATION**

(If item not applicable, check the "not applicable" box)

**1. DIVERSION DAM:** (Not applicable )

a. The diversion dam is constructed of: <b>Concrete</b>	
b. Crest length (feet): <b>80 ft</b>	Crest width (feet): <b>12 ft</b>
c. Height above stream bed (feet): ~5 ft upstream/12 ft downstream Depth below stream bed (feet): maximum ~2 ft	
d. Side slopes of <b>0</b> horizontal to 1 (one) vertical on upstream face	vertical face
e. And <b>0</b> horizontal to 1 (one) vertical on downstream face	vertical face
f. And contains about ~300 cubic yards of material	

**2. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE:** (Not applicable )

a. Name of ditch:	
b. Bottom width (feet):	
c. Depth of water at full operating capacity (feet):	
d. Side slopes <b>horizontal to 1 (one) vertical</b>	
e. Diameter (pipe line or circular flume) (feet): <b>See 2f</b>	
f. Type of pipe line: <b>27" concrete, 24" steel, 16" steel and 16" pvc</b>	
g. Slope <b>feet per 1000 feet</b>	<b>10.4</b>
h. Capacity (cubic feet per second): <b>Ranges from 7 cfs to 14.2 cfs</b>	
i. Length of canal or pipeline (feet): <b>~25,000 feet</b>	

**3. HYDRAULIC PROPERTIES - STORAGE DAM:** (Not applicable )

a. Maximum storage capacity (acre-feet):	
b. Maximum height above foundation (feet):	Length of Crest (feet):
c. Maximum width at base (feet):	Crest width (feet):
d. Slope of upstream face <b>horizontal to 1 (one) vertical</b>	
e. Slope of downstream face <b>horizontal to 1 (one) vertical</b>	
f. Elevation of crest of dam (feet):	Elevation of spillway crest (feet):
g. Elevation of flow line of outlet conduit (feet):	
h. Freeboard (above high water line at maximum spill) (feet):	<b>Properties of Bradner, Peterson and Storrie</b>
i. Width of spillway (feet):	<b>Dams are on file with the OSE.</b>
j. Discharge capacity of spillway (cubic feet per second):	
k. Location of spillway:	
l. Cross-sectional area at maximum flow (square feet):	
m. Size and character of outlet conduit:	
n. Type of dam, construction material, etc.:	

Elevation or depth above outlet (Feet)	Area of Water Surface (Acres)	Storage Capacity (Acre Feet)	Remarks

FOR OSE INTERNAL USE

Form wr-09  
 DAM DESCRIPTIONS - ATTACHMENT 2

File Number:	Trn Number:
Trans Description (optional):	

Version A: Add Storrie Lake Reservoir to City's Water Right



**DRAFT**  
**NEW MEXICO OFFICE OF THE STATE ENGINEER**  
 (GROUNDWATER SOURCES)  
**ATTACHMENT 2**



**DIVERSION AND STORAGE DAM INFORMATION**

(If item not applicable, check the "not applicable" box)

**1. DIVERSION DAM:** (Not applicable )

a. The diversion dam is constructed of:	
b. Crest length (feet):	Crest width (feet):
c. Height above stream bed (feet):	Depth below stream bed (feet):
d. Side slopes of horizontal to 1 (one) vertical on upstream face	
e. And horizontal to 1 (one) vertical on downstream face	
f. And contains about cubic yards of material	

**2. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE:** (Not applicable )

a. Name of ditch: Taylor well field pipeline	
b. Bottom width (feet):	
c. Depth of water at full operating capacity (feet):	
d. Side slopes horizontal to 1 (one) vertical	
e. Diameter (pipe line or circular flume) (feet): See 2f	
f. Type of pipe line: 8", 12" and 16" pvc (subject to change during final engineering phase)	
g. Slope feet per 1000 feet NA (pressure pipe system)	
h. Capacity (cubic feet per second): Ranges from ~1.5 cfs to ~3 cfs (subject to change during final engineering phase)	
i. Length of canal or pipeline (feet): ~51,000 feet (subject to change during final engineering phase)	

**3. HYDRAULIC PROPERTIES - STORAGE DAM:** (Not applicable )

a. Maximum storage capacity (acre-feet):	
b. Maximum height above foundation (feet):	Length of Crest (feet):
c. Maximum width at base (feet):	Crest width (feet):
d. Slope of upstream face horizontal to 1 (one) vertical	
e. Slope of downstream face horizontal to 1 (one) vertical	
f. Elevation of crest of dam (feet):	Elevation of spillway crest (feet):
g. Elevation of flow line of outlet conduit (feet):	
h. Freeboard (above high water line at maximum spill) (feet):	Properties of Bradner, Peterson and Storrie
i. Width of spillway (feet):	Dams are on file with the OSE.
j. Discharge capacity of spillway (cubic feet per second):	
k. Location of spillway:	
l. Cross-sectional area at maximum flow (square feet):	
m. Size and character of outlet conduit:	
n. Type of dam, construction material, etc.:	

Elevation or depth above outlet (Feet)	Area of Water Surface (Acres)	Storage Capacity (Acre Feet)	Remarks

OSD Date Stamp:

FOR OSE INTERNAL USE

Form wr-09

DAM DESCRIPTIONS - ATTACHMENT 2

File Number:	Trn Number:
Trans Description (Optional):	

Version A: Add Storrie Lake Reservoir to City's Water Right



**DRAFT**  
**NEW MEXICO OFFICE OF THE STATE ENGINEER**  
 RECLAIMED WATER SOURCE  
**ATTACHMENT 2**



**DIVERSION AND STORAGE DAM INFORMATION**

(If item not applicable, check the "not applicable" box)

**1. DIVERSION DAM:** (Not applicable )

a. The diversion dam is constructed of:	
b. Crest length (feet):	Crest width (feet):
c. Height above stream bed (feet):	Depth below stream bed (feet):
d. Side slopes of horizontal to 1 (one) vertical on upstream face	
e. And horizontal to 1 (one) vertical on downstream face	
f. And contains about cubic yards of material	

**2. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE:** (Not applicable )

a. Name of ditch: Reclaimed water pipeline	
b. Bottom width (feet):	
c. Depth of water at full operating capacity (feet):	
d. Side slopes horizontal to 1 (one) vertical	
e. Diameter (pipe line or circular flume) (feet): See 2f	
f. Type of pipe line: 8", 12" and 16" pvc (subject to change during final engineering phase)	
g. Slope feet per 1000 feet NA (pressure pipe system)	
h. Capacity (cubic feet per second): Ranges from ~1.5 cfs to ~3 cfs (subject to change during final engineering phase)	
i. Length of canal or pipeline (feet): ~58,000 feet (subject to change during final engineering phase)	

**3. HYDRAULIC PROPERTIES - STORAGE DAM:** (Not applicable )

a. Maximum storage capacity (acre-feet):	
b. Maximum height above foundation (feet):	Length of Crest (feet):
c. Maximum width at base (feet):	Crest width (feet):
d. Slope of upstream face horizontal to 1 (one) vertical	
e. Slope of downstream face horizontal to 1 (one) vertical	
f. Elevation of crest of dam (feet):	Elevation of spillway crest (feet):
g. Elevation of flow line of outlet conduit (feet):	
h. Freeboard (above high water line at maximum spill) (feet):	Properties of Bradner, Peterson and Storrie
i. Width of spillway (feet):	Dams are on file with the OSE.
j. Discharge capacity of spillway (cubic feet per second):	
k. Location of spillway:	
l. Cross-sectional area at maximum flow (square feet):	
m. Size and character of outlet conduit:	
n. Type of dam, construction material, etc.:	

Elevation or depth above outlet (Feet)	Area of Water Surface (Acres)	Storage Capacity (Acre Feet)	Remarks

FOR OSE INTERNAL USE

Form wr-09  
 DAM DESCRIPTIONS - ATTACHMENT 2

File Number:	Trn Number:
Trans Description (for Original):	

Version A: Add Storrie Lake Reservoir to City's Water Right

# DRAFT

## ATTACHMENT APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT ADD ADDITIONAL STORAGE (STORRIE LAKE) OSE FILE SP-2662 and UP-124

### ADDITIONAL STATEMENTS AND EXPLANATIONS

Through this application, the City and the Storrie Project Water Users Association are seeking a permit to store up to 2,300 ac-ft of the City's water, under its SP-2662 and UP-124 water rights, in Storrie Lake Reservoir. The Storrie Project Water Users Association has conveyed to the City a permanent storage easement for 2,300 ac-ft of storage space within Storrie Reservoir. Copies of the recorded Grant of Permanent Storage Easement and Agreement for the Purchase and Sale of a Storage Easement and Surplus Bulk Water at Storrie Lake are attached.

The City's permanent storage easement for 2,300 ac-ft of storage space in Storrie Lake Reservoir is for the City's exclusive use for storage of water to be used for municipal purposes throughout the City's municipal water system service area, and to fill and refill the City's permanent easement for 2,300 ac-ft of storage space using the City's water and water rights from the sources of water and Points of Diversion described in this application.

The City will use the following as sources for the 2,300 ac-ft of water it places into storage in Storrie Lake: Surface Waters of the Gallinas River and Underground Waters within the Gallinas Creek (sub) Basin and the Agua Zarca (sub) Basin located in the Upper Pecos Underground Basin, and all other municipal ground and surface water rights, storage rights, and private (non-public) waters owned or leased by the City of Las Vegas, including but not limited to water diverted from the Taylor Well Field, water stored in Storrie Lake or Peterson and Bradner Reservoirs, water recovered from an OSE approved ASR Project, recycled or reclaimed water, and water from any future storage facility constructed or purchased by the City.

Water that is stored by the City in Storrie Lake will remain in storage until such time as it is diverted out of storage and conveyed to the City's water treatment plant and/or other City owned storage reservoirs via the existing pumping station located at the toe of Storrie Dam.

This application does not seek to increase the 21,747 acre-foot capacity of Storrie Lake Reservoir permitted and licensed under SP-341 and adjudicated in the February 10, 1997 Judgment and Decree Re Water Storage Rights-Storrie Project, State of New Mexico ex rel. Pecos Valley Artesian Conservancy District v. Lewis, Storrie Project Subsection, Subfile No. GR-18.01A, Court File No. CV-WA-01-472. The City's right to store up to 2,300 acre-feet in Storrie Lake and Reservoir shall be part of and within the reservoir's existing 21,747 acre-foot capacity. Nor does this application seek to increase the City's maximum adjudicated and permitted annual diversions and annual depletions of water.

Appendix 4(B)  
(Storrie Storage Application -  
Alternative B)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

DRAFT

File No.



NEW MEXICO OFFICE OF THE STATE ENGINEER

APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT (Non 72-12-1)

(check applicable boxes):



For fees, see State Engineer website: http://www.ose.state.nm.us/

Form with checkboxes for Change Purpose of Use, Change Place of Use, Change Point of Diversion (POD), and Additional Groundwater/Surface Water Point of Diversion (POD).

1. APPLICANT(S) (Required) Note: water-right owner must be listed as an applicant.

Table with applicant information for Storrie Project Water Users Association and City of Las Vegas, including contact names, addresses, and phone numbers.

2. CURRENT OSE FILE INFORMATION (Required)

Form for OSE File No(s) SP-341 and Priority Date (if known).

3. CURRENT PURPOSE OF USE AND AMOUNT OF WATER (Required)

Form for purpose of use (Domestic, Livestock, Irrigation, etc.) and amount of water (2,300 ac-ft storage right).

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 12/14/11

Form for internal use with fields for File Number, Trn Number, Trans Description, Sub-Basin, PCW/LOG Due Date, and PBU Due Date.

Version B: Add POD to Storrie Lake Reservoir

**DRAFT**

**4. COUNTY WHERE WATER RIGHT IS CURRENTLY USED (Required)**

San Miguel

**5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT**

SPWUA has conveyed to the City a permanent storage easement for 2,300 ac-ft of storage space within Storrie Lake Reservoir.

This easement is for the exclusive and perpetual use by the City. Copies of the recorded Grant of Permanent Storage Easement and Agreement for the Purchase and Sale of a Storage Easement and Surplus Bulk Water at Storrie Lake are attached.

**6. CURRENT or MOVE-FROM POINT(S) OF DIVERSION (POD) (Required)**

Surface POD OR  Ground Water POD (Well)

Name of ditch, acequia, or spring: **Storrie Lake Reservoir and Sanguijuela Intake Canals**

Stream or water course: **Gallinas River** Tributary of: **Pecos River**

If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2.  Check here if Attachment 2 is included in this application packet.

**POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84)**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> NM State Plane (NAD83) (Feet) | <input checked="" type="checkbox"/> UTM (NAD83) (Meters) | <input type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 <sup>th</sup> of second) |
| <input type="checkbox"/> NM West Zone                  | <input type="checkbox"/> Zone 12N                        |   |
| <input type="checkbox"/> NM East Zone                  | <input checked="" type="checkbox"/> Zone 13N             |   |
| <input type="checkbox"/> NM Central Zone               |  |   |

POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Optional: Complete boxes labeled "Other" below with PLSS (Public Land Survey System, i.e. Quarters, Section, Township, Range); Hydrographic Survey Map & Tract; Lot, Block & Subdivision; OR Land Grant Name if known.
GR-18A	475364.13	3945234.68	Storrie Lake Intake Canal
GR-18B	479368.4	3948732.37	Sanguijuela Intake Canal

NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)

Additional point of diversion descriptions are attached:  Yes  No If yes, how many \_\_\_\_\_

Point of Diversion is on Land Owned by: **Storrie Project Water Users Association**

Other description relating point of diversion to common landmarks, streets, or other:

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

# DRAFT

## 7. CURRENT or MOVE-FROM PLACE(S) OF USE (Required)

The land is legally described by (check all that apply):

- |  |   |
|--|---|
| <input type="checkbox"/> Public Land Survey System (PLSS) (quarters, section, township, range)<br><input type="checkbox"/> Irrigation or Conservation District Map | <input checked="" type="checkbox"/> Hydrographic Survey Report or Map<br><input type="checkbox"/> Subdivision<br><input type="checkbox"/> Grant |
|--|---|

**Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):**

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
Upper Pecos Basin Stream System, Gallinas River Section					
Location of Storrie Lake shown on map sheets	9-10				
<b>Total Acres:</b>					
Other description relating place of use to common landmarks, streets, or other:					
Place of use is on land owned by (required): <b>Storrie Project Water Users Association</b>					
Are there other sources of water for these lands? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:					

Note: If on Federal or State Land, please provide copy of lease.

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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# DRAFT

**8. MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER (Complete this section ONLY if the purpose of use is changing)**

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input type="checkbox"/> Irrigation <input type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Other Use (specify): _____  Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet per annum): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section.  Diversion: _____  Consumptive Use: _____  Other (include units): _____
---	--

**9. MOVE-TO POINT(S) OF DIVERSION (POD) (Complete this section ONLY if adding or replacing a POD)**

<input checked="" type="checkbox"/> <b>Surface POD</b> OR <input checked="" type="checkbox"/> <b>Ground Water POD (Well)</b> Also see Additional Statements and Explanations			
Name of ditch, acequia, or spring: <b>City of Las Vegas Gallinas River Diversion</b>			
Stream or water course: <b>Gallinas River</b>		Tributary of: <b>Pecos River</b>	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input checked="" type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
<b>POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84)</b>			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <input type="checkbox"/> NM West Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/> NM Central Zone		<input checked="" type="checkbox"/> UTM (NAD83) (Meters) <input type="checkbox"/> Zone 12N <input checked="" type="checkbox"/> Zone 13N	
		<input type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 <sup>th</sup> of second)	
POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Optional: Complete below with PLSS (Public Land Survey System, i.e. Quarters, Section, Township, Range); Hydrographic Survey Map & Tract; Lot, Block & Subdivision; OR Land Grant Name if known.
GR -14	471343	3944872	Gallinas River Section H.S. Map Sheet 7.
UP-124-S	477614	3935992	City well TW-2
UP124POD23	477551	3936045	City well TW-2R
UP124-S2	477552	3935497	City well TW-4
UP-124-S3	477251	3937183	City well TW-5
UP-124-S4	477425	3936473	City well TW-6
UP-124-POD22	477550	3935500	City well TW-7
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions) Additional POD descriptions are attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No    If yes, how many _____			
Other description relating point(s) of diversion to common landmarks, streets, or other: <b>City Gallinas River diversion is located approximately 2 miles above Montezuma. Wells are all located within the Taylor Well Field.</b>			
Point of Diversion is on Land Owned by: <b>City of Las Vegas</b>			
Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.			
Approximate depth of well (feet):		Outside diameter of well casing (inches):	
Driller Name:		Driller License Number:	

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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Version B: Add POD to Storrie Lake Reservoir

DRAFT

If replacing the current well, is the current well to be plugged?  Yes  No  Not Applicable  
If No, state for what use it is retained:

B

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

Version B: Add POD to Storrie Lake Reservoir

# DRAFT

**10. MOVE-TO PLACE(S) OF USE (Complete this section ONLY if adding or changing a place of use)**

List each individually

The land is legally described by (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> Public Land Survey System (PLSS) (quarters, section, township, range)<br><input type="checkbox"/> Irrigation or Conservation District Map | <input type="checkbox"/> Hydrographic Survey Report or Map<br><input type="checkbox"/> Subdivision<br><input type="checkbox"/> Grant |
|--|--|

**Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):**

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
<b>Total Acres:</b>					
Other description relating place of use to common landmarks, streets, or other					
Place of use is on land owned by (required):					
Are there other sources of water for these lands? No <input type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:					

**Note: If on Federal or State Land, please provide copy of lease.**

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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DRAFT

11. ADDITIONAL STATEMENTS OR EXPLANATIONS

See attachment for additional statements and explanations.

ACKNOWLEDGEMENT

I, We (name of applicant(s)), Robert Quintana and Kenneth Garcia  
Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

Applicant Signature

Applicant Signature

ACTION OF THE STATE ENGINEER

This application is:

- approved
- partially approved
- denied

provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare and further subject to the attached conditions of approval.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, for the State Engineer,

\_\_\_\_\_, State Engineer

By: \_\_\_\_\_  
Signature Print

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

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:



**DRAFT**  
**NEW MEXICO OFFICE OF THE STATE ENGINEER**  
 GALLINAS RIVER SOURCE  
**ATTACHMENT 2**



**DIVERSION AND STORAGE DAM INFORMATION**

(If item not applicable, check the "not applicable" box)

**1. DIVERSION DAM:** (Not applicable )

a. The diversion dam is constructed of: <b>Concrete</b>	
b. Crest length (feet): <b>80 ft</b>	Crest width (feet): <b>12 ft</b>
c. Height above stream bed (feet): ~5 ft upstream/12 ft downstream Depth below stream bed (feet): maximum ~2 ft	
d. Side slopes of <b>0</b> horizontal to 1 (one) vertical on upstream face	vertical face
e. And <b>0</b> horizontal to 1 (one) vertical on downstream face	vertical face
f. And contains about ~300 cubic yards of material	

**2. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE:** (Not applicable )

a. Name of ditch:	
b. Bottom width (feet):	
c. Depth of water at full operating capacity (feet):	
d. Side slopes <b>horizontal to 1 (one) vertical</b>	
e. Diameter (pipe line or circular flume) (feet): <b>See 2f</b>	
f. Type of pipe line: <b>27" concrete, 24" steel, 16" steel and 16" pvc</b>	
g. Slope <b>feet per 1000 feet</b>	<b>10.4</b>
h. Capacity (cubic feet per second): <b>Ranges from 7 cfs to 14.2 cfs</b>	
i. Length of canal or pipeline (feet): <b>~25,000 feet</b>	

**3. HYDRAULIC PROPERTIES - STORAGE DAM:** (Not applicable )

a. Maximum storage capacity (acre-feet):	
b. Maximum height above foundation (feet):	Length of Crest (feet):
c. Maximum width at base (feet):	Crest width (feet):
d. Slope of upstream face <b>horizontal to 1 (one) vertical</b>	
e. Slope of downstream face <b>horizontal to 1 (one) vertical</b>	
f. Elevation of crest of dam (feet):	Elevation of spillway crest (feet):
g. Elevation of flow line of outlet conduit (feet):	
h. Freeboard (above high water line at maximum spill) (feet):	
i. Width of spillway (feet):	
j. Discharge capacity of spillway (cubic feet per second):	
k. Location of spillway:	
l. Cross-sectional area at maximum flow (square feet):	
m. Size and character of outlet conduit:	
n. Type of dam, construction material, etc.:	

Elevation or depth above outlet (Feet)	Area of Water Surface (Acres)	Storage Capacity (Acre Feet)	Remarks

OSE File Stamp:

FOR OSE INTERNAL USE

Form wr-09

DAM DESCRIPTIONS - ATTACHMENT 2

File Number:	Trn Number:
Trans Description (optional):	

Version B: Add POD to Storrie Lake Reservoir



**DRAFT**  
**NEW MEXICO OFFICE OF THE STATE ENGINEER**  
 (GROUNDWATER SOURCES)  
**ATTACHMENT 2**



**DIVERSION AND STORAGE DAM INFORMATION**

(If item not applicable, check the "not applicable" box)

**1. DIVERSION DAM:** (Not applicable )

a. The diversion dam is constructed of:	
b. Crest length (feet):	Crest width (feet):
c. Height above stream bed (feet):	Depth below stream bed (feet):
d. Side slopes of horizontal to 1 (one) vertical on upstream face	
e. And horizontal to 1 (one) vertical on downstream face	
f. And contains about cubic yards of material	

**2. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE:** (Not applicable )

a. Name of ditch: Taylor well field pipeline	
b. Bottom width (feet):	
c. Depth of water at full operating capacity (feet):	
d. Side slopes horizontal to 1 (one) vertical	
e. Diameter (pipe line or circular flume) (feet): See 2f	
f. Type of pipe line: 8", 12" and 16" pvc (subject to change during final engineering phase)	
g. Slope feet per 1000 feet NA (pressure pipe system)	
h. Capacity (cubic feet per second): Ranges from ~1.5 cfs to ~3 cfs (subject to change during final engineering phase)	
i. Length of canal or pipeline (feet): ~51,000 feet (subject to change during final engineering phase)	

**3. HYDRAULIC PROPERTIES - STORAGE DAM:** (Not applicable )

a. Maximum storage capacity (acre-feet):	
b. Maximum height above foundation (feet):	Length of Crest (feet):
c. Maximum width at base (feet):	Crest width (feet):
d. Slope of upstream face horizontal to 1 (one) vertical	
e. Slope of downstream face horizontal to 1 (one) vertical	
f. Elevation of crest of dam (feet):	Elevation of spillway crest (feet):
g. Elevation of flow line of outlet conduit (feet):	
h. Freeboard (above high water line at maximum spill) (feet): Properties of Bradner, Peterson and Storrie	
i. Width of spillway (feet): Dams are on file with the OSE.	
j. Discharge capacity of spillway (cubic feet per second):	
k. Location of spillway:	
l. Cross-sectional area at maximum flow (square feet):	
m. Size and character of outlet conduit:	
n. Type of dam, construction material, etc.:	

Elevation or depth above outlet (Feet)	Area of Water Surface (Acres)	Storage Capacity (Acre Feet)	Remarks

FOR OSE INTERNAL USE

Form wr-09  
 DAM DESCRIPTIONS - ATTACHMENT 2

File Number:	Trn Number:
Trans Description (optional):	

Version B: Add POD to Storrie Lake Reservoir



**DRAFT**  
**NEW MEXICO OFFICE OF THE STATE ENGINEER**  
 RECLAIMED WATER SOURCE  
**ATTACHMENT 2**



**DIVERSION AND STORAGE DAM INFORMATION**

(If item not applicable, check the "not applicable" box)

**1. DIVERSION DAM:** (Not applicable )

a. The diversion dam is constructed of:	
b. Crest length (feet):	Crest width (feet):
c. Height above stream bed (feet):	Depth below stream bed (feet):
d. Side slopes of horizontal to 1 (one) vertical on upstream face	
e. And horizontal to 1 (one) vertical on downstream face	
f. And contains about cubic yards of material	

**2. HYDRAULIC PROPERTIES OF MAIN CANAL OR PIPELINE:** (Not applicable )

a. Name of ditch: Reclaimed water pipeline	
b. Bottom width (feet):	
c. Depth of water at full operating capacity (feet):	
d. Side slopes horizontal to 1 (one) vertical	
e. Diameter (pipe line or circular flume) (feet): See 2f	
f. Type of pipe line: 8", 12" and 16" pvc (subject to change during final engineering phase)	
g. Slope feet per 1000 feet NA (pressure pipe system)	
h. Capacity (cubic feet per second): Ranges from ~1.5 cfs to ~3 cfs (subject to change during final engineering phase)	
i. Length of canal or pipeline (feet): ~58,000 feet (subject to change during final engineering phase)	

**3. HYDRAULIC PROPERTIES - STORAGE DAM:** (Not applicable )

a. Maximum storage capacity (acre-feet):	
b. Maximum height above foundation (feet):	Length of Crest (feet):
c. Maximum width at base (feet):	Crest width (feet):
d. Slope of upstream face horizontal to 1 (one) vertical	
e. Slope of downstream face horizontal to 1 (one) vertical	
f. Elevation of crest of dam (feet):	Elevation of spillway crest (feet):
g. Elevation of flow line of outlet conduit (feet):	
h. Freeboard (above high water line at maximum spill) (feet): Properties of Bradner, Peterson and Storrie	
i. Width of spillway (feet): Dams are on file with the OSE.	
j. Discharge capacity of spillway (cubic feet per second):	
k. Location of spillway:	
l. Cross-sectional area at maximum flow (square feet):	
m. Size and character of outlet conduit:	
n. Type of dam, construction material, etc.:	

Elevation or depth above outlet (Feet)	Area of Water Surface (Acres)	Storage Capacity (Acre Feet)	Remarks

Doc. No. 00-000

FOR OSE INTERNAL USE

Form wr-09  
 DAM DESCRIPTIONS - ATTACHMENT 2

File Number:	Trn Number:
Trans Description (optional):	

Version B: Add POD to Storrie Lake Reservoir

# DRAFT

ATTACHMENT  
APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT  
ADD ADDITIONAL POINTS OF DIVERSION (STORRIE LAKE)  
OSE FILE SP-341

## ADDITIONAL STATEMENTS AND EXPLANATIONS

Through this application, the City and the Storrie Project Water Users Association are seeking a permit to add the City's existing adjudicated surface water and groundwater Points of Diversion under OSE Files SP-2662 and UP-124, respectively, as additional points of diversion for Storrie Lake Reservoir. The City proposes to store up to 2,300 ac-ft of the City's water, under its SP-2662 and UP-124 water rights, in Storrie Lake Reservoir. The Storrie Project Water Users Association has conveyed to the City a permanent storage easement for 2,300 ac-ft of storage space within Storrie Reservoir. Copies of the recorded Grant of Permanent Storage Easement and Agreement for the Purchase and Sale of a Storage Easement and Surplus Bulk Water at Storrie Lake are attached.

The City's permanent storage easement for 2,300 ac-ft of storage space in Storrie Lake Reservoir is for the City's exclusive use for storage of water to be used for municipal purposes throughout the City's municipal water system service area, and to fill and refill the City's permanent easement for 2,300 ac-ft of storage space using the City's water and water rights from the sources of water and Points of Diversion described in this application.

The City will use the following as sources for the 2,300 ac-ft of water it places into storage in Storrie Lake: Surface Waters of the Gallinas River and Underground Waters within the Gallinas Creek (sub) Basin and the Agua Zarca (sub) Basin located in the Upper Pecos Underground Basin, and all other municipal ground and surface water rights, storage rights, and private (non-public) waters owned or leased by the City of Las Vegas, including but not limited to water diverted from the Taylor Well Field, water stored in Storrie Lake or Peterson and Bradner Reservoirs, water recovered from an OSE approved ASR Project, recycled or reclaimed water, and water from any future storage facility constructed or purchased by the City.

Water that is stored by the City in Storrie Lake will remain in storage until such time as it is diverted out of storage and conveyed to the City's water treatment plant and/or other City owned storage reservoirs via the existing pumping station located at the toe of Storrie Dam.

This application does not seek to increase the 21,747 acre-foot capacity of Storrie Lake Reservoir permitted and licensed under SP-341 and adjudicated in the February 10, 1997 Judgment and Decree Re Water Storage Rights-Storrie Project, State of New Mexico ex rel. Pecos Valley Artesian Conservancy District v. Lewis, Storrie Project Subsection, Subfile No. GR-18.01A, Court File No. CV-WA-01-472. The City's right to store up to 2,300 acre-feet in Storrie Lake and Reservoir shall be part of and within the reservoir's existing 21,747 acre-foot capacity. Nor does this application seek to increase the City's maximum adjudicated and permitted annual diversions and annual depletions of water.

# Appendix 5 (Bulk Water Application)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

File No.

# NEW MEXICO OFFICE OF THE STATE ENGINEER



## APPLICATION FOR PERMIT TO CHANGE AN EXISTING WATER RIGHT (Non 72-12-1)



(check applicable boxes):

For fees, see State Engineer website: <http://www.ose.state.nm.us/>

<input checked="" type="checkbox"/> Change Purpose of Use <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water	<input type="checkbox"/> Change Point of Diversion (POD): From: <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water To: <input type="checkbox"/> Groundwater <input type="checkbox"/> Surface Water	<input type="checkbox"/> Additional Groundwater Point of Diversion (POD)
<input checked="" type="checkbox"/> Change Place of Use <input type="checkbox"/> Groundwater <input checked="" type="checkbox"/> Surface Water		<input type="checkbox"/> Additional Surface Water Point of Diversion (POD)
<input type="checkbox"/> Temporary Change, NMSA 1978, § 72-12-7(B) Requested Start Date: (Not to Exceed 3 ac-ft in One Year)		Requested End Date:
<input type="checkbox"/> Water Use Lease, NMSA 1978, §§ 72-6-1 to-7 Requested Start Date:		Requested End Date:

### 1. APPLICANT(S) (Required) Note: water-right owner must be listed as an applicant.

Name: Storrie Project Water Users Association (SPWUA)	Name: City of Las Vegas
Contact or Agent: <input type="checkbox"/> check here if Agent Robert Quintana	Contact or Agent: <input type="checkbox"/> check here if Agent Kenneth Garcia
Mailing Address: P.O. Box 1261	Mailing Address: 905 12th Street
City: Las Vegas	City: Las Vegas
State: NM Zip Code: 87701	State: NM Zip Code: 87701
Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell Phone (Work):	Phone: <input type="checkbox"/> Home <input type="checkbox"/> Cell Phone (Work): 505-426-3310
E-mail (optional):	E-mail (optional):

### 2. CURRENT OSE FILE INFORMATION (Required)

OSE File No(s): SP-341	Priority Date (if known): 1909	Subfile/Cause No. (if applicable): Nos. 20294 and 22600 Consolidated
------------------------	--------------------------------	---

### 3. CURRENT PURPOSE OF USE AND AMOUNT OF WATER (Required)

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input checked="" type="checkbox"/> Irrigation <input type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Other Use (specify): _____  Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet <del>per year</del> ): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section.  Diversion: <u>1,200 ac-ft</u> Consumptive Use: <u>1,200 ac-ft</u> Other (include units): <u>see comments</u>
--	---

FOR OSE INTERNAL USE

Application for Permit, Form wr-06, Rev 9/26/12

File No.:	Trn. No.:	Receipt No.:
Trans Description (optional):		Sub-Basin:
PCW/LOG Due Date:	PBU Due Date:	

**4. COUNTY WHERE WATER RIGHT IS CURRENTLY USED (Required)**

San Miguel

**5. ADDITIONAL STATEMENTS CONCERNING THE CURRENT WATER RIGHT**

The 1,200 ac-ft of water that will be transferred to the City of Las Vegas is in storage in Storrie Lake. The water was diverted by SPWUA into storage in Storrie Lake in 2015 and in prior years.

**6. CURRENT or MOVE-FROM POINT(S) OF DIVERSION (POD) (Required)**

<input checked="" type="checkbox"/> <b>Surface POD</b> OR <input type="checkbox"/> <b>Ground Water POD (Well)</b>			
Name of ditch, acequia, or spring:   Storrie Lake and Sanguijuela Intake Canals			
Stream or water course:   Gallinas River		Tributary of:   Pecos River	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
<b>POD Location Required:</b> Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), <u>or</u> Latitude/Longitude (Lat/Long - WGS84). District II (Roswell) & District VII (Cimarron) customers, provide a PLSS location in addition to above.			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <input type="checkbox"/> NM West Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/> NM Central Zone		<input checked="" type="checkbox"/> UTM (NAD83) (Meters) <input type="checkbox"/> Zone 12N <input type="checkbox"/> Zone 13N	
<input type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 <sup>th</sup> of second)			
POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Provide if known: -Public Land Survey System (PLSS) (Quarters or Halves , Section, Township, Range) OR - Hydrographic Survey Map & Tract; OR - Lot, Block & Subdivision; OR - Land Grant Name
GR-18A	475364.13	3945234.68	Storrie Lake Intake Canal
GR-18B	479368.4	3948732.37	Sanguijuela Intake Canal
NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions) Additional point of diversion descriptions are attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      If yes, how many			
Point of Diversion is on Land Owned by:   Storrie Project Water Users Association			
Other description relating point of diversion to common landmarks, streets, or other:			

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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**7. CURRENT or MOVE-FROM PLACE(S) OF USE (Required)**

The land is legally described by (check all that apply):

- Public Land Survey System (PLSS) (quarters, section, township, range)
  Hydrographic Survey Report or Map
  Subdivision
  Grant
  Irrigation or Conservation District Map

**Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):**

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
Lands adjudicated with irrigation water					
rights for delivery by SPWUA as shown					
on 1990 Hydrographic Survey, Upper	Maps 24 - 35				1909
Pecos Basin, Gallinas River Section					
<b>Total Acres:</b>					
Other description relating place of use to common landmarks, streets, or other:					
Place of use is on land owned by (required): Shareholders of the Storrie Project					
Are there other sources of water for these lands? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> describe by OSE file number:					

**Note: If on Federal or State Land, please provide copy of lease.**

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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**8. MOVE-TO PURPOSE OF USE AND AMOUNT OF WATER (Complete this section ONLY if the purpose of use is changing)**

<input type="checkbox"/> Domestic <input type="checkbox"/> Livestock <input type="checkbox"/> Irrigation <input checked="" type="checkbox"/> Municipal <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Other Use (specify): _____  Describe a specific use if applicable (i.e. sand & gravel washing, dairy etc): _____	Amount of Water (acre-feet <del>xxxxxxx</del> ): If more details are needed, type "See Comments" in "Other" field below, and explain in Additional Statements Section.  Diversion: _____ 1,200 ac-ft Consumptive Use: _____ 1,200 ac-ft Other (include units): _____ see comments
--	---

**9. MOVE-TO POINT(S) OF DIVERSION (POD) (Complete this section ONLY if adding or replacing a POD)**

<input type="checkbox"/> Surface POD    OR <input type="checkbox"/> Ground Water POD (Well)			
Name of ditch, acequia, or spring:			
Stream or water course:		Tributary of:	
If application proposes a new point of diversion involving a diversion dam, storage dam, main canal, and/or pipeline, complete Attachment 2. <input type="checkbox"/> Check here if Attachment 2 is included in this application packet.			
<b>POD Location Required: Coordinate location must be reported in NM State Plane (NAD 83), UTM (NAD 83), or Latitude/Longitude (Lat/Long - WGS84).</b> District II (Roswell) & District VII (Cimarron) customers, provide a PLSS location in addition to above.			
<input type="checkbox"/> NM State Plane (NAD83) (Feet) <input type="checkbox"/> NM West Zone <input type="checkbox"/> NM East Zone <input type="checkbox"/> NM Central Zone		<input type="checkbox"/> UTM (NAD83) (Meters) <input type="checkbox"/> Zone 12N <input type="checkbox"/> Zone 13N	
<input type="checkbox"/> Lat/Long (WGS84) (to the nearest 1/10 <sup>th</sup> of second)			
POD Number (if known):	X or Easting or Longitude:	Y or Northing or Latitude:	Provide if known: -Public Land Survey System (PLSS) (Quarters or Halves , Section, Township, Range) OR - Hydrographic Survey Map & Tract; OR - Lot, Block & Subdivision; OR - Land Grant Name
<b>NOTE: If more PODS need to be described, complete form WR-08 (Attachment 1 – POD Descriptions)</b> Additional POD descriptions are attached: <input type="checkbox"/> Yes <input type="checkbox"/> No      If yes, how many _____			
Other description relating point(s) of diversion to common landmarks, streets, or other:			
Point of Diversion is on Land Owned by:			
<b>Note: The following information is for wells only. If more than one (1) well needs to be described, provide attachment.</b>			
Approximate depth of well (feet):		Outside diameter of well casing (inches):	
Driller Name:		Driller License Number:	
If replacing the current well, is the current well to be plugged? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable If No, state for what use it is retained:			

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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**10. MOVE-TO PLACE(S) OF USE (Complete this section ONLY if adding or changing a place of use)**

List each individually

The land is legally described by (check all that apply):

- Public Land Survey System (PLSS) (quarters, section, township, range)
  Hydrographic Survey Report or Map  
 Irrigation or Conservation District Map
  Subdivision  
 Grant

**Complete the blocks below for all tracts of land (more than one description can be provided for a tract if available):**

PLSS Quarters or Halves, <u>and/or</u> Name of Hydrographic Survey, <u>and/or</u> Name of Irrigation or Conservation District, <u>and/or</u> Name and County of Subdivision <u>and/or</u> Grant	PLSS Section <u>and/or</u> Map No. <u>and/or</u> Lot No.	PLSS Township <u>and/or</u> Tract No. (Please list each tract individually) <u>and/or</u> Block No.	PLSS Range	Acres	Priority
City of Las Vegas municipal water system, within the Las Vegas Grant, San Miguel County. Map is on file with the OSE.				6,000+/-	
<b>Total Acres:</b>				6,000+/-	
Other description relating place of use to common landmarks, streets, or other:					
Place of use is on land owned by (required): various					
Are there other sources of water for these lands? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> describe by OSE file number: Water rights under File SP-2662 and File UP-124					

**Note: If on Federal or State Land, please provide copy of lease.**

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:	Trn Number:
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**11. ADDITIONAL STATEMENTS OR EXPLANATIONS**

The City has purchased 1200 ac-ft of bulk water stored in Storrie Lake from SPWUA pursuant to an Agreement and resolution of the Board of SPWUA which are attached hereto. The water will remain in storage in Storrie Lake until such time as it is diverted out of storage and conveyed to the City's water treatment plant and/or other City owned storage reservoirs via the existing pumping station located at the toe of Storrie Dam. This bulk water purchase and transfer is needed by the City to maintain an adequate reserve in the event its water supplies from the Gallinas River are disrupted or limited. This is a one-time bulk water purchase and utilizes water diverted by SPWUA into Storrie Lake in 2015 and prior years. In order for the water to be held in reserve for unseen contingencies, the City's diversion of this water out of Storrie Lake may take place over an indefinite period of time.

**ACKNOWLEDGEMENT**

I, We (name of applicant(s)), Robert Quintana and Kenneth Garcia  
Print Name(s)

affirm that the foregoing statements are true to the best of (my, our) knowledge and belief.

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Signature

**ACTION OF THE STATE ENGINEER**

This application is:

- approved       partially approved       denied

provided it is not exercised to the detriment of any others having existing rights, and is not contrary to the conservation of water in New Mexico nor detrimental to the public welfare and further subject to the attached conditions of approval.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, for the State Engineer,

\_\_\_\_\_, State Engineer

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

\_\_\_\_\_  
Print

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

FOR OSE INTERNAL USE

Application for Permit, Form wr-06

File Number:

Trn Number:

**BEFORE THE NEW MEXICO STATE ENGINEER**

IN THE MATTER OF THE PROPOSED APPLICATION ) OSE File No. SP-341  
BY STORRIE PROJECT WATER USERS ASSOCIATION )  
AND THE CITY OF LAS VEGAS TO CHANGE PLACE )  
AND PURPOSE OF USE OF SURFACE WATER )

**AFFIDAVIT OF THE CITY OF LAS VEGAS**

COUNTY OF SAN MIGUEL )  
 ) ss.  
STATE OF NEW MEXICO )

The co-applicant **City of Las Vegas**, through Ken Garcia, City Utilities Director, submits the attached application to the State Engineer for a Permit to Change Place and Purpose of Use (surface waters) for consideration as emergency action under NMSA §72-5-25 prior to publication.

**The Applicant states the following:**

1. The City relies on surface water to ensure it can provide an adequate and continuous supply of potable water in Las Vegas and adjoining areas.
2. Due to the critically inadequate storage capacities in the City’s existing water storage reservoirs and ongoing repairs to Bradner Dam, the City does not have the water reserve needed to meet its water service obligations in the event its water supplies from the Gallinas River are disrupted or limited.
3. The public health and safety of the residents of Las Vegas and adjoining areas require the City maintain an adequate supply of water in reserve.
4. The City’s water supply consultants have advised the City that it should have a minimum of one year of system demand in storage as a reserve. However at this time the only storage capacity available to the City is 211 acre-feet in Peterson Reservoir, but for safety considerations the maximum amount of water that can be held in storage in Peterson Reservoir is 200 acre-feet, which is only a 40 day supply.
5. The immediate transfer to the City of 1,200 ac-ft of water currently in storage in Storrie Reservoir will provide the City with an additional 240 days of supply.
6. Co-applicant Storrie Project Water Users Association (SPWUA) is the owner of the water

storage right which is the subject of this emergency application.

- 7. The City has entered into an agreement with SPWUA, which has been approved by its shareholders, to purchase 1,200 acre-feet of water. This water has already been diverted from the Gallinas stream system and is presently stored in Storrie Reservoir. The City is ready, willing and able to take possession of this water and to transport it as needed into its water supply system.
- 8. The City's storage and use of water that has already been diverted into Storrie Lake will not be detrimental to other water right owners on the Gallinas River.
- 9. An emergency situation exists in which the delay caused by publication and hearing would result in the City's failure to maintain a safe and reliable level of service that is protective of the public's health, safety and welfare would negatively affect residences, businesses and government services that depend on a reliable and continuous supply of water.
- 10. Within thirty days, the City will comply with the requirements of Section 72-5-24 NMSA 1978.
- 11. I hereby swear or affirm that all of the information contained herein is true and that the City of Las Vegas will comply with the above requirement.

By:

\_\_\_\_\_  
Kenneth Garcia, City of Las Vegas Utilities Director

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by

\_\_\_\_\_

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Appendix 6  
(Corporate Resolution and  
Consent)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

**CORPORATE RESOLUTION AND CONSENT**

By Shareholders of Storrie Project Water Users Association Authorizing,  
Ratifying and Agreeing to a Settlement Agreement, Purchase Agreement and  
the Grant of a Storage Easement to the City of Las Vegas

THE UNDERSIGNED shareholders of Storrie Project Water Users Association (“SPWUA”) own not less than Eighty-Three and One-Third Percent (83-1/3<sup>rd</sup> %) of the outstanding shares of SPWUA (the undersigned shareholders of SPWUA are hereinafter referred to as the “Signatory Shareholders”); having reviewed that certain: (i) Agreement for the Purchase and Sale of a Storage Easement and Bulk Water in Storrie Reservoir, entered into by SPWUA and the City of Las Vegas (hereinafter “City”), dated February \_\_, 2016 (hereinafter “Purchase Agreement”); (ii) the form and content of the Storage Easement attached and incorporated into the Purchase Agreement as Appendix 1 (hereinafter “Storage Easement”), to be executed by SPWUA at the closing on the City’s purchase of the Storage Easement from SPWUA, and conveyed to the City in accordance with the terms of the Purchase Agreement; and (iii) Settlement Agreement entered into by SPWUA, the United States, on behalf of the United States Fish and Wildlife Service, and the City, dated February \_\_, 2016 (hereinafter “Settlement Agreement”); and having taken up the question at a duly noticed special meeting of the shareholders of SPWUA held on March 7, 2016, whether to approve, authorize and ratify these documents, and whether to approve and accept the individual agreements set forth below; and being duly informed concerning the history, purpose, benefits and legal effect of these matters; DO BY THIS RESOLUTION AND CONSENT RESOLVE AND AGREE AS FOLLOWS:

The Signatory Shareholders, acting in their representative capacities as shareholders of SPWUA, and in their individual capacities with respect to any interests they

may own, individually, in storage capacity at Storrie Lake and in the bulk water being sold and transferred to the City in Storrie Reservoir, DO, HEREBY:

1. Authorize, ratify and consent to the Purchase Agreement, a copy of which is attached hereto as **Exhibit A** and incorporated into this Resolution and Consent by reference; and

2. Authorize, ratify and consent to the execution, delivery and conveyance by SPWUA, through its President, of the Storage Easement in the form and content attached to the Purchase Agreement as **Appendix 1** and incorporated into this Resolution and Consent by reference; and

3. Represent and warrant that the Storage Easement, and the rights to be granted the City to store up to 2,300 acre feet of the City's water in Storrie Reservoir as specified in Exhibit A and Appendix 1 thereto, may be sold and conveyed to the City without causing detriment to SPWUA's business and without impairing the rights or interests of SPWUA's shareholders; and

4. Authorize, ratify and consent to the Settlement Agreement, a copy of which is attached hereto as **Exhibit B** and incorporated into this Resolution and Consent by reference; and

5. Authorize and consent that SPWUA, through its President, may join with the City in filing and prosecuting a joint application with the Office of the State Engineer ("OSE"), in the form attached to the Purchase Agreement as **Appendix 4**, Alternative A or B, for a permit for the City's storage of water in Storrie Reservoir; and

6. Authorize and consent that SPWUA, through its President, may join with the City in filing and prosecuting a joint application with the OSE, in the form attached to the Purchase Agreement as **Appendix 5**, for a permit for the City's use of bulk water stored in Storrie Reservoir; and

7. Represent and warrant that SPWUA is fully authorized and vested with the right to sell and deliver to the City 1,200 acre feet of bulk water stored in Storrie Reservoir as provided by the Purchase Agreement, and hereby authorize and consent that SPWUA, through its President may transfer title and ownership of 1,200 acre feet of bulk water to the City by executing the Bill of Sale attached to the Purchase Agreement as **Appendix 3** (hereinafter "Bill of Sale"); and

8. Represent and warrant that the Bill of Sale and the rights to be granted to the City to 1,200 acre feet of bulk water may be sold and conveyed to the City without causing detriment to SPWUA's business and without impairing the rights or interests of SPWUA's shareholders; and

9. Represent and agree that the Signatory Shareholders in their representative and individual capacities, shall not in the future challenge, protest or oppose on any grounds, or in any forum, the Purchase Agreement, the Storage Easement, the Bill of Sale, the Settlement Agreement, or any of the rights therein granted to the City, and do hereby expressly waive and release such rights and claims.

10. The Signatory Shareholders represent and agree that any individual interests or rights the Signatory Shareholders may have in storage space in Storrie Reservoir, or the water rights adjudicated to SPWUA or its shareholders, shall, upon delivery of the Storage Easement to the City in accordance with the terms of the Purchase Agreement, be held and

exercised by SPWUA and the Signatory Shareholders "subject to" the rights granted to the City by the Purchase Agreement and the Storage Easement; and

11. The Signatory Shareholders agree that the phrase "subject to" as used herein is defined to mean that the rights granted to the City by the Purchase Agreement and the Storage Easement shall, in the event of any conflict, controversy or dispute with SPWUA, the Signatory Shareholders, or their respective successors in interest, or any other person or entity, be exercised by the City prior to the rights of SPWUA, the Signatory Shareholders, or their respective successors in interest.

12. The Signatory Shareholders acknowledge and agree that the City has bargained for and is expressly relying upon the content of this Corporate Resolution and Consent in entering into the Purchase Agreement for the purchase of the Storage Easement, and the Settlement Agreement.

**RESOLVED, APPROVED AND AGREED TO** this \_\_\_ day of \_\_\_\_\_, 2016.

Signatory Shareholders of the Storrie Project Water Users Association:

\_\_\_\_\_

Printed Name

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---

Printed Name

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State of New Mexico    )  
                                  )ss.  
County of San Miguel    )

The foregoing Corporate Resolution and Agreement by Shareholders of Storrie Project Water Users Association Authorizing and Ratifying Settlement Agreement, Purchase Agreement and Grant of Storage Easement with the City of Las Vegas was acknowledged and executed before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by each and all of the persons whose signatures appear above, in their representative and individual capacities, each person having provided sufficient evidence to me of their identities.

\_\_\_\_\_  
NOTARY PUBLIC

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

My Commission Expires:\_\_\_\_\_

# Appendix 7 (Council Resolution)

to

Agreement for the Purchase and Sale of a Storage  
Easement and Bulk Water in Storrie Reservoir

CITY OF LAS VEGAS  
RESOLUTION NO. 16-09

A CITY RESOLUTION AUTHORIZING THE MAYOR AND THE CITY MANAGER TO SETTLE PROTESTS AND ENTER INTO AN AGREEMENT WITH THE STORRIE PROJECT WATER USERS ASSOCIATION TO PURCHASE 2300 ACRE FEET OF PERMANENT WATER STORAGE AND 1200 ACRE FEET OF BULK WATER.

WHEREAS, on July 25, 1989, the City of Las Vegas (City) entered into an agreement (#0175-A) with the Storrie Project Water Users Association (SPWUA) to lease 500 acre feet of water storage capacity at a rate of \$37,500.00 (\$75.00/AF) adjusted for CPI annually; and

WHEREAS, agreement #0175-A was for a period of twenty years and expired on December 31, 2009 at a final rate of \$61,760.44 (\$123.00/AF); and

WHEREAS, both parties extended the lease agreement effective January 1, 2010 for a one year period with a one-time cash sum of \$100,000 (\$200.00/AF); and

WHEREAS, a second extension to the lease agreement went into effect January 2, 2011 for a term of 3 years payable at \$100,000 the first year, \$125,000 (\$250.00/AF) the second year and \$150,000 (\$300.00/AF) the third year totaling \$375,000; and

WHEREAS, on March 20, 2013 the Governing Body adopted Resolution No. 13-15 as a joint effort between the SPWUA and the City to promote water efficiency and water conservation and to improve water storage and conveyance; and

WHEREAS, the City and the SPWUA have been in negotiations since that March 20, 2013 to draft an agreement that is mutually beneficial to both parties; and

WHEREAS, the City, SPWUA and the United States Fish and Wildlife Service have generally agreed to settle ongoing protests to various water storage applications by the City and the City has agreed generally to the following terms and conditions with SPWUA:

1. Purchase by the City of a perpetual and permanent water storage easement for 2300 acre feet of storage capacity at Storrie Reservoir commencing at the level where the water stored by the City can be released by gravity through the City's outlet works.
2. The payment of twelve million dollars (\$12,000,000 or, \$5,217.39/AF) to be paid at closing of the storage easement contingent upon the approval of a joint storage permit application by the Office of the State Engineer.
3. Purchase by the City of 1200 acre feet of bulk water in Storrie Reservoir for the purchase price of three hundred sixty thousand dollars (\$360,000), together with interim storage for the bulk water at the rate of five thousand two hundred seventeen dollars and thirty nine cents (\$5,217.39) per month pending closing of the City's storage easement.

4. Closing of the bulk water agreement will occur upon approval of a joint temporary bulk water permit application or final bulk water permit application by the Office of the State Engineer.
5. The purchase price for the storage easement and the bulk water purchase shall escalate at the rate of 1% per annum commencing after September 30, 2016 until closing of each of these purchase transactions.
6. Authorization and consent by 83 1/3<sup>rd</sup> percent of SPWUA shareholders to these transactions.

WHEREAS, Ordinance No. 14-10 for Bond Water System Improvements was adopted on February 18, 2015 and will allow the City to finance the acquisition of storage with debt capacity; and

WHEREAS, the City will submit an application to the New Mexico Finance Authority for financing under the Public Project Revolving Fund and/or seek financing through the open bond market; and

WHEREAS, the City will use water fund cash to purchase the bulk water and the interim storage costs for the bulk water. Such funds are included in the City's FY 16 budget.

WHEREAS, the City will finance the transactions through existing water rates.

NOW, THEREFORE BE IT RESOLVED by the Governing Body of the City of Las Vegas that the Mayor and the City Manager are authorized to settle ongoing protests to the City's various storage applications and to enter in to an agreement with the Storrie Project Water Users Association for 2300 acre feet of storage for the amount of \$12,000,000.00 and 1200 acre feet of bulk water for \$360,000, with temporary storage costs as provided above.

BE IT FURTHER RESOLVED that the agreement shall be deemed ratified by the governing body upon execution by the Mayor.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor Alfonso E. Ortiz, Jr.

Attest:

\_\_\_\_\_  
Casandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY ONLY

\_\_\_\_\_  
Dave Romero Jr., City Attorney

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 02/19/16

**DEPT:** Utilities Dept.

**MEETING DATE:** 02/29/16

**ITEM/TOPIC:** Request approval of Resolution 16-10 authorizing and approving the submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority.

**ACTION REQUESTED OF COUNCIL:** Approval/Disapproval of Resolution No. 16-10.

**BACKGROUND/RATIONALE:** The New Mexico Finance Authority has a program allowing submission of an application to include borrowing funds and/or issuing bonds for assistance to finance projects from the public project revolving fund. The City has been in ongoing negotiations with the Storrie Project Water Users Association to draft an agreement that is mutually beneficial to both parties for water storage. Both parties have tentatively reached an agreement for permanent perpetual water storage. The City intends to cash purchase bulk water. The City will acquire permanent water storage for the municipal water system under this NMFA program.

**STAFF RECOMMENDATION:** Approval of Resolution No. 16-10.

**COMMITTEE RECOMMENDATION:** This item will be discussed at the regular Utility Advisory Committee meeting on March 8, 2016.

**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**

  
\_\_\_\_\_  
**ELMER MARTINEZ**  
**CITY MANAGER**

\_\_\_\_\_  
**PURCHASING AGENT**  
**(FOR BID AWARD ONLY)**

\_\_\_\_\_  
**ANN MARIE GALLEGOS**  
**FINANCE DIRECTOR**  
**(PROCUREMENT)**

  
\_\_\_\_\_  
**DAVE ROMERO**  
**CITY ATTORNEY**  
**(ALL CONTRACTS MUST BE REVIEWED)**

Approved to form 1-26-15

CITY OF LAS VEGAS  
RESOLUTION NO. 16-10

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

WHEREAS, the City of Las Vegas, New Mexico ("Governmental Unit") is a qualified entity under the New Mexico Finance Authority Act, Sections 6-21-1 through 6-21-31, NMSA 1978 ("Act"), and the City Council of the City of Las Vegas ("Governing Body") is authorized to borrow funds and/or issue bonds for financing of public projects for benefit of the Governmental Unit; and

WHEREAS, the New Mexico Finance Authority ("Authority") has instituted a program for financing of projects from the public project revolving 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 public projects; and

WHEREAS, the Governing Body intends to purchase a perpetual and permanent water storage easement for up to 2,300 acre feet of storage capacity at Storrie Reservoir for the City's municipal water system("Project") for the benefit of the Governmental unit and its citizens; and

WHEREAS, the Governing Body has approved Resolution #16-09 authorizing the Mayor and the City Manager to enter into an agreement with the Storrie Project Water Users Association (SPWUA) to purchase up to 2300 acre feet of permanent water storage; 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 inconsistent with the provision hereof) heretofore taken by the Governing body and the officers and employees thereof directed toward the Application and the Project, be and the same is hereby ratified, approved and confirmed.

Section 2. That the completed Application submitted to the Governing Body, be and the same is 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor Alfonso E. Ortiz, Jr.

Attest:

\_\_\_\_\_  
Casandra Fresquez, City Clerk

APPROVED AS TO LEGAL SUFFICIENCY ONLY

\_\_\_\_\_  
Dave Romero Jr., City Attorney

FY	Lease Option		Acquisition Option			Present Value@ 3.05% (AIC)	Present Value Difference
	Present Value@ 3.05% (AIC)		Principal	Interest	Net Debt Service <sup>(3)</sup>		
2016	150,000	(1)					
2017	690,000	(2)	415,000	316,734	1,091,734	1,059,245	(389,779)
2018	690,000		420,000	312,826	732,826	689,973	(20,396)
2019	690,000		420,000	310,138	730,138	667,096	(36,672)
2020	690,000		425,000	306,988	731,988	648,992	(37,227)
2021	690,000		430,000	303,503	733,503	631,087	(37,429)
2022	690,000		430,000	299,547	729,547	609,106	(33,018)
2023	690,000		435,000	294,688	729,688	591,192	(32,155)
2024	690,000		445,000	288,946	733,946	577,042	(34,551)
2025	690,000		450,000	282,360	732,360	558,753	(32,319)
2026	690,000		455,000	275,070	730,070	540,520	(29,667)
2027	690,000		465,000	266,835	731,835	525,790	(30,056)
2028	690,000		475,000	256,744	731,744	510,165	(29,104)
2029	690,000		485,000	245,154	730,154	493,990	(27,166)
2030	690,000		500,000	232,350	732,350	480,811	(27,804)
2031	690,000		515,000	218,350	733,350	467,217	(27,618)
2032	690,000		530,000	203,209	733,209	453,302	(26,714)
2033	690,000		545,000	187,044	732,044	439,186	(25,224)
2034	690,000		560,000	170,095	730,095	425,053	(23,343)
2035	690,000		580,000	152,399	732,399	413,774	(23,953)
2036	690,000		600,000	133,781	733,781	402,285	(24,002)
2037	690,000		620,000	114,221	734,221	390,612	(23,526)
2038	690,000		640,000	93,637	733,637	378,750	(22,528)
2039	690,000		660,000	71,941	731,941	366,690	(21,012)
2040	690,000		680,000	49,105	729,105	354,458	(19,011)
2041	690,000		705,000	25,169	(4,052)	(1,912)	327,431
2042	690,000						315,885
2043	690,000						306,535
2044	690,000						297,463
	<b>19,320,000</b>				<b>17,921,609</b>	<b>12,673,180</b>	<b>213,041</b>

Par Amount	12,885,000
	12,885,000
Project Fund	12,000,000
Debt Service Reserve	734,221
Cost of Issuance	50,000
NMFA Processing Fee	96,638
Additional Proceeds	4,142
	12,885,000

(1) Current 500 Acre Fee = \$150,000

(2) Proposed 2300 Acre Fee = \$690,000

(3) Accounts for \$360,000 of Bulk Water Purchase (1,200 Acre Feet) and Net of Debt Service Reserve Fund

Acquisition Assumes

Current NMFA Rates as of 2/21/2016

Dated: 5/29/2016

City of Las Vegas  
Water Utility - 2015 Update

**DRAFT** 2/25/2016

Fiscal Year:	2013	2014	2015	2016	2017	2018*
<b>Revenues</b>						
Revenues from Existing Water Rates	\$ 3,670,118	\$ 4,743,343	\$ 4,873,209	\$ 4,873,209	\$ 4,873,209	
Additional Revenue - Adopted Rate Increases	-	-	-	146,196	150,582	
Additional Revenue - Proposed Rate Increases	-	-	-	-	-	
<b>Total Rate Revenue</b>	<b>\$ 3,670,118</b>	<b>\$ 4,743,343</b>	<b>\$ 4,873,209</b>	<b>\$ 5,019,405</b>	<b>\$ 5,023,791</b>	
Miscellaneous Revenue	\$ 131,065	\$ 83,045	\$ 17,964	\$ 83,045	\$ 17,964	
Interest	(17,060)	22,315	24,480	22,315	24,480	
<b>Total Revenue</b>	<b>\$ 3,784,123</b>	<b>\$ 4,848,703</b>	<b>\$ 4,915,653</b>	<b>\$ 5,124,765</b>	<b>\$ 5,066,235</b>	
<b>Expenses</b>						
Operation & Maintenance Expenses <sup>1</sup>	\$ 2,902,134	\$ 3,453,131	\$ 3,540,450	\$ 3,540,450	\$ 3,540,450	
Franchise Tax Fee	198,342	173,381	173,381	173,381	173,381	
<b>Total Expenses</b>	<b>3,100,476</b>	<b>3,626,512</b>	<b>3,713,831</b>	<b>3,713,831</b>	<b>3,713,831</b>	
<b>Net Revenues Available for Debt Service</b>	<b>\$ 683,647</b>	<b>\$ 1,222,191</b>	<b>\$ 1,201,822</b>	<b>\$ 1,410,934</b>	<b>\$ 1,352,404</b>	<b>\$ 1,352,404</b>
<b>Senior Lien Debt Service Requirements</b>	<b>\$ 365,881</b>	<b>\$ 365,796</b>	<b>\$ 84,839</b>	<b>\$ 412,107</b>	<b>\$ 412,106</b>	<b>\$ 847,756</b>
NMFA PPRF 1995A <sup>2</sup>	28,531	28,531	208	-	-	-
NMFA PPRF 2003B	337,031	333,429	4,158	-	-	-
2013 DWSRF Loan #2727	241	688	14,114	14,114	14,114	14,114
2013 DWSRF Loan #287B	78	1,000	20,529	20,529	20,529	20,529
2013 DWSRF Loan #2910	-	764	15,681	15,681	15,680	15,680
2013 DWSRF Loan #2911	-	751	15,689	15,689	15,689	15,689
2014 DWSRF Loan #3043	-	572	11,745	11,745	11,745	11,745
2014 DWSRF Loan #3046	-	61	2,515	2,515	2,515	2,515
2015 DWSRF Loan #3142	-	-	-	331,834	331,834	767,484
<b>Subordinate Lien DS Requirements</b>	<b>\$ 15,501</b>	<b>\$ 15,580</b>	<b>\$ 19,279</b>	<b>\$ 44,477</b>	<b>\$ 44,734</b>	<b>\$ 44,735</b>
2011 WTB Loan #197	2,566	2,566	2,567	2,566	2,566	2,566
2011 WTB Loan #218	1,736	1,736	1,736	1,736	1,736	1,737
2011 WTB Loan #219	8,135	8,135	8,135	8,135	8,135	8,134
2012 WTB Loan #251	3,064	3,143	3,135	3,128	3,120	3,120
2014 WTB Loan #286	-	-	3,706	3,706	3,706	3,706
2015 WTB Loan #287	-	-	-	4,207	4,522	4,522
2015 WTB Loan #317	-	-	-	21,000	20,950	20,950
<b>Senior Coverage</b>	<b>1.87</b>	<b>3.34</b>	<b>14.20</b>	<b>3.42</b>	<b>3.28</b>	<b>1.80</b>
<b>All in - Coverage</b>	<b>1.79</b>	<b>3.20</b>	<b>11.57</b>	<b>3.09</b>	<b>2.96</b>	<b>1.52</b>
<b>Pro Forma All in - Coverage<sup>3</sup></b>			<b>1.35</b>	<b>1.35</b>	<b>1.35</b>	<b>1.35</b>

<sup>1</sup> Excludes Depreciation, Amortization and Interest Expenses.

<sup>2</sup> These NMFA PPRF's were paid off on or before 8/1/2014. The Amount shown for FY15 is the interest accrued from 5/1 to 8/1.

<sup>3</sup> Coverage calculated using FY2018 debt service requirements and FY2015 Net Revenues Available for Debt Service.

\* Coverage calculated using FY2017 Net Revenues Available for Debt Service.