



# 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  
January 30, 2015–Friday– 1:30 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. **MAYOR'S APPOINTMENTS/REPORTS**
- VI. **APPROVAL OF AGENDA**
- VII. **PUBLIC INPUT (not to exceed 3 minutes per person)**
- VIII. **BUSINESS ITEMS**

1. Approval/Disapproval to Publish Ordinance #14-10 Bond Water System Improvements repealing and replacing Ordinance 12-16.

***Ken Garcia, Utilities Director*** 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 NM water utility loan system improvement revenue bonds based on the agreement between the City and the NM Finance Authority. The bond ordinance expired on November 19, 2014 and needs to be extended.

2. Approval/Disapproval of amendment #2 to the Souder Miller & Associates contract for the Raw Water Conveyance Project.

**Ken Garcia, Utilities Director** Amendment #2 is for the Planning and Design of the Raw Water Conveyance Project. The project is planned to include replacement of the existing Raw Water Conveyance pipeline between the Diversion and the Bradner Inlet/Outlet. The project will include site work, control valves, air relief valves and connections.

3. Approval/Disapproval to award bid for Water Treatment Plant Building Repairs to Hays Plumbing & Heating Inc.

**Ken Garcia, Utilities Director** The project is to make needed repairs to the Water Treatment Plant Facility. The filtration building is settling and there are large cracks in the North and West walls. There are also issues with the roof leaking and existing exhaust fans that need to be replaced. The work includes the addition of a mixer to the sludge lagoon to keep sediment suspended until lagoon could be drained.

4. Approval/Disapproval to enter into an agreement between the City of Las Vegas and the Friends of the Las Vegas Carnegie Library.

**Elmer J. Martinez, City Manager** The Friends of the Library are proposing to enter into an agreement with OverDrive for the purposes of providing an e-book service out of Carnegie Library. Under the agreement the Friends would pay 100% of the cost for the first year and 66% of the cost for the second and third years. The City's share will be paid from General Obligation Bond for books.

5. Approval/Disapproval of Resolution #14-74 repealing and replacing Resolution #80-51 removing the water tap issued to Mr. Gene Maes and reinstalling the tap on Zeamway at 1 Airport Road.

**Ken Garcia, Utilities Director** The East Loop water line up to Zeamway Road will be ready for service in January 2015. Mr. Gene Maes was granted a 2" water tap off of the MDF line per Resolution #80-51 dated March 12, 1992. The tap was restricted to serve 5 residential services. Staff is requesting that the existing tap be withdrawn and moved to a new location with proper easement and that staff enter into a line extension agreement per the City Code 440-12 with any customers that are legally being served off the existing tap.

## **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 87701

Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 01/23/15

DEPT: Utilities

MEETING DATE: 01/30/15

ITEM/TOPIC: Publication of Ordinance No. 14-10 Bond Water System improvements.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval to publish 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: Approval to publish ordinance.

COMMITTEE RECOMMENDATION: This item will be discussed for ratification at the regular Utility Advisory Committee meeting on February 10, 2015.

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 1-26-15

  
\_\_\_\_\_  
SUBMITTER'S SIGNATURE

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

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

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

The City Council (the "Governing Body") of the City of Las Vegas, New Mexico, met in special session in full conformity with the law and the rules and regulations of the Governing Body at the City Hall at 1700 North Grand Avenue, Las Vegas, New Mexico, 87701, being the meeting place of the Governing Body for the special meeting held on the ~~19<sup>th</sup>~~ day of ~~November~~, ~~2012~~2015, at the hour of ~~6:00~~ p.m. Upon roll call, the following members were found to be present:

Present:

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Absent:

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Also Present:

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

## TABLE OF CONTENTS

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

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

ARTICLE XXI [RESERVED] .....29

ARTICLE XXII PLEDGE OF NET REVENUES, LIEN OF THE BONDS AND  
EQUALITY OF THE BONDS .....29

    Section 22.01 *Pledge of Net Revenues* ..... 29

    Section 22.02 *[Reserved]* ..... 29

    Section 22.03 *Equality of Bonds* ..... 29

    Section 22.04 *Other Pledged Amounts* ..... 29

ARTICLE XXIII ADDITIONAL BONDS OF THE SYSTEM.....29

    Section 23.01 *Limitations Upon Issuance of the Bonds* ..... 29

    Section 23.02 *Parity Bonds* ..... 29

    Section 23.03 *Superior Obligations Prohibited* ..... 31

    Section 23.04 *Subordinate Obligations Permitted*..... 31

ARTICLE XXIV REFUNDING BONDS .....31

ARTICLE XXV PROTECTIVE COVENANTS .....31

    Section 25.01 *Use of Proceeds of the Bonds*..... 31

    Section 25.02 *Payment of the Bonds*..... 32

    Section 25.03 *Rate Covenant*..... 32

    Section 25.04 *Lien on Lands Serviced by System*..... 33

    Section 25.05 *Levy of Charges* ..... 33

    Section 25.06 *Efficient Operation*..... 33

    Section 25.07 *Records*..... 33

    Section 25.08 *Right to Inspect*..... 33

    Section 25.09 *Audits* ..... 33

    Section 25.10 *Billing Procedure* ..... 34

    Section 25.11 *Charges and Liens Upon System* ..... 34

    Section 25.12 *Insurance* ..... 34

    Section 25.13 *[Reserved]* ..... 34

    Section 25.14 *Alienating System* ..... 34

    Section 25.15 *Extending Interest Payments* ..... 35

    Section 25.16 *Competent Management* ..... 35

    Section 25.17 *Performing Duties* ..... 35

    Section 25.18 *Other Liens* ..... 35

    Section 25.19 *City's Existence* ..... 35

    Section 25.20 *Tax Compliance*..... 35

ARTICLE XXVI REBATE FUND .....37

ARTICLE XXVII EVENTS OF DEFAULT .....37

ARTICLE XXVIII REMEDIES UPON DEFAULT .....38

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

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

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS VEGAS, NEW MEXICO WATER UTILITY ~~REFUNDING—AND—~~SYSTEM IMPROVEMENT REVENUE BONDS, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWENTY FIVE MILLION AND 00/100 DOLLARS (~~\$2520,000,000.00~~) FOR THE PURPOSE OF DEFRAYING THE COST OF ~~REFUNDING~~, PAYING, REFINANCING AND DISCHARGING LOAN AGREEMENTS BETWEEN THE CITY AND THE NEW MEXICO FINANCE AUTHORITY AND FOR THE CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS TO THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

RECITALS:

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

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

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

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

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

~~interest rates on a portion of the Loan, of which \$979,703 of the principal amount of such Loan remains outstanding and \$341,301.50 is deposited in the required debt service reserve fund (the “Loan Agreement Reserve Fund”); and~~

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

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

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

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

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

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

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

WHEREAS, the Governing Body has determined that it is necessary and in the best interest of the City and the residents of the City that the Series Bonds be authorized and issued in a maximum aggregate principal amount of \$~~25~~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; ~~provided that withdrawals from the Rate Stabilization Fund shall not be included in Gross Revenues for the purposes of the Rate Covenant in any two consecutive calendar years; and~~

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

Gross Revenues do not include:

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

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

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

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

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

*"Insured Bank"* means a bank insured by an agency of the United States.

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

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

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

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

"NMFA" means the New Mexico Finance Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*Series Bonds*” means the “City of Las Vegas, New Mexico Water Utility Loan Refunding and System Improvement Revenue Bonds” which may be issued within two (2) years from the date of this Ordinance and in one or more issuances of bonds or loans, in an amount not to exceed the maximum aggregate principal amount of \$~~25~~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 ~~Loan Bonds~~ constitutes a Parity Obligation within the meaning of ~~the 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 \$2520,000,000. 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 ~~the Refunded Loan Obligations~~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 therefor and all other payments necessary to meet ongoing legal obligations to be paid at that time; and
- (b) Unless otherwise provided in this Ordinance or a Resolution of Sale, the City further covenants that it will at all times fix, charge and collect such rates and charges as shall be required in order that in each Fiscal Year the Net Revenues shall at least equal the greater of (a) the Debt Service Requirements on all Outstanding Bonds of the System, including the Series Bonds payable in whole or in part from Net Revenues in such Fiscal Year and the deposits required by this Ordinance as such requirements may be supplemented and amended by a Resolution of Sale, to be made into the various funds of this Ordinance or Resolution of Sale in such year or (b) 130% of the Debt Service Requirements on all Outstanding bonds of the System, including the Series Bonds, payable in whole or in part from Net Revenues in such Fiscal Year.

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

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

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

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

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

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

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

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

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

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

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

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

Section 25.13 ***[Reserved]***

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

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

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

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

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

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

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

Section 25.20 ***Tax Compliance.***

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

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

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

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

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

#### **ARTICLE XXVI REBATE FUND**

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

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

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

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

#### **ARTICLE XXVII EVENTS OF DEFAULT**

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

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

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

### **ARTICLE XXVIII REMEDIES UPON DEFAULT**

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

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

All proceedings shall be instituted and maintained for the equal benefit of all Owners of the Bonds then Outstanding, subject to the provisions of Article XVIII of this Ordinance, with respect to the use of Gross Revenues. The Owners by purchasing the Bonds consent to the appointment of a receiver to protect the rights of the Owners, provided the appointment of a receiver is subject to the discretion of the court having jurisdiction in the matter. The receiver may enter and take possession of and operate and maintain the System and shall prescribe rates, fees or charges and collect, receive and apply all Gross Revenues as required by this Ordinance and subject to the additional requirements as may be imposed under a Resolution of Sale. The failure of any Owner to exercise any right granted by this Article shall not relieve the City of any obligation to perform any duty. Each right or privilege of any Owner (or trustee or receiver therefor) is in addition and cumulative 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 ~~the any~~ outstanding ~~Loan as evidenced by the Loan Agreement~~ bonds or outstanding loans obligating at a redemption price equal to the principal amount of the ~~Refunded Loan Obligations~~ 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 ~~of the Loan Agreement (Loan # \_\_\_\_\_)~~ by first-class mail (return receipt requested) to the NMFA. Such notice may be in substantially the form attached as an exhibit to a Resolution of Sale.

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

#### **ARTICLE XXXVI EFFECTIVE DATE AND GENERAL SUMMARY FOR PUBLICATION**

Upon due adoption of this Ordinance, it shall be recorded and preserved by the City Clerk, authenticated by the signature of the Mayor and City Clerk or a Deputy City Clerk, and the seal of the City impressed thereon, and the title and a general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which 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. ~~12-16~~14-10

AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS VEGAS, NEW MEXICO WATER UTILITY ~~REFUNDING—AND—~~SYSTEM IMPROVEMENT REVENUE BONDS, IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF TWENTY FIVE MILLION AND 00/100 DOLLARS (\$~~2520~~25,000,000.00) FOR THE PURPOSE OF DEFRAYING THE COST OF ~~REFUNDING~~, PAYING, REFINANCING AND DISCHARGING LOAN AGREEMENTS BETWEEN THE CITY AND THE NEW MEXICO FINANCE AUTHORITY AND FOR THE CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS TO THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE ISSUANCE AND SALE OF THE BONDS; PROVIDING THAT THE BONDS WILL BE PAYABLE AND COLLECTIBLE SOLELY FROM THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER UTILITY SYSTEM; PROVIDING FOR THE TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THE BONDS AND OTHER DETAILS CONCERNING THE BONDS AND SUCH SYSTEM, INCLUDING BUT NOT LIMITED TO COVENANTS AND AGREEMENTS

IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY  
TAKEN IN CONNECTION THEREWITH AND APPERTAINING THERETO.

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

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

(End of Summary of Ordinance for Publication)

**ARTICLE XXXVII  
GOVERNING LAW**

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

**ARTICLE XXXVIII  
SEVERABILITY CLAUSE**

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

**ARTICLE XXXIX  
REPEALER CLAUSE**

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

**ARTICLE XL  
INTERESTED PARTIES**

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

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

Notwithstanding any provision of this Ordinance to the contrary, the obligations of the City under this Ordinance are special limited obligations of the City payable solely from the Pledged

Revenues. Neither the faith and credit, nor the taxing power of the State of New Mexico or any of its political subdivisions, including the City, is pledged to the payment or performance of such obligations. No agreements or provisions contained in this Ordinance, the provisions of a Resolution of Sale, or any other document or instrument related to the Bonds shall give rise to any pecuniary liability of the City, its officers, its employees or members of its Council or constitute a charge against the City's general credit, or obligate the City financially in any way, except with respect to the Pledged Revenues, and their application as provided in this Ordinance and a Resolution of Sale. No failure of the City to comply with any terms, covenants, or agreements in this Ordinance or any other document or instrument related to the Bonds shall subject the City, its officers, its employees or members of its Council to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Pledged Revenues.

PASSED, APPROVED, AND ADOPTED THIS ~~19TH~~ \_\_\_\_\_ DAY OF  
~~NOVEMBER~~ \_\_\_\_\_, ~~2012~~2015.

CITY OF LAS VEGAS, NEW MEXICO

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

[SEAL]

ATTEST:

\_\_\_\_\_  
~~CITY CLERK~~ Casandra Fresquez, City Clerk

Councilor \_\_\_\_\_ moved for the adoption of the foregoing City Ordinance

No. ~~\_\_\_~~, 14-10, and the motion was duly seconded by Councilor \_\_\_\_\_.

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

Those Voting Aye:

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

Those Voting Nay:

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

Those Absent:

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

\_\_\_\_\_ Councilors having voted in favor of said motion, \_\_\_\_\_ 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 ~~19<sup>th</sup>~~ \_\_\_\_\_ day of ~~November~~ \_\_\_\_\_, ~~2012~~2015.

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

[SEAL]

ATTEST:

\_\_\_\_\_  
~~CITY CLERK~~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 November 19, 2012, at the hour of 6:00 p.m. insofar as the same relate to the proposed bond issue, a copy of which is set forth in the official records of the proceedings of the City kept in my office. None of the action taken has been rescinded, repealed, or modified.

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

3. Notice of said meeting was given by publishing the notice in a newspaper in general circulation within the City. Such notice constitutes compliance with one of the permitted methods of giving notice of special meetings of the Council as required by the open meetings standards presently in effect, i.e., City Resolution No. 12-1614-10.

IN WITNESS WHEREOF, I have hereunto set my hand this 19<sup>th</sup> day of November, 2012~~2015~~.

Casandra Fresquez, City Clerk  
~~CITY CLERK~~

[SEAL]

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

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

Present:

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

Absent:

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

Also Present:

City Manager Timothy Dodge  
City Attorney Dave Romero  
City Clerk Casandra Friesquez  
\_\_\_\_\_

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

**TABLE OF CONTENTS**

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

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

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

ARTICLE XXIX DUTIES UPON DEFAULT .....39

ARTICLE XXX DEFEASANCE.....39

ARTICLE XXXI BONDS NOT PRESENTED WHEN DUE.....40

ARTICLE XXXII DELEGATED POWERS .....40

ARTICLE XXXIII AMENDMENT OF THE ORDINANCE OR RESOLUTION OF SALE....41

    Section 33.01 *Limitations upon Amendments*..... 41

    Section 33.02 *Additional Amendments*..... 41

    Section 33.03 *Proof of Instruments*..... 42

    Section 33.04 *Proof of Bonds*..... 42

ARTICLE XXXIV ORDINANCE IRREPEALABLE.....42

ARTICLE XXXV NOTICE OF PRIOR REDEMPTION.....42

    Section 35.01 *The Refunded Loan Obligations*..... 42

    Section 35.02 *Contingency*..... 42

ARTICLE XXXVI EFFECTIVE DATE AND GENERAL SUMMARY FOR  
PUBLICATION .....42

ARTICLE XXXVII GOVERNING LAW.....44

ARTICLE XXXVIII SEVERABILITY CLAUSE.....44

ARTICLE XXXIX REPEALER CLAUSE.....44

ARTICLE XL INTERESTED PARTIES .....44

ARTICLE XLI LIMITATION OF CITY’S LIABILITY .....44

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

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

RECITALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE I**  
**DEFINITIONS AND RULES OF CONSTRUCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Council"** means the Governing Body.

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

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

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

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

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

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

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

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

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

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

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

**"Government Obligations"** means direct obligations of the United States of America or obligations guaranteed by the United States of America.

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

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

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

Gross Revenues do not include:

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

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

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

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

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

**"Insured Bank"** means a bank insured by an agency of the United States.

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

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

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

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

"NMFA" means the New Mexico Finance Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Replacement Fund"** means the Replacement Fund established in Article XVII.

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

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

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

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

**"S&P"** means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., its successors and their assigns.

**"State"** means the State of New Mexico.

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

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

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

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

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

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

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

## ARTICLE II RATIFICATION

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

## ARTICLE III FINDINGS AND DECLARATIONS

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

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

## ARTICLE IV WATER UTILITY

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

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

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

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

## ARTICLE VI SERIES BONDS

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

### **Section 6.02 *Details of the Bonds.***

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

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

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

Section 6.03 *Securities Depository.*

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

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

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

**Section 6.04 *Redemption.***

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE VII FILING OF SIGNATURES**

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

**ARTICLE 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 the Refunded Loan Obligations as provided in a Resolution of Sale.

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

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

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

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

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

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

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

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

### ARTICLE XVIII ADMINISTRATION OF FUNDS AND ACCOUNTS

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

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

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

**Section 18.02 Debt Service Fund.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE XX**  
**GENERAL ADMINISTRATION OF FUNDS**

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

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

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

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

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

**ARTICLE XXI  
[RESERVED]**

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

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

Section 22.02 *[Reserved].*

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

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

**ARTICLE XXIII  
ADDITIONAL BONDS OF THE SYSTEM**

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

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

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

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

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

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

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

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

#### **ARTICLE XXIV REFUNDING BONDS**

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

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

#### **ARTICLE XXV PROTECTIVE COVENANTS**

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

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

**Section 25.03 *Rate Covenant.***

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 25.13 *[Reserved]***

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

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

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

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

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

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

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

**Section 25.20 *Tax Compliance.***

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

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

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

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

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

#### **ARTICLE XXVI REBATE FUND**

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

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

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

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

#### **ARTICLE XXVII EVENTS OF DEFAULT**

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

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

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

### **ARTICLE XXVIII REMEDIES UPON DEFAULT**

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

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

All proceedings shall be instituted and maintained for the equal benefit of all Owners of the Bonds then Outstanding, subject to the provisions of Article XVIII of this Ordinance, with respect to the use of Gross Revenues. The Owners by purchasing the Bonds consent to the appointment of a receiver to protect the rights of the Owners, provided the appointment of a receiver is subject to the discretion of the court having jurisdiction in the matter. The receiver may enter and take possession of and operate and maintain the System and shall prescribe rates, fees or charges and collect, receive and apply all Gross Revenues as required by this Ordinance and subject to the additional requirements as may be imposed under a Resolution of Sale. The failure of any Owner to exercise any right granted by this Article shall not relieve the City of any obligation to perform any duty. Each right or privilege of any Owner (or trustee or receiver therefor) is in addition and cumulative 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 the outstanding Loan as evidenced by the Loan Agreement at a redemption price equal to the principal amount of the Refunded Loan Obligations to be redeemed (as of the Redemption Date), plus accrued interest to the Redemption Date. Promptly upon issuance of the Bonds and not less than forty-five (45) days prior to the Redemption Date, the City shall mail such notice of prepayment and redemption of the Loan Agreement (Loan # \_\_\_\_\_) by first-class mail (return receipt requested) to the NMFA. Such notice may be in substantially the form attached as an exhibit to a Resolution of Sale.

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

#### **ARTICLE XXXVI EFFECTIVE DATE AND GENERAL SUMMARY FOR PUBLICATION**

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

of the City impressed thereon, and the title and a general summary of the subject matter contained in this Ordinance (set out below) shall be published in a newspaper which 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. 12-16**

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

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

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

(End of Summary of Ordinance for Publication)

#### **ARTICLE XXXVII GOVERNING LAW**

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

#### **ARTICLE XXXVIII SEVERABILITY CLAUSE**

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

#### **ARTICLE XXXIX REPEALER CLAUSE**

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

#### **ARTICLE XL INTERESTED PARTIES**

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

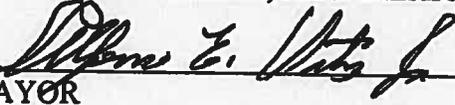
#### **ARTICLE XLI LIMITATION OF CITY'S LIABILITY**

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

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

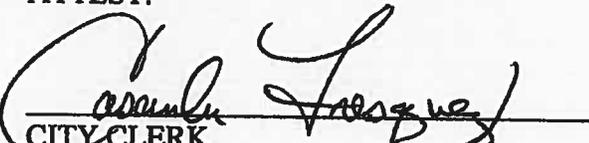
PASSED, APPROVED, AND ADOPTED THIS 19TH DAY OF NOVEMBER, 2012.

CITY OF LAS VEGAS, NEW MEXICO

  
MAYOR

[SEAL]

ATTEST:

  
CITY CLERK

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

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

Those Voting Aye:

Councilor Joey Herrera  
Councilor Vincent Howell  
Councilor David Romero.

Those Voting Nay:

Councilor Tonita Gurule-Giron'

Those Absent:

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

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

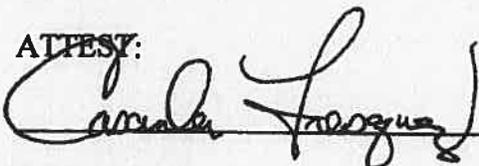
After consideration of the matters not relating to the ordinance, the meeting on motion duly made, seconded and unanimously carried, was adjourned.

Dated this 19<sup>th</sup> day of November, 2012.

  
Mayor

[SEAL]

ATTEST:



CITY CLERK

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

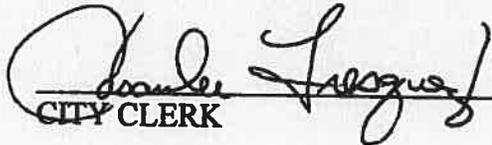
I, Casandra Fresquez, the duly qualified, and acting City Clerk of Las Vegas, New Mexico (the "City"), do hereby certify:

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

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

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

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

  
CITY CLERK

[SEAL]

Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 01/23/15

DEPT: Utilities Dept.

MEETING DATE: 01/30/15

ITEM/TOPIC: Amendment #2 to the SMA contract for the Raw Water Conveyance Project.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of amendment #2 to the SMA contract.

BACKGROUND/RATIONALE: Amendment #2 is for the Planning and Design of the Raw Water Conveyance Project. This project was recommended in the 2011 Preliminary Engineering Report (PER). Original contract date is October 21, 2013.

The project is planned to include replacement of the existing Raw Water Conveyance pipeline between the Diversion and the Bradner Inlet / Outlet. The project will include site work, control valves, air relief valves and connections.

STAFF RECOMMENDATION: Approval of amendment #2.

COMMITTEE RECOMMENDATION: This item was discussed at the regular Utility Advisory Committee meeting on January 13, 2015. The Committee concurs with staff recommendation. Changes will be revisited at the February 10<sup>th</sup>, 2015 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)



\_\_\_\_\_  
SUBMITTER'S SIGNATURE

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

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



## UTILITIES DEPARTMENT PROJECT SUMMARY SHEET

**PROJECT NAME:** Raw Water Conveyance

**PROJECT NUMBER:** UT-WRWC-2014-1

**PROJECT DESCRIPTION:** Complete replacement of pipe between the Diversion structure and both Peterson and Bradner reservoirs and reconfiguration and reconstruction of pre-sedimentation basin. The ability of the raw water conveyance system to move water effectively is critical to the viability of the City's water system. Portions of the conveyance system are over 50 years old and their design life is not expected to extend beyond the planning period. Portions of the system should be rehabilitated or replaced. The flow capacities of the system also limit the city's ability to fully use their surface water rights, which is detrimental to the City's water system reliability.

**ACTION TIMELINE:** Request Approval of URS RWC Amendment 2

**BUDGET LINE ITEM:** 646-0000-650-8763

**Engineers Estimates:** Pre-construction Phase: \$1,900,000  
 Bradner RWC Project Construction Phase: \$5,000,000  
 RWC from Diversion to WTP: \$12,000,000

PER Rank: 3

**FUNDING SOURCES**

SRF 2910SMA \$ 788,205.59  
 SRF 2910URS \$ 341,779.46  
 Capital outlay \$ 305,154.00  
 SRF 3142 \$4,896,558.01  
 Total Funds \$6,331,697.06

**ESTIMATED EXPENDITURES**

Design SMA \$ 788,205.59  
 Design URS \$ 646,933.46  
 Engineering Services \$ 700,000.00  
 Construction for all phases \$11,310,173.01  
 Total w/ GRT \$13,445,312.06

Need \$7,113.615.00 For RWC (ph1-4) Construction and Engineering Services

ACTION	DESCRIPTION	DATE
Loan/Grant	From 2014 Legislature, Grant for \$1,203,921.99 From NMFA in the amount of \$99,187.55 Project #2910-DW Loan (25%): \$164,786.30 Grant (75%): \$494,358.90	6/21/13
Authorized Ordinance	City adopted Ordinance No. 13-06 authorizing execution of loan and subsidy agreement	05/15/13
Loan/Subsidy Agreement	City entered into loan/subsidy agreement with NMFA	06/21/13
Document Review	N/A	
RFP 101-35 Advertised	Las Vegas Optic, Albuquerque Journal and City Website	6/7/13 6/8-9/13
RFP 101-35 Opening	Opened at City Hall Number of Proposers: 7	06/25/13
Staff Recommendation	Interviews with Engineers completed	08/02/13
Committee Recommendation	Item discussed at Utility Advisory Committee-recommendation for approval.	11/12/14
Council Approval	Item taken to City Council Worksession for discussion Item taken to City Council for approval	11/12/14
Notice to Proceed	URS SMA	02/19/14 10/31/13
Engineering Services Agreement	URS Raw Water Conveyance Project Agreement	01/14/2014



## ATTACHMENTS

Please check the appropriate box and include applicable attachments

1. As set forth in the AGREEMENT FOR ENGINEERING SERVICES dated the 31<sup>st</sup> day of October, 2013 by and between the City of Las Vegas, New Mexico, the OWNER, and Souder, Miller & Associates, the ENGINEER, the OWNER and ENGINEER agree this \_\_\_\_\_ day of January, 2015 that the OWNER shall compensate the ENGINEER for services described in Section B and Section C and further described in

**ATTACHMENT I – Planning Services scope of work, cost proposal and compensation for Engineering Services During the Planning Phase**

**ATTACHMENT II – Design Services scope of work, cost proposal and compensation for Engineering Services During the Design Phase**

**ATTACHMENT III - Construction Services scope of work, cost proposal and compensation for Engineering Services During the Construction Phase**

**ATTACHMENT IV - Operational Services scope of work, cost proposal and compensation for Engineering Services During the Operation Phase**

2. Compensation for ENGINEERING SERVICES shall be by the

**LUMP SUM** method of payment. The total amount of compensation for ENGINEERING SERVICES, as described in the appropriate ATTACHMENTS shall not exceed \$\_\_\_\_\_, excluding gross receipt tax and reimbursables.

**STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, <sup>including</sup> excluding gross receipt tax and reimbursables, for ENGINEERING SERVICES as described in the appropriate ATTACHMENTS shall not exceed \$353,566.00 (three hundred fifty three thousand, five hundred sixty six dollars) without prior written approval of the OWNER, with Funding Agency

concurrency.  
3. Compensation for ADDITIONAL ENGINEERING SERVICES (provided by the ENGINEER upon written authorization from the OWNER and concurrence of the Funding Agency), shall be by the

**LUMP SUM** method of payment. The total amount of compensation for ADDITIONAL ENGINEERING SERVICES, as described in the appropriate ATTACHMENT shall not exceed \$\_\_\_\_\_, excluding gross receipt tax and reimbursables.

**STANDARD HOURLY RATE WITH MAXIMUM** method of payment. The total amount of hourly charges, <sup>including</sup> excluding gross receipt tax and reimbursables, for ADDITIONAL ENGINEERING SERVICES as described in the appropriate ATTACHMENT shall not exceed \$74,744 (seventy four thousand, seven hundred forty four dollars) without prior written approval of the OWNER and with Funding Agency concurrence.

4. The amount of compensation shall not change unless the scope of services to be provided by the ENGINEER changes and this Agreement is formally amended according to Section A-5.

Contract Time under Section B. and for the purpose of Section A.8 shall be (as specified in the Attachments) calendar days (or as specified in the Attachments).

5. The OWNER and ENGINEER agree that as mutually agreeable, reasonable Liquidated Damages for delay (but not as a penalty), ENGINEER shall pay OWNER fifty dollars (\$50.00) (minimum fifty dollars [\$50.00] per day) for each calendar day that expires after the Contract Time specified in the Agreement (See attached

project schedule - Gantt chart, bar chart, etc.) until the Work is complete and accepted by the OWNER. OWNER shall have no more than ten (10) calendar days to accept or reject the Work.

6. The ENGINEER agrees to obtain and maintain, at the ENGINEER's expense, such insurance as will protect the ENGINEER from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the OWNER and the ENGINEER from all claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER, or by the ENGINEER's employees, for the ENGINEER's functions and services required under this Agreement. Such insurance shall be in an amount not less than \$500,000 for injury to any one person and \$1,000,000 on account of any one accident and in the amount of not less than \$1,000,000 for property damage. The ENGINEER further agrees to procure and maintain professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 per claim and in the aggregate. Prior to commencement of any work, the ENGINEER shall furnish to the OWNER a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least ten (10) calendar days prior written notice shall have been given to the OWNER. ENGINEER shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement.

7. OWNER shall pay ENGINEER applicable gross receipt taxes and reimbursable expenses at the rates set forth in the appropriate ATTACHMENTS. *The applicable gross receipts tax shall be the City of Las Vegas gross receipts tax rate. Because the construction project is located in Las Vegas, New Mexico, on property owned by the OWNER; the ENGINEER shall have an office location in Las Vegas, New Mexico. ENGINEER shall also establish a Las Vegas, New Mexico mailing address. The amounts payable to ENGINEER for reimbursable expenses will be the project related internal expenses, such as mileage, per diem and reproduction, actually incurred or allocated by ENGINEER, plus all invoiced external reimbursable expenses, including consultants, allocable to the project, the latter multiplied by a factor of 1.1 (1.1 MAXIMUM).*

*Mileage will be reimbursed at the current federally approved IRS rate. Reimbursable the Attachments expenses shall not exceed the estimate in the ATTACHMENT without prior written approval of the OWNER, with Funding Agency concurrence.*

8. The method for interim or partial payments, such as milestone or time & materials, shall be: as detailed in

The rest of the page is intentionally left blank

9. Signatures

IN WITNESS THEREOF, the parties hereto have executed, or caused to be executed, by their duly authorized officials, this Agreement in triplicate on the respective dates indicated below.

ATTEST: \_\_\_\_\_  
Type Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

OWNER: City of Las Vegas, New Mexico  
By \_\_\_\_\_  
Type Name Mr. Elmer Martinez  
Title City Manager  
Date \_\_\_\_\_

ATTEST: Tod L. Phinney  
Type Name TOD L. PHINNEY  
Title SENIOR CLIENT MANAGER  
Date JAN. 23, 2015

ENGINEER: Souder, Miller & Associates  
By James D. Smith  
Type Name James D. Smith, P.E.  
Title Vice President  
Address 3451 Candelaria Rd, NE,  
Suite D  
Date Jan 23, 2015

REVIEWED: FUNDING AGENCY  
NAME: \_\_\_\_\_  
By Reviewed by  
Type Name Andrea Telmo  
Date Andrea Telmo, Project Engineer  
Construction Programs Bureau-NMED  
Date: 1/20/2015

## ATTACHMENT II

### Agreement for Engineering Services

#### Design Services: Scope of Work, Cost Proposal and Compensation for Engineering Services during the Design Phase

##### Exhibit B.1 - Scope of Work

Including: Project Description  
Scope of Work: Basic Engineering Services  
Scope of Work: Additional Engineering Services  
Schedule for Deliverables  
Compensation for Engineering Services during the Design Phase  
Interim or Partial Payments

##### Exhibit B.2 - Cost Proposal

Including: Detailed Breakdown of Scope of Work  
Labor and Expenses Analysis

Revised by

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **EXHIBIT B.1 (AMENDMENT NO. 2) - SCOPE OF WORK**

### **Engineering Services during the Design Phase**

**Name of Project:** Raw Water Conveyance Project  
**Project Number:** 6422500  
**Name of Owner:** City of Las Vegas, NM  
**Project Description:** Design Phase 1 and 2 improvements to the City's existing raw water conveyance system as recommended in the Preliminary Engineering Report (PER).

This scope, schedule and pricing are pursuant to a request by the City of Las Vegas (OWNER) to Souder, Miller & Associates (ENGINEER) for engineering design services relating to the Raw Water Conveyance Project (DW-2910). The project includes improving the existing raw water conveyance system by designing and constructing 16,100 linear feet (lf) of a parallel 36-inch diameter pipeline. This pipeline will be routed from the OWNER's water treatment plant to the Gallinas River Diversion Structure. The project includes site work, control valves, air relief valves and connections. The work will be performed as described below.

#### **Scope of Work: Basic Engineering Services during the Design Phase**

The Scope of Work for this phase of the project includes project management, meetings and coordination, preliminary (60 percent) design and final (100 percent) design for the raw water conveyance system (RWCS) pipe line improvements. The final deliverable for the Design Phase work will be the bid package consisting of drawings, contract documents, technical specifications and an engineer's opinion of probable construction cost for the improvements described above. The ENGINEER's opinion of probable construction cost (cost estimate) will be included with the 60 percent and 100 percent delivered design phase products.

The entire RWCS pipe line improvements are planned to be divided into four distinct bid packages as follows:

1. Raw water pipeline (4,200 lf) from the water treatment plant to the Peterson Reservoir outfall pipeline (Phase 1).
2. Raw water pipeline (4,800 lf) from the Peterson Reservoir outfall pipeline to the Raw Water Master Meter (Phase 2).
3. Raw water pipeline (4,600 lf) from the Raw Water Master Meter to the Pre-Sedimentation Basin outlet (Phase 3).
4. Raw water pipeline (2,500 lf) from the Pre-Sedimentation Basin inlet, including a Pre-Sedimentation Basin bypass pipeline, to the Gallinas River Diversion Structure (Phase 4).

This amendment only includes preparation of the Phase 1 and Phase 2 design and bid documents. However, mapping and surveying and underground utility location will be completed for Phase 1 through Phase 4.

The following paragraphs detail the design phase engineering services to be completed by the ENGINEER.

#### **Task P2.1 - Project Management and Coordination Meetings/Workshops**

The ENGINEER will execute and maintain the appropriate controls for the project execution including financial, staffing, schedule, quality and health and safety including the following specific tasks:

1. The ENGINEER will conduct a design phase kick-off meeting, five (5) monthly progress meetings, and three (3) design review meetings with the OWNER to define the expectations and requirements of both parties during the design phase. A design review meeting will be held following submittal of each design phase (preliminary and final).
2. The ENGINEER will schedule, prepare agendas, facilitate the meeting, administer and distribute meeting minutes for all project meetings. All meetings are expected to be held at the OWNER's offices in Las Vegas, New Mexico.
3. The ENGINEER will procure and manage subconsultant services including geotechnical investigations and underground utility location mapping.
4. The ENGINEER will administer the contract including maintenance of project files (hard copy or digital), data library, and correspondence with Owner, sub-consultants, funding and governmental agencies, and vendors.
5. The ENGINEER will prepare and submit monthly invoices with supporting documentation including a progress report following the OWNER's format.
6. At the formal request of the ENGINEER, the OWNER agrees to provide available relevant information regarding the existing system including record drawings; operating and maintenance manuals; system data; and other documentation needed to advance the design.

#### **Task P2.5 - Preliminary Design (60%)**

The ENGINEER will advance the Design documents to a 60 percent level of detail and will include a draft set of plans, technical specifications, and front-end construction contract documents (general conditions, construction contract, labor requirements, and bidding requirements) and estimate of probable construction cost. The drawings will be completed to define the pipeline alignments and profiles, identify the major features of the work for the purpose of obtaining OWNER acceptance. The Drawing set will include title sheet, master drawing list, general notes, abbreviations and symbols, material quantities, general arrangement of the pipeline improvements, plans and profiles, cross sections (every 100-foot station) and details. Specifically,

1. The ENGINEER will furnish the OWNER with three (3) copies of the Preliminary Design Phase documents for review and comment.

2. The ENGINEER will facilitate the 60 percent design review meeting with the OWNER to present the design and solicit comments.
3. The OWNER will submit to the ENGINEER written comments within twenty one (21) calendar days of receipt of the Preliminary Design documents. Delays in review of the documents will require an increase in the contract period.
4. The ENGINEER will prepare and submit a formal comment and response letter to the OWNER.

The ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when the formal comment and response letter has been delivered to the OWNER.

#### **Task P2.6 - Final Design (100 percent)**

The ENGINEER will advance the Preliminary Design documents to a Final Design (ready for bid) level of detail. The documents will include the information that is required to bid the work, guide construction, facilitate permit acquisition and obtain governmental agency approvals.

1. The ENGINEER will incorporate the OWNER's and governmental agency review comments and revision requests for the 60% design in a Final Design package.
2. THE ENGINEER will revise the estimate of probable construction cost based on the current design phase and new quantities generated from the final drawings.
3. The ENGINEER will furnish the OWNER an estimate and scope of work for the Bid and Construction Phase services at the completion of the Final Design that will be negotiated under separate contract with the OWNER.
4. The ENGINEER will furnish to the OWNER three (3) copies of the Final Design (draft-final) contract documents, final opinion of probable construction cost, and related documents for OWNER's and other government Agency final review and acceptance.
5. The ENGINEER will facilitate the draft-final design review meeting with the OWNER to present the final design and solicit final comments and acceptance.
6. The ENGINEER will address and incorporate the OWNER's and governmental agencies final comments into the Final Design (ready to bid) Documents.
7. The ENGINEER will furnish the OWNER three (3) copies of the Final Design contract documents, technical specifications, drawings (half size bond) and final opinion of probable construction cost, and related documents.

Engineer's services under the Final Design Phase will be considered complete on the date the final bid documents (ready for bid) are delivered to the OWNER.

#### **Scope of Work: Additional Engineering Services during the Design Phase**

The scope of work for Additional Engineering Services for the design phase of the project includes environmental investigation and permitting (under separate contract with URS Corporation), site survey, geotechnical investigation, and utility location to support the project design.

### **Task P2.1 – Design Survey**

The ENGINEER will conduct topographical and boundary site surveys to prepare the base Design Drawings and Right of Way maps (if required) for the Phase 1 through 4 reach (16,100 linear feet) of the project. The surveying work is bounded by pipeline alignment and fifty feet to either side of the centerline. Surveying work that has been completed for previous or existing projects will be incorporated into the ENGINEER's survey.

### **Task P2.2 - Environmental Permitting**

All environmental permitting work required for Phase 1 and Phase 2 work is being completed by URS Corporation (URS) under a separate contract. URS will provide all required federal and state permits to the ENGINEER for inclusion in the Phase 1 bid and contract package.

### **Task P2.3 - Geotechnical Investigation**

The ENGINEER will conduct a geotechnical investigation utilizing the services of a subconsultant. Ten (10) exploratory boreholes are planned for the Phase 1 and Phase 2 reach of the project to characterize the subsurface soil, suitability of onsite fill material, pipe bedding/backfill requirements and compactive effort required during excavation and backfilling. Six (6) boreholes to a depth of 10 feet and four (4) boreholes to a depth of 20 feet will be drilled and sampled. Borehole and soil sample locations will be mapped on the design drawings.

Soil samples will be tested for properties including particle size, Atterberg limits, moisture content, soil classification and moisture density relationship (standard proctor). A geotechnical report will be prepared that summarizes the test results and recommends safe side slopes, safe distance from other utilities, pipe bedding depth and classifications of bedding, initial fill, final fill and compactive effort. The geotechnical report will be included with the Technical Specifications.

### **Task P2.4 – Underground Utility Location**

The ENGINEER will conduct an existing underground utility location investigation utilizing the services of a subconsultant. Exploratory excavation ("pot-holes") will be completed for the Phase 1 through 4 reach of the project to locate and identify existing utility crossings or existing utility and pipe connections in congested and/or critical tie-in locations. Fifteen (15) pothole locations are planned. Pothole locations will be mapped on the design drawings.

### **EXCLUSIONS (Work not included in the Contract)**

Cultural resources investigations, including archeological and historical, investigations, Engineering Services during Construction, additional permitting not included herein are excluded from the Contract. If these exclusions are required to complete the design phase services prior to bid solicitation, the ENGINEER will request a change order from the OWNER pursuant to the Contract.

**Schedule for Deliverables:**

The ENGINEER will begin the design phase upon written Notice to Proceed from the OWNER. The deliverables and corresponding time for the work described herein are as follows:

<b>Deliverable</b>	<b>Contract Time</b>
60 Percent Design Package	45 days from written notice to proceed
60 Percent Design Comment Response	5 days from receipt of OWNER'S/ Review Agency comments
100% Design Package (draft-final)	30 days from receipt of OWNER'S/Review Agency comments
Ready for Bid Design Package (final)	20 days from acceptance of Final Design Package by OWNER

**Compensation for Engineering Services during the Design Phase:**

Compensation for Basic Engineering Services during the Design Phase shall be by the STANDARD HOURLY RATE WITH MAXIMUM method of payment. The maximum amount of charges for Engineering Services during the Design Phase described here-in and as detailed in the attached Exhibit B.2 - Cost Proposal, shall not exceed **\$344,048.00 (three hundred forty four thousand, forty eight dollars)** including New Mexico Gross Receipt Tax (NMGRT), and reimbursable expenses without prior written approval of the Owner, and with Funding Agency concurrence. NMGRT is based on the current rate of **8.1458** percent for **Las Vegas**. Any adjustments to the tax rate will be itemized on the ENGINEER'S monthly invoice. If the tax exceeds the Compensation for Engineering Services, the ENGINEER will request a change order pursuant to the Contract.

Compensation for Additional Engineering Services during the Design Phase shall be by the STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of compensation for said services described above and as detailed in the attached Exhibit B.2 - Cost Proposal, shall not exceed **\$74,744.00 (seventy four thousand, seven hundred forty four hundred dollars)** including NMGRT and reimbursable expenses without prior written approval of the Owner, and with Funding Agency concurrence.

*For Additional Services not included in the Scope of Work described above, the ENGINEER shall perform the work on a Time and Materials basis per the Standard Rates table included as Attachment No. 1 to Exhibit B.1 of the Agreement. Such Additional Services will be performed only with prior written approval from the OWNER.*

**Interim or Partial Payments:**

Owner shall pay Engineer for Basic Engineering Services during the Design Phase related to the preparation of the construction drawings and specifications, as set forth above and detailed in Exhibit B.2 - Cost Proposal, the maximum amount not-to-exceed **\$344,048.00 (three hundred forty four thousand, forty eight dollars)** including NMGRT, invoiced monthly by the Engineer on a Time and Materials basis.

OWNER shall pay ENGINEER for Additional Engineering Services during the Design Phase related to the preparation of the construction drawings and specifications, as set forth above and detailed in Exhibit B.2 - Cost Proposal, the maximum amount not to exceed **\$74,744.00 (seventy four thousand, seven hundred forty four hundred dollars)** including NMGRT, invoiced monthly by the ENGINEER on a Time and Materials basis.

## **EXHIBIT B.2 – COST PROPOSAL**

### **(Compensation for Engineering Services)**

The following Summary of Cost Proposal includes an itemization of services to be provided pursuant to the present Agreement for Engineering Services according to each major development phase as presented in Section B of the Agreement.

A detailed breakdown of each phase is included in subsequent Attachments and their related Exhibits.

## Summary of Cost Proposal

**Souder, Miller & Associates**

**Professional Services and Expenses Task/Hours/Fee Breakdown Related To**

**Project Description:** Raw Water Conveyance Project (Amendment No. 2) - Phase 1 and 2  
**Project Number:** 6422500 (DW-2910)  
**Owner:** City of Las Vegas, NM  
**Date of Submittal:** January 23, 2015  
**Tax Rate on Services:** 8.1458%

TOTALS			
PHASE/ CATEGORY OF WORK	Subtotal	NMGR	Total*
Planning Phase - Basic Engineering Services	\$ -	\$ -	
Planning Phase - Additional Services	\$ -	\$ -	
Design Phase - Basic Engineering Services	\$ 318,133.50	\$ 25,914.52	\$ 344,048.00
Design Phase - Additional Services	\$ 69,114.25	\$ 5,629.91	\$ 74,744.00
<b>Total Design Phase Services</b>			<b>\$ 418,792.00</b>
Bid Phase - Basic Engineering Services	\$ 8,801.25	\$ 716.93	\$ 9,518.00
Bid Phase - Additional Services	\$ -	\$ -	\$ -
<b>Total Bid Phase Services</b>			<b>\$ 9,518.00</b>
Operation Phase - Basic Engineering Services	\$ -	\$ -	
Operation Phase - Additional Services	\$ -	\$ -	
<b>TOTAL</b>	<b>\$ 396,049.00</b>	<b>\$ 32,261.36</b>	<b>\$ 428,310.00</b>

\*Rounded to the nearest dollar.

**Notes:**

**Includes:**

- Phase 1 & 2 Geotech Investigation
- Phase 1 to 4 Survey and mapping
- Phase 1 to 4 utility location
- Environmental permitting by others (URS Corp)

**ATTACHMENT NO. 1 - EXHIBIT B.1  
ENGINEERING SERVICES  
2015 STANDARD RATES BY CATEGORY**

**PROFESSIONAL SERVICES**

*Professional Staff*

Principal	\$ 190.00	per hour
Senior Design Manager	\$ 170.00	per hour
Senior Engineer/Scientist/Surveyor/Manager II	\$ 150.00	per hour
Senior Engineer/Scientist/Surveyor/Manager I	\$ 135.00	per hour
Project Engineer/Scientist/Surveyor/Manager II	\$ 120.00	per hour
Project Engineer/Scientist/Surveyor/Manager I	\$ 105.00	per hour
Staff EIT/Scientist/LSIT II	\$ 90.00	per hour
Staff EIT/Scientist/LSIT I	\$ 80.00	per hour

*Technical Staff*

Senior Engineering/Design/Survey Tech V	\$ 115.00	per hour
Senior Engineering/Design/Survey Tech IV	\$ 95.00	per hour
Engineering/CAD/Design/Survey/Field Tech III	\$ 80.00	per hour
Engineering/CAD/Design/Survey/Field Tech II	\$ 70.00	per hour
Engineering/CAD/Design/Survey/Field Tech I	\$ 60.00	per hour
Construction Observer III	\$ 90.00	per hour
Construction Observer II	\$ 75.00	per hour
Construction Observer I	\$ 55.00	per hour

*Support Staff*

Project Financial/Manager Assistant II	\$ 80.00	per hour
Project Financial/Manager Assistant I	\$ 65.00	per hour
Administrative Assistant IV	\$ 100.00	per hour
Administrative Assistant III	\$ 80.00	per hour
Administrative Assistant II	\$ 65.00	per hour
Administrative Assistant I	\$ 45.00	per hour

**EXPENSES**

All project-related expenses will be billed at rates determined with respect to current market pricing; a complete list of expense rates is available upon request.

**OTHER SERVICES**

Telephone/facsimile/postage at actual cost Mileage at \$0.575 per mile (or current IRS rate).

Per diem \$129.00 per day (or max per-diem rate per U.S. GSA) Other travel (car rental, air, etc.) at actual cost.

**SUBCONTRACTED SERVICES**

Subconsultants, analytical laboratories, drilling services and general subcontractors at cost plus 10%

The standard rates identified herein are effective January 1, 2014 and will be adjusted annually and submitted to the OWNER in the month of January to reflect equitable changes in the compensation payable to the ENGINEER.

DESIGN PHASE - BASIC

Project Description: Raw Water Conveyance Project (Amendment No. 2) - Phase 1 and 2  
 Project Number: 6422500 (DW-2810)  
 Owner: City of Las Vegas, NM  
 Date of Submittal: January 23, 2015  
 Tax Rate on Services: 8.1458%

Note: Figures in this table do not include tax.

Job Description	Principal	Senior Design Manager	Senior Eng./Sur. Mgr. II	Senior Eng./Sur. Mgr. I	Project Eng./Sci. Mgr II	Project Eng./Sci. Mgr I	Staff EIT/LSIT Sci. II	Staff EIT/LSIT Sci. I	Sr. Eng. Des/Surv. Tech V	Sr. Eng. Des/Surv. Tech IV	Eng/CAD Surv/Field Tech III	Eng Surv. Tech II
Billing Rate per Unit	\$ 190.00	\$ 170.00	\$ 150.00	\$ 135.00	\$ 120.00	\$ 105.00	\$ 90.00	\$ 80.00	\$ 115.00	\$ 95.00	\$ 80.00	\$
Unit	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs
Task												
<b>P2.1 - Project Management</b>												
P2.1 Project Administration (12 mos)	12	24	98	0	0	0	0	0	0	0	0	0
P2.2 Meetings (8 total)	0	18	64	0	0	64	0	0	0	0	0	0
Subtotal Hours:	12	40	160	0	0	64	0	0	0	0	0	0
Subtotal Cost:	\$ 2,280.00	\$ 6,800.00	\$ 24,000.00	\$ -	\$ -	\$ 6,720.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>P2.5 - Preliminary Design (60%)</b>												
P2.5.1 60% Design Package (Phase 1)	4	24	117	0	234	188	0	0	0	0	117	1
P2.5.2 60% Design Package (Phase 2)	4	26	128	0	252	168	0	0	0	0	128	1
Subtotal Hours:	8	50	243	0	486	324	0	0	0	0	243	2
Subtotal Cost:	\$ 1,520.00	\$ 8,500.00	\$ 36,450.00	\$ -	\$ 58,320.00	\$ 34,020.00	\$ -	\$ -	\$ -	\$ -	\$ 19,440.00	\$ 17
<b>P2.6 - Final Design (100%)</b>												
P2.6.1 100% Design Package (Phase 1)	2	16	78	0	0	198	0	0	0	0	78	1
P2.6.2 100% Design Package (Phase 2)	2	17	84	0	0	168	0	0	0	0	84	1
Subtotal Hours:	4	33	162	0	0	324	0	0	0	0	162	2
Subtotal Cost:	\$ 760.00	\$ 5,610.00	\$ 24,300.00	\$ -	\$ -	\$ 34,020.00	\$ -	\$ -	\$ -	\$ -	\$ 12,960.00	\$ 11
TOTAL UNITS	24	123	565	-	486	712	-	-	-	-	405	-
TOTAL COST	\$ 4,560.00	\$ 20,910.00	\$ 84,750.00	\$ -	\$ 58,320.00	\$ 74,760.00	\$ -	\$ -	\$ -	\$ -	\$ 32,400.00	\$ 28

DESIGN PHASE - ADDITIO

Job Description	Principal	Senior Design Manager	Senior Eng./Sur. Mgr. II	Senior Eng./Sur. Mgr. I	Project Eng./Sci. Mgr II	Project Eng./Sci. Mgr I	Staff EIT/LSIT Sci. II	Staff EIT/LSIT Sci. I	Sr. Eng. Des/Surv. Tech V	Sr. Eng. Des/Surv. Tech IV	Eng/CAD Surv/Field Tech III	Eng Surv. Tech II
Billing Rate per Unit	\$ 190.00	\$ 170.00	\$ 150.00	\$ 135.00	\$ 120.00	\$ 105.00	\$ 90.00	\$ 80.00	\$ 115.00	\$ 95.00	\$ 80.00	\$
Unit	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs	Hrs
Task												
<b>P2.4.3 Exploratory Excavation</b>												
P2.4.3 Exploratory Excavation	0	1	4	2	0	8	8	0	0	0	16	0
Subtotal Hours:	0	1	4	2	0	8	8	0	0	0	16	0
Subtotal Cost:	\$ -	\$ 170.00	\$ 600.00	\$ 270.00	\$ -	\$ 840.00	\$ 720.00	\$ -	\$ -	\$ -	\$ 1,280.00	\$ -
TOTAL UNITS	-	4	20	14	40	48	8	-	-	-	80	-
TOTAL COST	\$ -	\$ 680.00	\$ 3,000.00	\$ 1,890.00	\$ 4,800.00	\$ 5,040.00	\$ 720.00	\$ -	\$ -	\$ -	\$ 6,400.00	\$ -

## **ATTACHMENT III**

### **Agreement for Engineering Services**

#### **Construction Services: Scope of Work, Cost Proposal and Compensation for Engineering Services during the Bid Phase**

##### **Exhibit C.1 - Scope of Work**

Including: Project Description  
Scope of Work: Basic Engineering Services  
Scope of Work: Additional Engineering Services  
Schedule for Deliverables  
Compensation for Engineering Services during the Construction Phase  
Interim or Partial Payments

##### **Exhibit C.2 - Cost Proposal**

Including: Detailed Breakdown of Scope of Work  
Labor and Expenses Analysis

## EXHIBIT C.1 (AMENDMENT NO. 2) - SCOPE OF WORK

### Engineering Services during the Bid Phase

**Name of Project:** Raw Water Conveyance Project

**Project Number:** 6422500

**Name of Owner:** City of Las Vegas, NM

**Project Description:** Bid solicitation for construction the Phase 1 and 2 Improvements to the City's existing raw water conveyance system as recommended in the Preliminary Engineering Report (PER).

This scope, schedule and pricing are pursuant to a request by the City of Las Vegas (OWNER) to Souder, Miller & Associates (ENGINEER) for engineering services during the Bid Phase related to the Raw Water Conveyance Project (DW-2910). The project includes improving the existing raw water conveyance system by designing and constructing 16,100 linear feet (lf) of a parallel 36-inch diameter pipeline. This pipeline will be routed from the OWNER's water treatment plant to the Gallinas River Diversion Structure. The project includes site work, control valves, air relief valves and connections. The work will be performed as described below.

#### Scope of Work: Basic Engineering Services during the Bid Phase

The Scope of Work for this phase of the project includes project management, meetings and coordination, and bid administration for the raw water conveyance system (RWCS) pipe line improvements. The following bid administration services will be carried out through contractor bid award.

1. Assist the OWNER with Advertisement for bids.
2. Prepare and distribute bid packages to interested Contractors.
3. Prepare for and hold a Pre-Bid Conference for all interested Contractors.
4. Preparation of addenda and clarifications to the Contract Documents.
5. Assist the OWNER with Receipt of Contractor Bids
6. Evaluate and tabulate Contractor bids.
7. Prepare for the OWNER a recommendation of award of construction contract.

#### Scope of Work: Additional Engineering Services during the Bid Phase

No additional engineering services during the Bid Phase are included in this Exhibit.

*For Additional Services not included in the Scope of Work described above, the ENGINEER shall perform the work on a Time and Materials basis per the Standard Rates table included as*

*Attachment No. 1 to Exhibit B.1 of the Agreement. Such Additional Services will be performed only with prior written approval from the OWNER.*

**Schedule for Deliverables:**

Tasks related to Bid Phase Services and corresponding due dates for the work described above are as follows:

<b>Deliverable</b>	<b>Contract Time</b>
Draft Bid Advertisement	10 days following acceptance of the Contract Documents by the Funding Agency
Bid Tabulation and letter recommending award to a Contractor	5 day following opening of bids.

**Compensation for Engineering Services during the Bid Phase:**

Compensation for Basic Engineering Services during the Bid Phase shall be by the STANDARD HOURLY RATE WITH MAXIMUM method of payment. The total amount of hourly charges, excluding gross receipt tax and reimbursables, for said services described above and as detailed in the attached Exhibit C.2 - Cost Proposal, shall not exceed **\$9,518.00 (nine thousand, five hundred and eighteen dollars)** including New Mexico Gross Receipt Tax (NMGR), and reimbursable expenses without prior written approval of the Owner, and with Funding Agency concurrence. NMGR is based on the current rate of **8.1458** percent for **Las Vegas**. Any adjustments to the tax rate will be itemized on the ENGINEER'S monthly invoice. If the tax exceeds the Compensation for Engineering Services, the ENGINEER will request a change order pursuant to the Contract.

Compensation for Additional Engineering Services during the Bid Phase shall be by the STANDARD HOURLY RATE WITH MAXIMUM method of payment. *No additional services are included in this Exhibit.*

**Interim or Partial Payments:**

Owner shall pay Engineer for Basic Engineering Services during the Bid Phase related to Bid Administration, as set forth above and detailed in Exhibit C.2 - Cost Proposal, the lump sum Amount of **\$9,518.00 (nine thousand, five hundred and eighteen dollars)** including NMGR, Invoiced monthly by the Engineer on a percent complete basis, and will be considered one hundred percent complete upon submittal of the bid tabulation and letter to the OWNER recommending award.

## **EXHIBIT C.1 – COST PROPOSAL**

### **(Compensation for Engineering Services)**

The following Summary of Cost Proposal includes an itemization of services to be provided pursuant to the present Agreement for Engineering Services according to each major development phase as presented in Section B of the Agreement.

A detailed breakdown of each phase is included in subsequent Attachments and their related Exhibits.

## Summary of Cost Proposal

**Souder, Miller & Associates**

**Professional Services and Expenses Task/Hours/Fee Breakdown Related To**

**Project Description:** Raw Water Conveyance Project (Amendment No. 2) - Phase 1 and 2  
**Project Number:** 6422500 (DW-2910)  
**Owner:** City of Las Vegas, NM  
**Date of Submittal:** January 23, 2015  
**Tax Rate on Services:** 8.1458%

TOTALS			
PHASE/ CATEGORY OF WORK	Subtotal	NMGR	Total*
Planning Phase - Basic Engineering Services	\$ -	\$ -	
Planning Phase - Additional Services	\$ -	\$ -	
Design Phase - Basic Engineering Services	\$ 318,133.50	\$ 25,914.52	\$ 344,048.00
Design Phase - Additional Services	\$ 69,114.25	\$ 5,629.91	<u>\$ 74,744.00</u>
<b>Total Design Phase Services</b>			<b>\$ 418,792.00</b>
Bid Phase - Basic Engineering Services	\$ 8,801.25	\$ 716.93	\$ 9,518.00
Bid Phase - Additional Services	\$ -	\$ -	<u>\$ -</u>
<b>Total Bid Phase Services</b>			<b>\$ 9,518.00</b>
Operation Phase - Basic Engineering Services	\$ -	\$ -	
Operation Phase - Additional Services	\$ -	\$ -	
<b>TOTAL</b>	<b>\$ 396,049.00</b>	<b>\$ 32,261.36</b>	<b>\$ 428,310.00</b>

\*Rounded to the nearest dollar.

**Notes:**

Includes:  
Phase 1 & 2

**ATTACHMENT NO. 1 - EXHIBIT C.1  
ENGINEERING SERVICES  
2015 STANDARD RATES BY CATEGORY**

**PROFESSIONAL SERVICES**

Professional Staff

Principal	\$ 190.00	per hour
Senior Design Manager	\$ 170.00	per hour
Senior Engineer/Scientist/Surveyor/Manager II	\$ 150.00	per hour
Senior Engineer/Scientist/Surveyor/Manager I	\$ 135.00	per hour
Project Engineer/Scientist/Surveyor/Manager II	\$ 120.00	per hour
Project Engineer/Scientist/Surveyor/Manager I	\$ 105.00	per hour
Staff EIT/Scientist/LSIT II	\$ 90.00	per hour
Staff EIT/Scientist/LSIT I	\$ 80.00	per hour

Technical Staff

Senior Engineering/Design/Survey Tech V	\$ 115.00	per hour
Senior Engineering/Design/Survey Tech IV	\$ 95.00	per hour
Engineering/CAD/Design/Survey/Field Tech III	\$ 80.00	per hour
Engineering/CAD/Design/Survey/Field Tech II	\$ 70.00	per hour
Engineering/CAD/Design/Survey/Field Tech I	\$ 60.00	per hour
Construction Observer III	\$ 90.00	per hour
Construction Observer II	\$ 75.00	per hour
Construction Observer I	\$ 55.00	per hour

Support Staff

Project Financial/Manager Assistant II	\$ 80.00	per hour
Project Financial/Manager Assistant I	\$ 65.00	per hour
Administrative Assistant IV	\$ 100.00	per hour
Administrative Assistant III	\$ 80.00	per hour
Administrative Assistant II	\$ 65.00	per hour
Administrative Assistant I	\$ 45.00	per hour

**EXPENSES**

All project-related expenses will be billed at rates determined with respect to current market pricing; a complete list of expense rates is available upon request.

**OTHER SERVICES**

Telephone/facsimile/postage at actual cost Mileage at \$0.575 per mile (or current IRS rate).

Per diem \$129.00 per day (or max per-diem rate per U.S. GSA) Other travel (car rental, air, etc.) at actual cost.

**SUBCONTRACTED SERVICES**

Subconsultants, analytical laboratories, drilling services and general subcontractors at cost plus 10%

The standard rates identified herein are effective January 1, 2014 and will be adjusted annually and submitted to the OWNER in the month of January to reflect equitable changes in the compensation payable to the ENGINEER.



**Special**

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE:** 01/23/15

**DEPT:** Utilities Dept.

**MEETING DATE:** 1/30/15

**ITEM/TOPIC:** Award bid for Water Treatment Plant Building Repairs to the low bidder, Hays Plumbing & Heating Inc.

**ACTION REQUESTED OF COUNCIL:** Approval/Disapproval to award bid.

**BACKGROUND/RATIONALE:** The project is to make needed repairs to the Water Treatment Plant Facility. The filtration building is settling and there are large cracks in the North and West walls. There are also issues with the roof leaking and existing exhaust fans that need to be replaced. The work includes the addition of a mixer to the sludge lagoon to keep sediment suspended until lagoon could be drained. Funding (SRF 2911) for the Engineering Services and Observation will expire in June of 2015. To be able to complete this project prior to the expiration of the funding will require a NTP by January 30, 2015. Bid Amounts do not include NMGRT.

Advertised: 12/8/14-OPTIC; 12/7/14-Albuquerque Journal and City Website.

Bid Opening: January 6, 2015

Number of Bidders: 4 (see attached Bid tabulation)

Lowest Bid: Hays Plumbing & Heating, Inc. – \$145,284.37

Funding Source: NMFA Loan/Grant

Line Item Number: 646-0000-650-7305

**STAFF RECOMMENDATION:** Award bid to the low bidder.

**COMMITTEE RECOMMENDATION:** This item will be discussed for ratification at the regular Utility Advisory Committee meeting on February 10<sup>th</sup>, 2015.

**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)

*J. Carr*

\_\_\_\_\_  
SUBMITTER'S SIGNATURE

ANN MARIE GALLEGOS  
FINANCE DIRECTOR  
(PROCUREMENT)

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



## UTILITIES DEPARTMENT PROJECT SUMMARY SHEET

**PROJECT NAME:** Water Treatment Plant Repairs

**PROJECT NUMBER:** 2911-DW

**PROJECT DESCRIPTION:** Stabilize filter building foundation, repair cracked masonry walls, replace leaky roof on filter building, improve sludge withdrawal from west sludge lagoon and add sun roof over outdoor liquid alum tank.

Pre-construction Phase Cost: \$26,750

Project Estimate: \$300,300

PER Rank: 10

**ACTION TIMELINE:** Requesting Approval/Disapproval to award proposal and enter into scope and fee agreements with engineering firm.

**LINE ITEM NUMBER:** 646-0000-650-7305

ACTION	DESCRIPTION	DATE
<b>Loan/Grant</b>	From NMFA in the amount of \$1,222,757.00 Project #2911-DW Loan (25%): \$305,689.00 Grant (75%): \$917,068.00	6/21/13
<b>Authorized Ordinance</b>	City adopted Ordinance No. 13-07 authorizing execution of loan and subsidy agreement	05/15/13
<b>Loan/Subsidy Agreement</b>	City entered into loan/subsidy agreement with NMFA	06/21/13
<b>Engineering Services Agreement</b>	N/A	
<b>Document Review</b>	N/A	
<b>RFP 101-35 Advertised</b>	Las Vegas Optic, Albuquerque Journal and City Website	6/7/13 6/8-9/13
<b>RFP 101-35 Opening</b>	Opened at City Hall Number of Proposers: 7	06/25/13
<b>Staff Recommendation</b>	Interviews with Engineers completed	08/02/13
<b>Committee Recommendation</b>	Item discussed at Utility Advisory Committee- recommendation for approval.	08/05/13
<b>Council Approval</b>	Item taken to City Council Workshop for discussion Item taken to City Council for approval	08/14/13 08/21/13
<b>Notice to Proceed</b>		

**WATER TREATMENT PLANT IMPROVEMENTS - BID TABULATION**  
**LAS VEGAS, NEW MEXICO**  
**January 6, 2015**

ITEM #	DESCRIPTION	UNIT	QUANTITY	Engineers Estimate		Hays Plumbing & Heating, Inc.		Frankan Construction Company, Inc.		TLC Company, Inc.		New Image Construction, Inc.	
				UNIT COST	TOTAL COSTS	UNIT COST	TOTAL COSTS	UNIT COST	TOTAL COSTS	UNIT COST	TOTAL COSTS	UNIT COST	TOTAL COSTS
<b>BASE BID</b>													
<b>A - GENERAL</b>													
A-1	Permitting	LS	1	\$ 750.00	\$ 750.00	\$ 100.00	\$ 100.00	\$ 690.00	\$ 690.00	\$ 700.00	\$ 700.00	\$ -	\$ 700.00
A-2	Project Sign	EA	1	\$ 650.00	\$ 650.00	\$ 500.00	\$ 500.00	\$ 550.00	\$ 550.00	\$ 975.00	\$ 975.00	\$ -	\$ 600.00
				<u>\$ 1,400.00</u>		<u>\$ 600.00</u>		<u>\$ 1,240.00</u>		<u>\$ 1,675.00</u>		<u>\$ 1,300.00</u>	
<b>B - SUPPLEMENTAL SLUDGE POND MIXER</b>													
B-1	Mobilization	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 100.00	\$ 100.00	\$ 18,454.00	\$ 18,454.00	\$ 3,000.00	\$ 3,000.00	\$ -	\$ 21,391.00
B-2	Aqua-Aerobic Systems 3HP Model FSS Endura Series	EA	1	\$ 13,650.00	\$ 13,650.00	\$ 16,812.64	\$ 16,812.64	\$ 14,375.00	\$ 14,375.00	\$ 23,270.00	\$ 23,270.00	\$ -	\$ 6,000.00
B-3	Mooring posts, cables, and all associated hardware	EA	6	\$ 600.00	\$ 3,600.00	\$ 860.00	\$ 5,160.00	\$ 633.00	\$ 3,798.00	\$ 790.00	\$ 4,740.00	\$ -	\$ 8,300.00
B-4	Electrical work, complete	LS	1	\$ 8,500.00	\$ 8,500.00	\$ 7,172.73	\$ 7,172.73	\$ 5,405.00	\$ 5,405.00	\$ 9,600.00	\$ 9,600.00	\$ -	\$ -
				<u>\$ 28,250.00</u>		<u>\$ 29,245.37</u>		<u>\$ 42,032.00</u>		<u>\$ 40,610.00</u>		<u>\$ 35,691.00</u>	
<b>C - ALLUM STORAGE TANK CANOPY</b>													
C-1	Mobilization	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 100.00	\$ 100.00	\$ 18,454.00	\$ 18,454.00	\$ 5,000.00	\$ 5,000.00	\$ -	\$ -
C-2	Metal Tank Canopy	LS	1	\$ 6,600.00	\$ 6,600.00	\$ 9,206.00	\$ 9,206.00	\$ 15,819.00	\$ 15,819.00	\$ 51,625.00	\$ 51,625.00	\$ -	\$ 14,000.00
C-3	Foundation	LS	1	\$ 1,200.00	\$ 1,200.00	\$ 1,800.00	\$ 1,800.00	\$ 1,093.00	\$ 1,093.00	\$ 2,484.00	\$ 2,484.00	\$ -	\$ -
				<u>\$ 9,800.00</u>		<u>\$ 11,106.00</u>		<u>\$ 35,366.00</u>		<u>\$ 59,109.00</u>		<u>\$ 14,000.00</u>	
<b>D - ROOF AND VENTILATION REPAIR</b>													
D-1	Mobilization	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 100.00	\$ 100.00	\$ 18,454.00	\$ 18,454.00	\$ 4,000.00	\$ 4,000.00	\$ -	\$ -
D-2	Roofing Materials	SF	1200	\$ 10.00	\$ 12,000.00	\$ 8.48	\$ 10,176.00	\$ 8.44	\$ 10,128.00	\$ 8.00	\$ 9,600.00	\$ -	\$ -
D-3	Ballast	CY	20	\$ 60.00	\$ 1,200.00	\$ 30.00	\$ 600.00	\$ 28.75	\$ 575.00	\$ 31.50	\$ 630.00	\$ -	\$ -
D-4	Roof Repair	LS	1	\$ 6,000.00	\$ 6,000.00	\$ 9,716.00	\$ 9,716.00	\$ 9,660.00	\$ 9,660.00	\$ 13,500.00	\$ 13,500.00	\$ -	\$ 31,207.00
D-5	Repair Gutter Splices	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 4,048.00	\$ 4,048.00	\$ 4,025.00	\$ 4,025.00	\$ 4,800.00	\$ 4,800.00	\$ -	\$ -
D-6	Install New Fans, Incl removal of existing fans	EA	2	\$ 3,400.00	\$ 6,800.00	\$ 2,600.00	\$ 5,200.00	\$ 2,933.00	\$ 5,866.00	\$ 6,825.00	\$ 13,650.00	\$ -	\$ 4,500.00
				<u>\$ 31,000.00</u>		<u>\$ 29,840.00</u>		<u>\$ 48,708.00</u>		<u>\$ 46,180.00</u>		<u>\$ 35,707.00</u>	
<b>E - BUILDING FOUNDATION REPAIR AND DRAINAGE IMPROVEMENTS</b>													
E-1	Mobilization	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 100.00	\$ 100.00	\$ 4,055.00	\$ 4,055.00	\$ 8,600.00	\$ 8,600.00	\$ -	\$ -
E-2	Helical Piers	EA	20	\$ 1,500.00	\$ 30,000.00	\$ 1,631.00	\$ 32,620.00	\$ 1,025.90	\$ 20,518.00	\$ 2,395.00	\$ 47,900.00	\$ -	\$ 44,193.00
E-3	Misc. parts and brackets for Piers	EA	20	\$ 300.00	\$ 6,000.00	\$ 347.00	\$ 6,940.00	\$ 425.00	\$ 8,500.00	\$ 130.00	\$ 2,600.00	\$ -	\$ -
E-4	Grading and Drainage Improvements (Remove and dispose existing railroad tie wall, extend downspouts away from the building and through new retaining wall, and site grading)	LS	1	\$ 3,200.00	\$ 3,200.00	\$ 2,833.00	\$ 2,833.00	\$ 4,761.00	\$ 4,761.00	\$ 7,298.00	\$ 7,298.00	\$ -	\$ 2,500.00
E-5	Construct New Retaining Wall	CY	20	\$ 500.00	\$ 10,000.00	\$ 1,600.00	\$ 32,000.00	\$ 1,087.00	\$ 21,740.00	\$ 1,200.00	\$ 24,000.00	\$ -	\$ 30,000.00
				<u>\$ 51,200.00</u>		<u>\$ 74,493.00</u>		<u>\$ 59,574.00</u>		<u>\$ 90,398.00</u>		<u>\$ 76,693.00</u>	
	Projects Subtotal			\$ 121,650.00		\$ 145,284.37		\$ 186,920.00		\$ 237,972.00		\$ 163,391.00	
	10% Contingency on Engineer's Estimate only			\$ 12,165.00		\$ -		\$ -		\$ -		\$ -	
	Projects Subtotal			<u>\$ 133,815.00</u>		<u>\$ 145,284.37</u>		<u>\$ 186,920.00</u>		<u>\$ 237,972.00</u>		<u>\$ 163,391.00</u>	
	NMGRT TAX 8.0625%			\$ 10,788.83		\$ 11,713.55		\$ 15,070.43		\$ 19,186.49		\$ 13,173.40	
	<b>BASE BID ESTIMATE TOTAL</b>			<u>\$ 144,603.83</u>		<u>\$ 156,997.92</u>		<u>\$ 201,990.43</u>		<u>\$ 257,158.49</u>		<u>\$ 176,564.40</u>	
<b>ADDITIVE ALTERNATE</b>													
F-1	Additional electrical work, if required, for connection of new system. See construction plan sheet 4.	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 900.00	\$ 900.00	\$ 2,185.00	\$ 2,185.00	\$ 3,300.00	\$ 3,300.00	\$ -	\$ 2,100.00
	NMGRT TAX 8.0625%			\$ 161.25		\$ 72.56		\$ 176.17		\$ 266.06		\$ 169.31	**
	<b>ADDITIVE ALTERNATE ESTIMATE TOTAL</b>			<u>\$ 2,161.25</u>		<u>\$ 972.56</u>		<u>\$ 2,361.17</u>		<u>\$ 3,566.06</u>		<u>\$ 2,269.31</u>	

\* math error in the bid form

\*\*The bid docs had a rounding error, showing .39 instead of .40  
 \*\*The bid docs show 163.31, but their total was correct

Average of all Bidders \$ 183,391.84  
 Average of all but High \$ 123,898.84



January 22, 2015  
(Revised from January 12, 2015)

Ms. Maria Gilvarry  
Utilities Department  
905 12<sup>th</sup> Street  
Las Vegas, NM 87701

**RE: WATER TREATMENT PLANT BUILDING REPAIRS  
RECOMMENDATION OF AWARD**

Dear Ms. Gilvarry:

Four sealed bids were received for the WTP Building Repairs project on Tuesday, January 6, 2015, at 3:00 PM as advertised and as modified by Addendum, and were opened and read aloud. The bids have been canvassed and are detailed on the attached bid tabulation. There were several arithmetic errors discovered in the bids, including in the Engineer's Estimate as read aloud at the Bid Opening. The errors did not change the rank of the Bidders. The adjusted Base bids are summarized below without New Mexico Gross Receipts Tax (NMGRT).

BIDDER	TOTAL BASE BID w/o NMGRT
New Image Construction, Inc.	\$163,391.00
TLC Company, Inc.	\$237,972.00
Franken Construction Company, Inc.	\$186,920.00
Hays Plumbing & Heating, Inc.	\$145,284.37
Engineer's Estimate	\$133,815.00

The apparent low bidder is Hays Plumbing & Heating, Inc. They hold New Mexico License No. 8243 with Classifications, MM98, GB98, GF02, GF03, GF04, GF05, GF09, GF98, ES03, ES04, ES05, ES6, EL01, MM01, MM02, MM03 and GA01. These licenses are appropriate for the elements to be constructed under this project. The New Mexico Construction Industries Division web site confirms this information and that the licenses are active until 8/31/2015. The Surety issuing the Bid Bond, Western Surety Company, of Sioux Falls South Dakota, listed in the Federal Department of the Treasury Circular 570. All other required affidavits, acknowledgment of addenda and bid forms appear to be in correct order.

The two lowest bidders are closely grouped with approximately 12% difference between them. The Engineer's Estimate appears slightly low, but within 7% of the apparent low bidder. Therefore, it appears that the total bid amount is reasonable.

It doesn't appear that there was any collusion among the bidders, nor was the Engineer's Estimate shared with the bidders by WHPacific. The bid from New Image Construction Incorporated appeared to be incomplete, with all unit cost information omitted. Although several bid items differ from the Engineer's Estimate by more than 20%, it is not apparent that the bid is unbalanced, as a majority of the unit costs differ in the Mobilization cost, and Hays Plumbing is a Las Vegas Company. The error in the Engineer's Estimate was that the quantity of Bid Item B-3, Mooring posts, Cables and all associated hardware, was listed

as nine (9) and all Bids listed the quantity as six (6). While 9 is correct (an item changed during the final design, the quantity was changed to 6, in order to match the Bid List.

According to information from staff, the City has the available budget to build this project and has funding for contingencies. Therefore, WHPacific recommends the City of Las Vegas, NM accept the low bid from Hays Plumbing & Heating, Inc., and award a contract for the Total Base Bid for the WTP Building Repairs in the amount of \$145,284.37, not including NMGRT.

Should you have any questions or require additional information, please contact me at your convenience at 247-0294 or [sjohnson@whpacific.com](mailto:sjohnson@whpacific.com) or [kjacobson@whpacific.com](mailto:kjacobsen@whpacific.com).

Sincerely,

WHPacific, Inc.

FOR *Karen Menni-Jacobsen, PE*  
By: Sheila K. Johnson, P.E. PROJECT  
Project Engineer MANAGER

Enclosure: Bid Tabulation



Albuquerque Publishing Company
7777 Jefferson N.E. Albuquerque, New Mexico 87109
P.O. Drawer J-T Albuquerque, New Mexico 87103
(505) 823-7777

Account Number
1008572

Ad Order Number
0001190259

Ad Proof / Order Confirmation

WHPACIFIC INC
6501 AMERICAS PKWY NE STE 400
ALBUQUERQUE NM 87110

Ordered By Alice Customer Phone 505-247-0294 Pickup #
Customer EMail PO Number Joint Ad #
Ad Cost \$95.76 Sales Rep cwhite
Tax Amount \$6.70 Order Taken by: cwhite
Total Amount \$102.46 Payment Method
Amount Due \$102.46 Payment Amount \$0.00

Product Albuquerque Journal
Ad Number 0001190259-01
Ad Type APC-Legals
Ad Size : 1.0 X 152 Li
Color <NONE>
Run Dates 12/7/2014

Placement Legal Notices
Classification Non-government-0001
Sort Text ADVERTISEMENTFORBIDSTHECITYOF
LASVEGASNEWMEXICOWILLOPENSE

Affidavits
0

ADVERTISEMENT FOR BIDS

The City of Las Vegas, New Mexico will open Sealed Bids at 3:00 pm., Tuesday, January 4, 2015, at the City Council Chambers, 1700 North Grand Avenue, Las Vegas, New Mexico, or other designated area at the City Office; ON THE FOLLOWING:

Water Treatment Plant Building Repairs. The Project consists of installation of a mixer in the treatment lagoon, helical piles for the Water Treatment Building, construction of a new retaining wall and drainage improvements, replacement of exhaust fans at the Water Treatment Building, a prefabricated metal canopy over the Alum Storage Tank, and Roof Repairs to the existing ballasted rubber membrane roof of the Water Treatment Building

The CONTRACT DOCUMENTS AND SPECIFICATIONS AND PLANS may be examined at the following location: City Clerk, 1700 North Grand Ave., Las Vegas, NM 87701

Copies of CONTRACT DOCUMENTS AND SPECIFICATIONS AND PLANS may be obtained at the office of: Academy Reprographics, 8800-N San Mateo Blvd. NE, Albuquerque, NM 87113 or at the office of the City Clerk, 1700 North Grand Ave., Las Vegas, NM 87701 between the hours of 8 am and 5 pm /hour

**Albuquerque Publishing Company**  
 7777 Jefferson N.E. Albuquerque, New Mexico 87109  
 P.O. Drawer J-T Albuquerque, New Mexico 87103  
 (505) 823-7777

**ADVERTISEMENT FOR BIDS**

The City of Las Vegas, New Mexico will open Sealed Bids at 3:00 pm., Tuesday, January 8, 2015, at the City Council Chambers, 1700 North Grand Avenue, Las Vegas, New Mexico, or other designated area of the City Offices; ON THE FOLLOWING:

**Water Treatment Plant Building Repairs.** The Project consists of installation of a mixer in the treatment lagoon, helical piles for the Water Treatment Building, construction of a new retaining wall and drainage improvements, replacement of exhaust fans at the Water Treatment Building, a prefabricated metal canopy over the Alum Storage Tank, and Roof Repairs to the existing ballasted rubber membrane roof of the Water Treatment Building

The **CONTRACT DOCUMENTS AND SPECIFICATIONS AND PLANS** may be examined at the following location: City Clerk, 1700 North Grand Ave., Las Vegas, NM 87701

Copies of **CONTRACT DOCUMENTS AND SPECIFICATIONS AND PLANS** may be obtained at the office of: Academy Reprographics, 8800-N San Mateo Blvd. NE, Albuquerque, NM 87113 or at the office of the City Clerk, 1700 North Grand Ave., Las Vegas, NM 87701 between the hours of 8 am and 5 pm (local time) weekdays. A \$50.00 deposit is required. Checks shall be made out to WHPacific, Inc. The deposit will be refunded provided the bid documents are returned to the Consultant in good condition, unmarked or un-written, within ten (10) calendar days after bid opening. Portions of the bidding documents may be purchased at the cost of administration and reproduction.

Mailed Bids should be addressed to the City Clerk, 1700 North Grand Avenue, Las Vegas, New Mexico 87701; with the envelope marked "Water Treatment Plant Building Repairs." Opening No. 2015-18; on the lower left-hand corner of the submitted envelope. It shall be the responsibility of the bidder to see that their bid is delivered to the City Clerk by the date and time set for the bid request. If the mail or delivery of bid request is delayed beyond the opening date and time, bid thus delayed will not be considered. A public opening will be held and any bidder or their authorized representative is invited to attend.

There will be a **MANDATORY PRE-BID** conference to be held at the City Hall 1700 North Grand Ave., Las Vegas, NM 87701, 2:30 PM, December 15, 2014. We will drive to the Project Site approximately 6 miles northwest of the City to conduct a project site tour. Bids from Bidders who do not attend the mandatory pre-bid conference will not be considered.

Each proposal shall be submitted in accordance with the information for Bidders and shall be accompanied by an acceptable Proposal Guaranty in the form of a Bid Bond or Certified Check in the amount equal to five percent (5%) of the total bid amount, made payable to CITY OF LAS VEGAS, NM

**Ad Proof / Order Confirmation****Account Number**

1008572

**Ad Order Number**

0001190259

WHPACIFIC INC

erty that, if the proposal is accepted, the bidder will execute the Contract and file acceptable Performance and Labor and Material Payment Bonds within seven (7) calendar days after award of the Contract.

This project is wholly or partially funded with United States Environmental Protection Agency funds, and therefore must comply with all federal cross cutter requirements. Neither the United States nor its department's agencies or employees is or will be party to this invitation for bids or any resulting contract. This procurement will be subject to all applicable federal regulations including the Davis Bacon Act requirements.

All qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. Bidders on this work will be required to comply with the President's Executive Order No. 11246, as amended.

The bidder must make a good faith effort to solicit and hire Disadvantaged Business subcontractors and suppliers to meet the goals outlined in EPA XP-215. A good faith effort requires that the Contractor: 1) Complete the affirmative steps outlined in XP-215, 2) Submit XP-215 with the bid proposal, 3) Submit with the bid proposal proof that affirmative steps have been taken and this should include copies of advertisements and letters of solicitation. A Bid Proposal that omits XP-215 or does not support that a good faith effort was made will be considered non-responsive and the Bid Proposal rejected.

The City of Las Vegas reserves the right to reject any/or all bids submitted.

Journal: December 7, 2014

LEGAL  
28030

AFFIDAVIT OF PUBLICATION

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

Martin Stalzer

being first duly sworn,  
(publisher)  
on oath states: that he is the General Manager of the Las Vegas Optic, a tri-weekly

newspaper of general paid circulation and of general circulation in San Miguel County, New Mexico, entered under the second class postal privilege in said county, being the county in which the notice hereto attached is required to be published and said paper has been published in said San Miguel County continuously and uninterruptedly during a period of six months prior to the first issue thereof containing said notice. That the notice of which a copy as published is hereto attached and hereby made a part hereof was published in the English language in said newspaper once each week for consecutive weeks on the following dates, to wit:

First Publication on the DEC day of 8th 2014  
Second Publication on the \_\_\_\_\_ day of \_\_\_\_\_ 2014  
Third Publication on the \_\_\_\_\_ day of \_\_\_\_\_ 2014  
Fourth Publication on the \_\_\_\_\_ day of \_\_\_\_\_ 2014

That such notice is a legal notice and was published in said newspaper duly qualified for that purpose within the meaning of the provisions of Chapter 167, session Laws of 1937, and that payment therefor has been made—assessed as Court costs.

PUBLISHER'S BILL

\_\_\_\_\_ lines one time @ \_\_\_\_\_ \$ 10962  
\_\_\_\_\_ lines @ \_\_\_\_\_ \$ 1000  
\_\_\_\_\_ Tax \_\_\_\_\_ \$ 965  
Total \_\_\_\_\_ \$ 12927  
Received payment.

Martin Stalzer  
General Manager Publisher

Subscribed and sworn to before me this 10th day of December 2014

CME  
Notary Public  
6-13-2018  
Expires

SPC35432



HAYS PLUMBING & HEATING, INC.  
Bidders Company Name

BID PROPOSAL  
BIDDER INFORMATION

COPY

BIDDER: HAYS PLUMBING & HEATING, INC.

AUTHORIZED AGENT: Gordon Hays, President

JAN - 6 2015

ADDRESS: 600 Railroad Avenue - Las Vegas, NM 87701

TELEPHONE NUMBER: ( 505 ) 425-7535

FAX NUMBER: ( 505 ) 454-0202

DELIVERY: same as above

STATE PURCHASING RESIDENT CERTIFICATION NO.: L0253274432

NEW MEXICO CONTRACTORS LICENSE NO.: 8243

BID ITEM (S): As shown on page BP-3, Water Treatment Plant Building Repairs

**ITEM (S) UNDER THIS BID ARE TO BE F.O.B. LAS VEGAS, NEW MEXICO 87701. THE CITY OF LAS VEGAS RESERVES THE RIGHT REJECT ANY OR ALL BIDS AND TO WAIVE ANY TECHNICAL IRREGULARITY IN THE FORM OF THE BID.**

**AFFIDAVIT FOR FILING WITH COMPETITIVE BID**

STATE OF NEW MEXICO )

) ss

COUNTY OF SAN MIGUEL )

I Gordon Hays, of lawful age, being of first duly sworn in oath, say that I am the agent authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any city official or employee as to the terms of said prospective contract, or any other terms of said prospective contract; or in any discussion between bidders with any city official concerning an exchange of money or any other thing of value for special consideration in the letting of a contract.

**BID PROPOSAL**  
**WATER TREATMENT PLANT BUILDING REPAIRS**

TO: City of Las Vegas  
905 12<sup>th</sup> Street  
Las Vegas, NM 87701  
(Hereinafter called "Owner")

The undersigned hereby proposes to perform all work for the WTP Building Repairs Project in accordance with the following:

1. Advertisement for Bids dated December 7, 2014 in the Albuquerque Journal and December 8, 2014 in the Las Vegas Optic.
2. The *New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction 2014 Edition (NMDOT)* and the *New Mexico Standard Specifications for Public Works Construction (NMAPWA)* are incorporated by reference, the same as if fully rewritten therein, in the contract, proposal, bond, and other contract documents for work to be performed under this contract for City of Las Vegas. Said NMDOT and NMAPWA specifications are for the purpose of the contract, proposal, bond, and other documents, supplemented, modified, and amended herein.
3. The Contract Documents, including Drawings, Supplementary General Provisions, Special Provisions, Supplementary Technical Specifications, and modifications prepared by WHPacific, Inc., for the Owner.

All of which are incorporated herein and made a part hereof; and to perform said work in accordance with and at the rates and prices or lump sum bid shown in the following bid schedule: (The cost of any work added or deducted from the following estimated quantities shall be computed at the unit prices bid. The cost of any work not specifically identified in the bid schedule shall be considered incidental to the item to which it applies.) Bids shall not include New Mexico gross receipts tax.

The undersigned, as Bidder, hereby declares that the only persons or firms interested in the proposal as principal or principals are named herein and that no other persons or firms herein mentioned have any interest in this proposal or in the contract to be entered into; that this proposal is made without collusion with any other person, company, or parties making a bid or with any other person, company, or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud.

The undersigned agrees that, upon receiving written notice of acceptance of this proposal, he will within seven (7) days execute and return to City of Las Vegas the prescribed construction contract and bonds.

**WATER TREATMENT PLANT BUILDING REPAIRS LAS VEGAS NEW MEXICO  
NOVEMBER 2014**

Item No.	Description	UNIT	QTY	UNIT COST	TOTAL COSTS
<b>A-1 GENERAL</b>					
A-1	PERMITTING	LS	1	\$ 100.00	\$ 100.00
A-2	PROJECT SIGN	EA	1	\$ 500.00	\$ 500.00
SUBTOTAL					600.00
<b>B- SUPPLEMENTAL SLUDGE POND MIXER</b>					
B-1	MOBILIZATION	LS	1	\$ 100.00	\$ 100.00
B-2	AQUA-AEROBICS SYSTEMS 3HP MODEL FSS ENDURA SERIES AQUADDM MIXER AND 90° ANGLE- COMPLETE IN PLACE	EA	1	\$ 16,812.64	\$ 16,812.64
B-3	MOORING POSTS, CABLES, AND ALL ASSOCIATED HARDWARE	EA	6	\$ 860.00	\$ 5,160.00
B-4	ELECTRICAL WORK, COMPLETE	LS	1	\$ 7,172.73	\$ 7,172.73
SUBTOTAL					29,245.37
<b>C-ALUMINUM STORAGE TANK CANOPY</b>					
C-1	MOBILIZATION	LS	1	\$ 100.00	\$ 100.00
C-2	METAL TANK CANOPY	LS	1	\$ 9,206.00	\$ 9,206.00
C-3	FOUNDATION	LS	1	\$ 1,800.00	\$ 1,800.00
SUBTOTAL					11,106.00
<b>D-ROOF AND VENTILATION REPAIR</b>					
D-1	MOBILIZATION	LS	1	\$ 100.00	\$ 100.00
D-2	ROOFING MATERIALS	SF	1200	\$ 8.48	\$ 10,176.00
D-3	BALLAST	CY	20	\$ 30.00	\$ 600.00
D-4	ROOF REPAIR	LS	1	\$ 9,716.00	\$ 9,716.00
D-5	REPAIR GUTTER SPLICES	LS	1	\$ 4,048.00	\$ 4,048.00
D-6	INSTALL NEW FANS, INCL REMOVAL OF EXISTING FANS	EA	2	\$ 2,600.00	\$ 5,200.00
SUBTOTAL					29,840.00
<b>E-BUILDING FOUNDATION REPAIRS AND DRAINAGE IMPROVEMENTS</b>					
E-1	MOBILIZATION	LS	1	\$ 100.00	\$ 100.00
E-2	HELICAL PIERS	EA	20	\$ 1,631.00	\$ 32,620.00
E-3	MISC. PARTS AND BRACKETS FOR PIERS	EA	20	\$ 347.00	\$ 6,940.00
E-4	GRADING AND DRAINAGE IMPROVEMENTS (REMOVE AND DISPOSE EXISTING RAILROAD TIE WALL, EXTEND DOWNSPOUTS AWAY FROM THE BUILDING AND THROUGH NEW RETAINING WALL, SITE GRADING)	LS	1	\$ 2,833.00	\$ 2,833.00
E-5	CONSTRUCT NEW RETAINING WALL	CY	20	\$ 1,600.00	\$ 32,000.00
SUBTOTAL					74,493.00
PROJECTS SUBTOTAL \$					\$ 145,284.37
NMGRT TAX 8.0625					\$ 11,713.95
BASE BID SUBTOTAL					\$ 156,997.92
<b>F- ADDITIVE ALTERNATE</b>					
F-1	ADDITIONAL ELECTRICAL WORK, IF REQUIRED, FOR CONNECTION OF NEW SYSTEM. SEE CONSTRUCTION PLAN SHEET 4	LS	1	\$ 900.00	\$ 900.00
NMGRT TAX 8.0625					\$ 72.56
ADDITIVE ALTERNATE TOTAL					\$ 972.56

HAYS PLUMBING & HEATING, INC.

Bidders Company Name

Award of the Contract will be made to the lowest responsible bidder based on the Base Bid:

The undersigned, as Bidder, hereby declares that the only persons or firms interested in the proposal as principal or principals are named herein and that no other persons or firms herein mentioned have any interest in this proposal or in the contract to be entered into; that this proposal is made without collusion with any other person, company, or parties making a bid or with any other person, company, or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud.

The undersigned, as Bidder hereby certifies that he and his subcontractors are registered with the Department of Workforce Solutions (formerly the Labor Department) in accordance with the "Public Works Contracts - Registration of Contractors and Subcontractors" Section of the Public Works Minimum Wage Act.

The undersigned agrees that, upon receiving written notice of acceptance of this proposal, he will, within seven (7) days, execute and return to City of Las Vegas the prescribed construction contract, insurance and bonds.

The Contractor agrees that time is of the essence, and the work will be accomplished in a timely and efficient manner. All work must be completed according to the following schedule for completion of the work. The Contractor further agrees to pay, as liquidated damages (representing damage, failure to provide drinking water and risk of loss of property), the amounts listed in the following schedule for each calendar day in which the work is not complete.

Description of Work	Timeframe / Completion Date	Liquidated Damages
Substantial Completion Base Bid	120 Calendar Days	\$1,000.00/calendar day
Final Base Bid	150 Calendar Days	\$1,000.00/calendar day

Attached hereto is the required proposal guarantee described as follows: BASE BID without NMGR

ONE HUNDRED FORTY FIVE THOUSAND TWO HUNDRED EIGHTY-FOUR DOLLARS

37/LDD.\*\*\*\*\*

HAYS PLUMBING & HEATING, INC.

Bidders Company Name

The proposal guarantee shall be 5% of the total amount bid. The receipt of Addenda is acknowledged below:

Addendum No. Date 1 12/30/2014

Addendum No. Date \_\_\_\_\_

Addendum No. Date \_\_\_\_\_

Dated: January 5, 2015.

SIGNATURE OF BIDDER:

(SEAL) if Bid is by a  
Corporation

By: GORDON HAYS  
(Print Name)

*Gordon Hays*

Title: PRESIDENT

Company: HAYS PLUMBING & HEATING, INC.

Address: 600 RAILROAD AVENUE

Las Vegas, NM 87701

New Mexico Contractor's Classification and License No.:

8243 MM98; GB98

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"Prospective contractor" means a person who is subject to the competitive sealed

proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s) \_\_\_\_\_

(The above fields are unlimited in size) \_\_\_\_\_

Signature

Date

Title (position)

-OR-

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

HAYS PLUMBING & HEATING, INC.

Signature

Date

GORDON HAYS, PRESIDENT

Title (Position)

**SUBCONTRACTORS FAIR PRACTICES ACT  
REQUIRED LISTING**

CITY OF LAS VEGAS

Bidders' listing of subcontractors for compliance with Subcontractors Fair Practices Act (NMSA 1978 §13-4-31, et. seq.). This sheet must be filled in.

**PROJECT: WATER TREATMENT PLANT BUILDING REPAIRS**

Bidder must list subcontractors where estimated work exceeds \$5,000.00. List only one subcontractor per category of work. This listing must be filled out with either a subcontractor's name or the words "no subcontractor to be used," "no bid was received," or "only one bid was received" corresponding to each category. Failure to fill in this sheet may result in a non-responsive bid which may be rejected. See Special Conditions No. 18.

SUBCONTRACTOR'S NAME	LOCATION	CATEGORY
<u>LANPHERE'S ELECTRIC</u>	<u>Las Vegas, New Mexico</u>	<u>Electrical</u>
<u>RAM JACK OF NEW MEXICO</u>	<u>Albuquerque, New Mexico</u>	<u>Helical Underpinning</u>
<u>AERATOR SOLUTIONS</u>	<u>Roscoe, IL</u>	<u>EcoJet Mixer</u>
<u>NATIONAL ROOFING</u>	<u>Albuquerque, NM</u>	<u>Roofing</u>

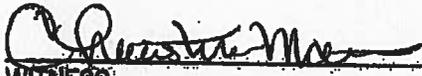
**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, Hays Plumbing & Heating, Inc., hereinafter called the "Principal," as Principal, and the Western Surety Company, of S. Dakota, hereinafter called the "Surety," as Surety, are held and firmly bound unto the City of Las Vegas, hereinafter called the "Obligee," in the sum of five percent (5%) of total amount of Bid Dollar (\$ \_\_\_\_\_), for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for: **WATER TREATMENT PLANT BUILDING REPAIRS**

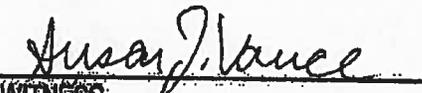
NOW, THEREFORE, if the Obligee shall accept the bid of the Principal, and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents, with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

SIGNED AND SEALED this 30th day of December, 2014, in the presence of:

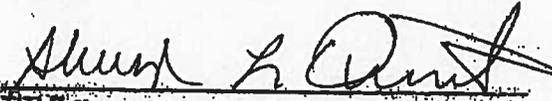
  
WITNESS

Hays Plumbing & Heating, Inc.  
PRINCIPAL

Gordon Hays  
TITLE Gordon Hays, President

  
WITNESS

Western Surety Company  
SURETY

  
TITLE Sherryl L. Quint, Attorney-in-Fact

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Roger N Downey, Susan Jane Vance, Sherryl L Quint, Christian B Downey, Maria Y Ankeny, Individually**

of Albuquerque, NM, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 28th day of October, 2013.

WESTERN SURETY COMPANY

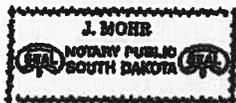


Paul T. Bruffat  
Paul T. Bruffat, Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 28th day of October, 2013, before me personally came Paul T. Bruffat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
June 23, 2015



J. Mohr  
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 30th day of December, 2014.



WESTERN SURETY COMPANY

L. Nelson  
L. Nelson, Assistant Secretary

(9-13)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6**

**Supplemental conditions  
for  
Federally Assisted Drinking Water  
Infrastructures under the  
Drinking Water State Revolving Loan Fund  
Revised September 2013**

**REPRODUCTION OF THIS GUIDANCE  
SHOULD BE ON COLORED PAPER,  
PREFERABLY PINK**

## **REQUIRED FEDERAL FORMS**

Forms that must be submitted within bidder's proposal:

1. XP-211 Certifications Regarding Contract under Equal Opportunity Clause & Non-Segregated Facilities
2. XP-215 MBW/WBE/SBRA Utilization Form along with proof of solicitation (i.e. newspaper/advertisement, letters of solicitation)
3. XP-315 Davis Bacon Certification
4. 5700-49 Certification Regarding Debarment, Suspension & Other Responsibility Matters
5. 6100-2
6. 6100-3
7. 6100-4

Form to be provided with every construction pay application:

8. XP-214 Labor Standards Certification

## REFERENCES

- Copeland Anti-Kickback, 29 CFR Part 3  
<http://www.dol.gov/compliance/laws/comp-copeland.htm>
- Suspension and Debarment, Subpart C of 2 CFR 180 and 1532  
[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfr180\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfr180_main_02.tpl)  
[http://edocket.access.gpo.gov/cfr\\_2009/janqtr/pdf/2cfr1532.332.pdf](http://edocket.access.gpo.gov/cfr_2009/janqtr/pdf/2cfr1532.332.pdf)
- Disadvantaged Business Enterprise, 40 CFR Part 33  
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=40:1.0.1.2.30&idno=40>
- Equal Employment Opportunity, 41 CFR Part 60  
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=41:1.2.3.1.1&idno=41>
- Labor Standards, 29 CFR Parts 4 & 6  
[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr4\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr4_main_02.tpl)  
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=99c9a20e960f56be66f17a591b52c888&rgn=div5&view=text&node=29:1.1.1.1.7&idno=29>
- Nondiscrimination, 40 CFR Part 7  
<http://www.epa.gov/ocr/docs/40p0007.pdf>
- OMB Circular A-133  
[http://www.whitehouse.gov/omb/assets/a133\\_compliance/app\\_7.pdf](http://www.whitehouse.gov/omb/assets/a133_compliance/app_7.pdf)
- Reissuance of NPDES General Permits for Storm Water Discharges from Construction Sites in Region 6 - Federal Register  
<http://www.epa.gov/region6/gen/w/sw/swcon98.pdf>

Model Contract Clauses—Attached

NPDES Bypass Policy—Attached

Federal Cross-Cutters—Attached

XP-211

**BIDDER'S CERTIFICATION\***

**In Compliance with Equal Employment Opportunity and Nonsegregated Facilities**

Project Name Water Treatment Plant Project Number \_\_\_\_\_  
Contract For Building Repairs \_\_\_\_\_

The following certifications must be completed by the bidder for each contract.

**A. EQUAL EMPLOYMENT OPPORTUNITY:**

- I have developed and have on file at my each establishment affirmative action programs pursuant to 41 CFR Part 60-2.
- I have participated in previous contract(s) or subcontract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375. I have filed all reports due under the requirements contained in 41 CFR 60-1.7.
- I have not participated in previous contract(s) subject to the equal opportunity clause under Executive Orders 11246 and 11375.
- I will obtain a similar certification from any proposed subcontractor(s), when appropriate.

**B. NONSEGREGATED FACILITIES**

- I certify that I do not and will not maintain any facilities provided for my employees in a segregated manner, or permit my employees to perform their services at any location under my control where segregated facilities are maintained; and that I will obtain a similar certification prior to the award of any federally assisted subcontract exceeding \$10,000 which is not exempt from the equal opportunity clause as required by 41 CFR 60-1.8.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Bidder's Authorized Representative Gordon Hays, President

Signature of Bidder's Authorized Representative Gordon Hays Date 1/6/15

HAYS PLUMBING & HEATING, INC. - 600 Railroad Avenue - Las Vegas, NM 87701  
Name & Address of Bidder.

XP-214

**CERTIFICATION BY CONTRACTOR  
STATEMENT OF COMPLIANCE  
WITH LABOR STANDARDS**

In accordance with Title 29, Subtitle A, Part 5, Section 5.6(a)(1), each monthly pay application must be accompanied by the following contractor employment mechanics and laborer Finance Authority Drinking Water and Sanitation Act, which the New Mexico Department of Finance is available to participate:

Pay Application No. \_\_\_\_\_

Name of Project \_\_\_\_\_

Contract No. \_\_\_\_\_

Project No. \_\_\_\_\_

*With  
Pay Requests*

I hereby certify that all applicable labor standards as set forth in the Davis Bacon Act, Contract Work Hours and Safety Compensation Act, and the applicable "Anti-Kickback" Act and the \_\_\_\_\_ have been complied with by \_\_\_\_\_ as principal contractor and by each \_\_\_\_\_

(Name of Contractor)

subcontractor employing mechanics or laborers at the site of the work, or there is a substantial dispute with the respect to the required provisions. I also certify that I have submitted all weekly payroll to \_\_\_\_\_ (Name of grantee).

Typed Name & Title of Contractor's Authorized Representative \_\_\_\_\_

Signature of Contractor's Authorized Representative \_\_\_\_\_

Date \_\_\_\_\_

**Owner/Grantee Certification**

I hereby certify that the above is true to the best of my knowledge and that I have reviewed all certified payroll supplied by the prime contractor and certify that it meets all labor standards as set forth in the Davis Bacon Act.

Signature of Grantee Authorized Representative \_\_\_\_\_

Date \_\_\_\_\_

I understand that the falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

**MBE/WBE/SBRA UTILIZATION INFORMATION SHEET**

**NOTE:** The bidder shall complete the following Minority/Women's/Small Business in Rural Area (MBE/WBE/SBRA) utilization information whenever they solicit sub contract construction work and/or services and purchase of equipment and supplies for the project in order to provide the fair share of the total dollar amount of the contract for

MBE: Construction 41.03 %, Equipment 36.69 %, Supplies 25.51 %, Services 38.78 %  
 WBE: Construction 6.47 %, Equipment 30.65 %, Supplies 35.30 %, Services 40.00 %  
 SBRA: Construction \_\_\_\_\_, Equipment \_\_\_\_\_, Supplies \_\_\_\_\_, Services \_\_\_\_\_

1. Do you maintain and update qualified MBE, WBE, and SBRA on your solicitation lists for supplies, equipment, construction and/or service? Yes \_\_\_ No X

If yes, when did you update your MBE/WBE/SBRA solicitation lists? \_\_\_\_\_

2. Do you maintain a list of minority, women and rural small business-focused publications that may be utilized to solicit MBEs or WBEs or SBRA's?  
 Yes \_\_\_ No X

If yes, name the publications: \_\_\_\_\_

3. Do you use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide MBE/WBE/SBRA firms for placement on your solicitation lists? Yes \_\_\_ No X

4. Do you seek out Minority Business Development Centers to assist you in identifying MBEs/WBEs/SBRAs for potential work opportunities on your proposed bid for this project? Yes \_\_\_ No X

5. Do you analyze the bid package or contract documents to identify portions of work that can be divided and performed by qualified MBEs, WBEs, and SBRA's including the bonding range? Yes \_\_\_ No X

If yes, please attach a brief description of portions of work you have identified for subcontracting.

6. Do you develop realistic delivery schedules which may provide for greater MBE/WBE/SBRA participation? Yes X No \_\_\_

7. Do you send a letter of solicitation to MBE/WBE/SBRA for this project?  
 Yes \_\_\_ No X

If yes, please attach a sample copy of each different solicitation letter and the name and address of each MBE/WBE/SBRA.

8. Do you advertise in general circulation, trade journals, State agency publications of identified MBEs/WBEs/SBRAs, minority or women or rural small business focused media, etc., concerning the subcontracting opportunities on your proposed bid for this project? Yes X No \_\_\_

If yes, please list the name of publication and dates of advertisement and attach a copy of each advertisement from each publication.

9. Do you conduct pre-bid, pre-solicitation, and post award conferences, meetings and follow-ups with interested MBE, WBE, and SBRA? Yes \_\_\_ No X

If yes, please list person who attended conference as representative of MBE/WBE/SBRA

Name & Title of Person: \_\_\_\_\_

Name of MBE/WBE/SBRA: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Date and Place of Conference: \_\_\_\_\_

---

Name & Title of Person: \_\_\_\_\_

Name of MBE/WBE/SBRA: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Date and Place of Conference: \_\_\_\_\_

---

Name & Title of Person: \_\_\_\_\_

Name of MBE/WBE/SBRA: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Date and Place of Conference: \_\_\_\_\_

10. Total dollar amount of the contract:

\$

11. Total dollar amount and percentage of MBE/WBE/SBRA participation:

MBE:	Construction	%	Equipment	%	Supplies	%	Services	%
	(\$)		(\$)		(\$)		(\$)	
WBE:	Construction	%	Equipment	%	Supplies	%	Services	%
	(\$)		(\$)		(\$)		(\$)	
SBRA:	Construction	%	Equipment	%	Supplies	%	Services	%
	(\$)		(\$)		(\$)		(\$)	

# CLASSIFIEDS

# CLASSIFIEDS

### To Place A Classified Ad:

Call: 505-425-6796 • 1-800-767-6796 or Fax: 505-425-1005

Email: [lvclassified@lasvegasoptic.com](mailto:lvclassified@lasvegasoptic.com)

To view legal notices online, go to: [www.publicnoticereads.com](http://www.publicnoticereads.com)

To view classifieds/legal notices online, go to: [www.lasvegasoptic.com](http://www.lasvegasoptic.com)

- NOTICES
- FOR SALE
- YARD SALE
- FINANCIAL
- BUSINESS
- OPPORTUNITY
- HELP WANTED
- APARTMENT
- UNFURNISHED
- FURNISHED
- HOUSES FOR RENT
- HOUSES FOR SALE
- DIGIBLE HOME/OWNER
- MOBILE HOME/DEALER
- REAL ESTATE
- MOBILE HOME
- SPACE
- LOTS/LAND
- AUTOS
- TRUCKS
- SUVs
- MOTORCYCLES
- VANS
- TRAILERS
- COMMERCIAL
- SPACE
- BULK MATERIAL
- SERVICES
- WANTED

**PAYMENT:** All classified ads must be paid in full upon the first run. Payment may be made by cash, check, money order, or credit card. (We accept cash, check, Visa, MasterCard and American Express)

**FAIR HOUSING:** All real estate classified ads must meet the Fair Housing Act criteria. (A publisher's notice has been placed at the bottom of this notice for information on the Fair Housing Act)

**ADJUSTMENTS:** Please carefully review your classified ad for any error on the first day of publication. Please request for corrections by 7:00 am the day following the first publication. A copy of your ad may be prepared at time of payment.

**DEADLINE:** All classified ads and legal notices must be received by 11:00 am, 5 days before the desired start date.

**PUBLISHERS NOTICE:** All real estate advertising in this newspaper is subject to the Fair Housing Act which makes it illegal to advertise any notice, notice, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such prohibited limitation or discrimination. Federal laws includes children under the age of 18 living with parents or legal custodians, pregnant women and people receiving public assistance. It is illegal to discriminate on the basis of marital status. Our readers are hereby notified that all dwellings advertised in this newspaper are available on an equal opportunity basis. To complain or discrimination call HUD toll free at 1-800-645-5777. This toll-free telephone number for the hearing impaired is: 1-800-927-9275

**580**  
Wanted

Land for rent or purchase for mobile home. 425-8842

**600**  
Employment

Driver P/T Seasonal evenings weekends and holidays required. Must have a valid NM Drivers License and clean MVD Record. Must be able to lift 50 lbs. Contact Cynthia Fitch, [cfnch@lasvegasoptic.com](mailto:cfnch@lasvegasoptic.com) or visit 614 Lincoln Ave, 8 am - 5 pm weekdays

**710**  
Apartments for Rent

2 bed upstairs apt \$800/ mo w/d hook-ups close to MMHU to Carnegie at 915 8th St 505-660-7639

SERVICES, OR PSYCHOLOGICAL SERVICES FROM THE DISTRICT YOU THEY MAY BE ELIGIBLE FOR ADDITIONAL SERVICES EVEN IF THEY YOU HAVE GRADUATED. IF YOU WERE SCHEDULED TO RECEIVE ANY OF THESE SERVICES DURING THE TIME PERIOD LISTED ABOVE PLEASE CONTACT OUR SPECIAL EDUCATION OFFICES AT 505-426-2302. YOU ARE CALLING THE STAFF ABOUT THE NOTICE FOR SPEECH, SOCIAL WORK OR PSYCHOLOGICAL SERVICES. PUB: Las Vegas Optic, Oct 27, Nov 14, 17, 18, 21, 24, 26, 28, Dec 1, 3, 5, 8, 10, 12, 15, 17, 19, 22, 24, 26, 29, 31, 2014, Jan 2, 5, 7, 9, 12, 14, 16, 19, 21, 23, 26, 28, 30, Feb 2, 4, 6, 8, 11, 13, 16,

be cash or certified funds, ELECTRONICALLY FILED / Jonathan Morse, Special Master P.O. Box 8387 Santa Fe, NM 87504 505-982-3305 PUB: Las Vegas Optic, Dec 31, 2014, Jan 7, 14, 21, 2015

Annual meeting Round House Ditch January 10, 2015, 10:00 am at Mike Estrada home. Agenda - discuss about news fee; discuss Post-Treatment Plant Build-

Submitted by Mayordo-Work, Electrical, and Roofing Repair. Email quotes to: [hays\\_plumbing@hotmail.com](mailto:hays_plumbing@hotmail.com), by 5 pm, Friday, 1/2/15. For info on the project, specs and contract requirements contact Randy Hays at 505-425-7335. PUB: Las Vegas Optic, Dec 31, 2014

REQUEST FOR QUOTES #28072 Hays Plumbing & Heating (Hays) an EEO employer is requesting quotes from certified DBE/WBE/MBE/SBRA Dec 31, 2014

NOTICE: Annual meeting Round House Ditch January 10, 2015, 10:00 am at Mike Estrada home. Agenda - discuss about news fee; discuss Post-Treatment Plant Build-

Annual meeting Round House Ditch January 10, 2015, 10:00 am at Mike Estrada home. Agenda - discuss about news fee; discuss Post-Treatment Plant Build-

**Get the Results YOU WANT!**  
The Las Vegas Optic Classifieds - Need it. Want it. Buy it. Sell it!  
**505-425-6796**

**CLASSIFIED**

**CALL NOW!**

This action is a suit to foreclose a mortgage secured by the real property described above. The total amount awarded by the Judgment to Los Alamos National Bank, as Plaintiff, with interest to the date of sale, is \$341,226.86; plus its costs and attorney



12. Name, address, phone number, contact person, type of construction subcontract, and dollar amount of subcontract.

**MBE Subcontractor:**

**WBE Subcontractor:**

**SBRA Subcontractor:**

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

**MBE Subcontractor:**

**WBE Subcontractor:**

**SBRA Subcontractor:**

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

**MBE Subcontractor:**

**WBE Subcontractor:**

**SBRA Subcontractor:**

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

**MBE Subcontractor:**

**WBE Subcontractor:**

**SBRA Subcontractor:**

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

MBE Subcontractor:

WBE Subcontractor:

SBRA Subcontractor:

Address:

Address:

Address:

Phone:

Phone:

Phone:

Contact Person:

Contact Person:

Contact Person:

Type of Work:

Type of Work:

Type of Work:

Amount: \$

Amount: \$

Amount: \$

I understand that a false statement on the above information may be grounds for rejection of this bid proposal or termination of the contract award.

HAYS PLUMBING & HEATING, INC.

GORDON HAYS, PRESIDENT

Typed Name & Title of Authorized Representative

*Gordon Hays*

1/6/15

Signature of Bidder's Authorized Representative

Date

Davis-Bacon Act Certification

HAYS PLUMBING

The Contractor acknowledges to and for the benefit of the Owner S. HEATING, INC. ("Purchaser") and the State of New Mexico (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the New Mexico Finance Authority Drinking Water State Revolving Loan Fund and such law contains provisions commonly known as the Davis-Bacon Act that requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the federal prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area as determined by the Secretary of Labor.

The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Davis-Bacon Act; (b) as such has compensated all contractors and sub-contractors performing work on this project not less than the prevailing wage rate and fringe benefits for corresponding classes as determined by the Secretary of Labor; and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary, and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

HAYS PLUMBING & HEATING, INC.

Gordon Hays  
(Contractor Signature & Date)  
Gordon Hays, President

Gordon Hays  
(Owner Signature & Date)  
Gordon Hays, President

1/12/15

United States Environmental Protection Agency  
Washington, DC 20460

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and the principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 U SC Sec. 10 01, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

**Gordon Hays, President**

Typed Name & Title of Authorized Representative

  
Signature of Bidder's Authorized Representative

  
Date

I am unable to certify to the above statements. My explanation is attached.





OMB Control No: 2090-0030  
Approved: 8/13/2013  
Approval Expires: 8/31/2015

### Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Participation Form

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE<sup>1</sup> subcontractor<sup>2</sup> the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g. in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030  
Approved: 8/13/2013  
Approval Expires: 8/31/2015

### Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Performance Form

This form is intended to capture the DBE<sup>1</sup> subcontractor's<sup>2</sup> description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractor's bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services, Equipment or Supplies	Price of Work Submitted to the Prime Contractor

DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA	Meets/ exceeds EPA certification standards?
<input type="checkbox"/> Other: _____	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030  
Approved: 8/13/2013  
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

<b>Subcontractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T) 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE<sup>1</sup> subcontractors<sup>2</sup> and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	<input type="checkbox"/> YES	<input type="checkbox"/> NO	
If yes, please complete the table below. If no, please explain:			
[Redacted]			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?
Continue on back if needed			

<sup>1</sup> A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

<sup>2</sup> Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



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Approved: 8/13/2013  
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**Disadvantaged Business Enterprise (DBE) Program  
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

<b>Prime Contractor Signature</b>	<b>Print Name</b>
<b>Title</b>	<b>Date</b>

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**CITY COUNCIL MEETING AGENDA REQUEST**

**DATE: 1/17/15**

**DEPT: EXECUTIVE**

**MEETING DATE: 1/30/15**

**ITEM/TOPIC:** Agreement between the City of Las Vegas and the Friends of the Las Vegas Carnegie Library.

**ACTION REQUESTED OF COUNCIL:** Approval/ Disapproval to enter into an agreement the Friends of the Las Vegas Carnegie Library.

**BACKGROUND/RATIONALE:** The Friends of the Library are proposing to enter into an agreement with OverDrive for the purposes providing an e-book service out of Carnegie Library. Under the agreement the Friends would pay 100% of the cost for the first year and 66% of the cost for the second and third years. The City share will be paid from General Obligation Bond for books.

**STAFF RECOMMENDATION:** APPROVAL

**COMMITTEE RECOMMENDATION:**

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

  
SUBMITTER'S SIGNATURE

**REVIEWED AND APPROVED BY:**



ALFONSO E. ORTIZ, JR.  
MAYOR

  
ELMER J. MARTINEZ  
CITY MANAGER

ANN MARIE GALLEGOS  
FINANCE DIRECTOR

PURCHASING AGENT  
(FOR BID AWARD ONLY)

DAVE ROMERO  
CITY ATTORNEY

Approved as to Legal Sufficiency Only

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

MEMORANDUM OF AGREEMENT BETWEEN  
CITY OF LAS VEGAS  
AND  
FRIENDS OF THE LAS VEGAS CARNEGIE LIBRARY

The Memorandum of Agreement hereinafter will be referred to as the MOA.

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the City of Las Vegas, New Mexico, a municipal corporation, hereinafter called (City) and the City of Las Vegas Friends of the Library.

**PARTIES TO MOA:**

The parties to this MOA are The City of Las Vegas, Friends of The Las Vegas Carnegie Library, contracting with "OverDrive, Inc." who will be providing E-book services via the City of Las Vegas Carnegie Public Library internet services.

**SCOPE OF MOA:**

This is a Three (3) Year payment agreement for the Annual Participation Fee for MEMBERSHIP in the New Mexico Library To Go "CONSORTIUM" E-book Services provided by "OverDrive, Inc." via the internet service already available at the City of Las Vegas Carnegie Public Library.

**PARTIES RESPONSIBILITIES:**

**Friends of The Las Vegas Carnegie Library:**

Payment of Three Thousand Dollars (\$3,000) as payment for the First Year of the Annual Participation Fee for E-book services provided by "OverDrive," Inc.. Payment of such fee to be made following the approval of this agreement in 2015.

Payment of Two Thirds of the cost for the Annual Participation Fee for E-book Services provided by "OverDrive, Inc." for the second and third year(s) of this MOA. Such Two Thirds payment is Two Thousand Dollars (\$2,000) for each of the last two years of this MOA. Payment of such fee to be made on the renewal dates in 2016 and 2017.

**City of Las Vegas:**

Payment of One Third of the Cost for the Annual Participation Fee for E-book Services provided by "OverDrive, Inc." for the second and third year(s) of this MOA. Such One Third payment amount is One Thousand Dollars (\$1,000) for each of the last two years of this MOA. Payment of such fee to be made annually on the renewal dates of 2016 and 2017.

The City Of Las Vegas will continue to provide reliable internet services at Carnegie Public Library for the three year period of this MOA.

Make available an Internet Technologist Specialist so that the E-book Services function properly through the internet service already available on the City of Las Vegas Carnegie Public Library computers.

OverDrive, Inc.

All E-book services, terms and conditions as provided by **Schedule "C" Library Participation**

**Form-New Mexico Library To Go** attached herein and made part of this MOA.

**FURTHERMORE:**

Any additional cost(s) to perform and/or complete any of the above listed terms by either of the parties to this MOA shall be subject to negotiations and agreement between the parties of this MOA; any amendments to this agreement must be made in writing and approved by the parties.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by:

**FOR THE CITY OF LAS VEGAS:**

\_\_\_\_\_  
ELMER J. MARTINEZ, City Manager

**FOR THE CITY OF LAS VEGAS FRIENDS OF THE LIBRARY:**

\_\_\_\_\_  
GINA L. HARRIS, President, Friends of The Las Vegas Carnegie Library

**ATTEST:**

\_\_\_\_\_  
CASANDRA FRESQUEZ, City Clerk

Approved as to Legal Sufficiency only:

\_\_\_\_\_  
DAVE ROMERO, Attorney for City of Las Vegas

Special

CITY COUNCIL MEETING AGENDA REQUEST

DATE: 01/23/15

DEPT: Utilities Dept.

MEETING DATE: 01/30/15

ITEM/TOPIC: Resolution No. 14-74 repealing and replacing Resolution No. 80-51, removing the water tap issued to Mr. Gene Maes, and reinstalling the tap on Zeamway at 1 Airport Road.

ACTION REQUESTED OF COUNCIL: Approval/Disapproval of Resolution No. 14-74.

BACKGROUND/RATIONALE: The East Loop water line up to Zeamway Road will be ready for service in January 2015.

Mr. Gene Maes was granted a 2" water tap off of the MDF line per Resolution No. 80-51 dated March 12, 1992. This tap was restricted to serve 5 residential services. Staff is requesting that the existing tap be withdrawn and moved to a new location with proper easement and that staff enter into a line extension agreement per the City Code 440-12 with any customers that are legally being served off the existing tap.

Any other customer seeking approval for service will need to provide legal documents to the satisfaction of the City Utilities Department that their tap was obtained under the premise that it was legal and in compliance with all City and County requirements, resolutions and ordinances.

STAFF RECOMMENDATION: Approval of resolution.

COMMITTEE RECOMMENDATION: This item will be discussed for ratification at the regular Utility Advisory Committee meeting on February 10<sup>th</sup>, 2015.

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)

  
SUBMITTER'S SIGNATURE

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

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

CITY OF LAS VEGAS  
RESOLUTION #14-74

A RESOLUTION REPEALING AND REPLACING RESOLUTION NUMBER 80-51.

WHEREAS, on March 12, 1992, the City of Las Vegas granted Mr. Gene Maes a two inch (2") commercial water tap off the MDF water line; and

WHEREAS, the tap was restricted to servicing a total of five mobile homes; and

WHEREAS, Mr. Gene Maes entered into contract #0368-92 with the City on March 12, 1992 for the same; and

WHEREAS, Mr. Maes account has been chronically delinquent leaving the customers without a practical means of receiving service; and

WHEREAS, the City desires to provide an individual service to each of the residents; and

WHEREAS, there are special circumstances involved in this case and this case will not be cited, either now or in the future, as precedence for other taps into the MDF water line and as to all future requests for taps into the MDF line, Resolution #06-11, is still in force and effect.

NOW THEREFORE BE IT RESOLVED by the Governing Body of the City of Las Vegas that:

1. The two inch water tap will be terminated and moved to a new location on Zeamway and Airport Road.
2. The use of these taps will remain for residential service.
3. Service lines beyond the meters will be the continuing responsibility of the individual residents and their assigned successors.
4. Individual service agreements will be required with customers prior to receiving service.
5. Under City code 440-12, a line extension agreement will be required to extend the City main from Zeamway/Airport Road to individual customers to serve all of the customers. Customers will offset any expenses the City may incur extending water mains to the five properties from Airport Road.
6. Any additional claims will be considered on a case by case basis, from customers who may have unknowingly obtained taps from Mr. Gene Maes. They will be reviewed by the Utilities Department Director as to legitimacy prior to approval or disapproval.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

**Attest:**

---

**Casandra Fresquez, City Clerk**

**APPROVED AS TO LEGAL SUFFICIENCY ONLY**

---

**Dave Romero Jr., City Attorney**

7081

CITY OF LAS VEGAS  
RESOLUTION NO. 80-51

A RESOLUTION ALLOWING ONE TAP OFF THE MDF LINE FOR USE BY GENE MAES.

WHEREAS, the City of Las Vegas adopted Resolution 72-38, in April of 1984, which declared a moratorium of water taps into the MDF waterline until the City of Las Vegas determined that it was physically and economically feasible; and

WHEREAS, Gene Maes had requested a water tap into the MDF waterline for connection to his property;

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

1). The City hereby grants Gene Maes one two inch (2") tap with a commercial meter into the MDF waterline.

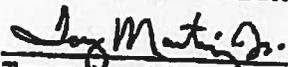
2). Property owner's use of this tap is restricted to serve a total of five mobile homes. There shall be no change in this use.

3). There are special circumstances involved in this case and this case will not be cited, either now or in the future, as precedent for other taps into the MDF waterline and as to all future requests for taps into the MDF line, Resolution 72-38, is still in force and effect.

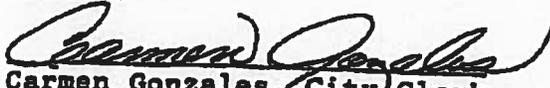
4.) Attached to this Resolution and, by reference incorporated into this Resolution is a contract between the City and the property owner which outlines all requirements for the described tap into the MDF waterline and which must be executed by the property owner prior to receiving the described water tap.

PASSED, APPROVED, AND ADOPTED this 12th day of March 1992.

CITY OF LAS VEGAS:

  
\_\_\_\_\_  
Tony Martinez, Jr., Mayor

ATTEST:

  
Carmen Gonzales, City Clerk

REVIEWED AND APPROVED AS TO FORM:

  
Beatriz Martinez-Garduno  
City Attorney

AGREEMENT/CONTRACT

NO. 0368-92

CITY OF LAS VEGAS

AGREEMENT

This Agreement entered into this 12th day of March 1992, by and between the City of Las Vegas, New Mexico, a Municipal Corporation, hereinafter called the "City" and Gene Maes, hereinafter called "Property Owner".

WHEREAS, Property Owner is the owner of certain real property located northeast of the City and in close proximity to the City's MDF waterline; and

WHEREAS, the City has determined that it is in the best interests of the City and the Property Owner to allow one two inch (2") tap with a commercial meter off the MDF waterline;

NOW, THEREFORE, in consideration of the premises, the parties hereby agree as follows:

1. CITY TO ALLOWS WATER TAP OFF MDF LINE.

The City shall allow one two inch (2") tap off the MDF waterline at a location to be solely determined by the City and to allow one commercial meter to be used to serve Property Owner's mobile home and future rental spaces for a maximum of four additional mobile homes.

It is expressly understood that Property Owner will not use this tap for more than a total maximum of five (5) mobile homes.

2. NO ADDITIONAL USE OF THE WATER.

It is understood and agreed by the one party that the waterline shall be used only for the above purposes, and specifically not for any other use including, but not limited to agricultural use or additional commercial use, and it is further

**AGREEMENT WITH GENE MAES**

**PAGE 2**

understood and agreed that no additional residences or structures shall be connected to the waterline other than the total of five mobile homes proposed for connection to the waterline described.

**3. PAYMENT TO THE CITY BY PROPERTY OWNER.**

In consideration for the water tap described herein, the Property Owner agrees as follows:

A. To pay the City \$1,535.68 for the two inch (2") water service and meter, water tap charge for Property Owner's mobile home pursuant to Ordinance 75-49, and Resolution 75-60, commercial water deposit and processing fee.

B. Additionally, Property Owner will pay the sum of \$672.00 per each additional mobile home up to a maximum of four additional mobile homes.

C. Property Owner shall be responsible in making payment of the monthly water bill to the City.

D. Keep all amounts owing to the City current or be subject to the standard penalties for all other delinquent bills owing to the City, including cut-off of service.

**4. PROPERTY OWNER IS RESPONSIBLE FOR ADDITIONAL CHARGES FOR WATERLINE CONNECTIONS.**

The Property Owner understands and agrees that he is responsible for any additional charges and provision of services involved in connecting the property owner's mobile home and future rental spaces for a maximum of four additional mobile homes described herein, to the water meter which shall be installed

**AGREEMENT WITH GENE MAES**

**PAGE 3**

pursuant to this Agreement.

**5. ENTIRE AGREEMENT.**

This Agreement constitutes the entire Agreement between the parties hereto; any prior Agreement, whether written or oral, assertion or statement, understanding or other commitment antecedent to this Agreement shall not have any force or effect whatsoever, unless the same is mutually agreed to by the parties hereto and reduced to writing. No changes or amendments to this Agreement shall be effective except those on written approval by both parties.

**6. ASSIGNABILITY.**

It is understood and agreed by the parties that should the Property Owner sell, transfer or otherwise convey his ownership or interest in his property which is served by the waterline described herein, he may then assign his interest in this Agreement by giving notice in writing to the City.

**7. SEVERABILITY.**

It is understood and agreed by the parties hereto that if any part, term, or provision of this contract is by the Court held to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

**AGREEMENT WITH GENE MAES**

**PAGE 4**

**8. NOTICE.**

The New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities, or kickbacks in the procurement of this Agreement. In addition, the New Mexico Procurement Code, Sections 13-1-128 through 13-1-199, NMSA 1978, as amended, imposes civil and criminal penalties for its violations.

**9. SUBJECT TO LAWS.**

The Property Owner shall comply at his own cost with all applicable laws, ordinances, and codes of the federal, state and local government.

**10. NOTICES.**

Any notices required to be given under this Agreement shall be deemed sufficient if given in writing, by mail to the principal office of the City or of the Property Owner.

**11. SUBJECT TO OTHER DOCUMENTS.**

This Agreement is subject to the terms and conditions of the Statutes of the State of New Mexico and Ordinances of the City of Las Vegas, New Mexico, as they exist at the time of this Agreement is signed. All of these Statutes and Ordinances are incorporated by reference into this Agreement.

**AGREEMENT WITH GENE MAES**

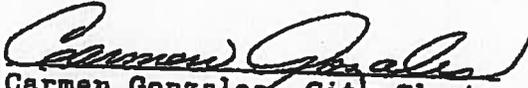
**PAGE 5**

In witness whereof, the parties hereto executed this Agreement  
the day and year first above written.

**CITY OF LAS VEGAS:**

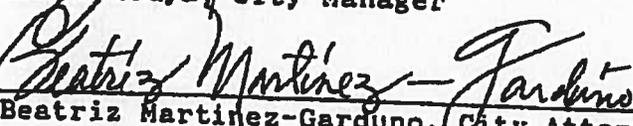
  
\_\_\_\_\_  
Tony Martinez, Jr., Mayor

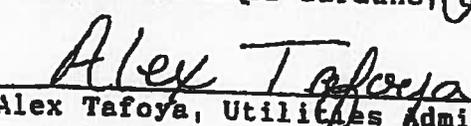
**ATTEST:**

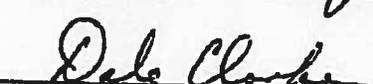
  
\_\_\_\_\_  
Carmen Gonzalez, City Clerk

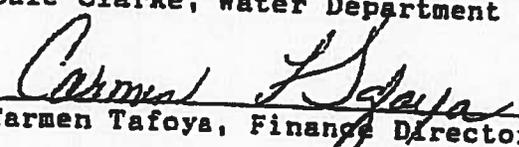
**REVIEWED AND APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Les Montoya, City Manager

  
\_\_\_\_\_  
Beatriz Martinez-Garduno, City Attorney

  
\_\_\_\_\_  
Alex Tafuya, Utilities Administrative Director

  
\_\_\_\_\_  
Dale Clarke, Water Department Director

  
\_\_\_\_\_  
Carmen Tafuya, Finance Director

