

Citizens' Finance Advisory Commission.

3. **ECONOMIC DEVELOPMENT** (presenter: Betsey Hale)
SUPPLEMENTAL APPROPRIATION FOR 2015 PRO CHALLENGE CYCLING RACE AND RTA APPLICATION

A Motion to Approve and Order Published on Second Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for the 2015 Pro Challenge Cycling Race and for Completion of the Regional Tourism Authority (RTA) Application

This is an administrative action. The ordinance on second reading appropriates Lodging Tax Funds: \$75,000 for consultants to develop the application for the Regional Tourism Act to the State Economic Development Commission, and \$100,000 in funding associated with hosting the US Pro Cycling Challenge event. The funding is from reserves in the Lodging Tax Fund and reduces the flexibility for funding other future events or programs. No specific adverse impacts to projects are projected. The current balance of the Lodging Tax reserves is \$976,794.36. City Council unanimously approved the first reading of the appropriation ordinance on January 6, 2015.

4. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
SUPPLEMENTAL APPROPRIATION FOR THE ARCADIA HOTEL INCENTIVE AGREEMENT

A Motion to Approve and Order Published on Second Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for an Incentive Agreement with 351 Linden Street LLC for Development of the Arcadia Hotel Property

This is an administrative action to approve the second reading of a supplemental appropriation ordinance for \$125,000 from Council Reserves. On January 6, 2015 City Council unanimously approved the first reading of the supplemental appropriation ordinance and Resolution #R-6-2015 authorizing the City Manager to sign an incentive agreement with 351 Linden Street LLC (aka Howard Perko), the developer of 140 E. 4th Street. This agreement is for \$125,000. The total request, including this agreement, the Urban Renewal Agreement and the commitment from the Loveland Downtown Partnership will be \$298,000. It also includes a Materials Use Tax Waiver not to exceed \$35,000. There is \$1 million available in Council Reserves, if this project is approved, the balance for 2015 will be \$875,000.

ADJOURN AS CITY COUNCIL AND CONVENE AS THE WATER ENTERPRISE BOARD OF DIRECTORS

5. **CITY MANAGER** (presenter: Alan Krcmarik)
WATER ENTERPRISE BOND SALE AND ISSUANCE

A Motion to Approve and Order Published on Second Reading an Ordinance Authorizing the Issuance and Sale of the City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015, Payable Solely Out of the Net Revenues to be Derived from the Operation of the City's Water Enterprise; and Providing Other Details Concerning the Bond, Including, Without Limitation, Covenants and Agreements in Connection Therewith

This is an administrative action authorizing the Water Enterprise to complete a financial transaction to obtain up to \$3.2 million of bond proceeds to be used by the Water Enterprise to improve the Water Treatment Plant. The need for the additional funding was caused by the bids coming in higher than expected. Council provided direction to obtain the financing by an ordinance in July 2014. The Water Enterprise will benefit from the receipt of proceeds from the proposed bank financing for construction of the capital project, the expansion of the Water Treatment Facility. This ordinance was approved

unanimously on first reading by Council at the January 6, 2015 regular meeting.

ADJOURN AS THE WATER ENTERPRISE BOARD OF DIRECTORS AND RECONVENE AS CITY COUNCIL

6. **CITY MANAGER** (presenter: Alan Krcmarik)
WATER ENTERPRISE BOND TERMS AND PROVISIONS
A Motion to Approve and Order Published on Second Reading an Ordinance of the City of Loveland, Authorizing the Terms and Provisions Relating to the Water Enterprise Revenue Bonds, Series 2015, to be Issued by the City of Loveland, Colorado, Water Enterprise, the Finance Improvements to the City's Water System, Including, Without Limitation, Covenants and Agreement of the City in Connection Therewith
 This is an administrative action by the City Council. Pursuant to Ordinance 4454 adopted by the Council in 1999, the Council ratified the establishment of the City of Loveland Water Enterprise. In separate action, the City Council, acting as the Board of the Water Enterprise, considered on first reading the terms of the Water Enterprise Revenue Bonds, Series 2015. This proposed ordinance indicates the City Council's agreement to and authorization of the bond ordinance. This Ordinance was adopted unanimously on first reading by Council at the January 6, 2015 regular meeting.
7. **DEVELOPMENT SERVICES** (presenter: Alison Hade)
HABITAT FOR HUMANITY FEE WAIVER
A Motion to Approve Resolution #R-8-2015 Waiving Certain Development Fees for the Construction of Nine Residences by Loveland Habitat for Humanity
 Loveland Habitat for Humanity is requesting a waiver of development fees, consisting of building permit fees, capital expansion fees and enterprise fees, for the construction of four single family detached dwellings, four attached single family dwellings within a four-plex building and one attached single family dwelling within a duplex building, for a total of nine dwelling units to be constructed in 2015. One of these homes will be occupied by a flood survivor. The total fee estimate for all nine dwellings is \$229,885.72. The requested fee waiver will not exceed \$210,000. Habitat for Humanity will pay the balance of any fees. \$65,000 was appropriated in the 2015 Budget to backfill enterprise fees waived by the proposed resolution. An additional amount, not to exceed \$145,000, in development and capital expansion fees would be waived by the resolution and not backfilled.
8. **DEVELOPMENT SERVICES** (presenter: Alison Hade)
AMENDMENT TO FEE WAIVER FOR LOT CHANGE FOR HABITAT FOR HUMANITY
A Motion to Approve Resolution #R-9-2015 Amending Resolution #R-24-2014 Pertaining to Fee Waivers for Construction of Nine Residences by Loveland Habitat for Humanity
 This is an administrative action. On March 18, 2014, City Council adopted a resolution granting Loveland Habitat for Humanity fee waivers for the construction of a total of nine homes in the Koldeway Industrial 3rd Subdivision and the Sierra Valley First Subdivision. One of the lots identified in the resolution for construction of a home receiving a fee waiver is currently unsuitable for construction pending the correction of some drainage issues. The dollar amount of the fee waiver will remain the same.
9. **CITY CLERK** (presenter: Terry Andrews)
APPOINTMENT OF ELECTION JUDGES FOR SPECIAL ELECTION
A Motion to Approve Resolution #R-10-2015 of the Loveland City Council Authorizing the City Clerk to Appoint Election Judges for the Special Election to be Held on February 10, 2015 Concerning the Establishment of a Downtown

Development Authority

This is an administrative action. Council approved an ordinance calling for a special election on February 10, 2015, regarding the establishment of a Downtown Development Authority (DDA). This resolution confirms authority to the City Clerk, acting as the Designated Election Official, to appoint election judges pursuant to Section 31-101-401 C.R.S.

10. PUBLIC WORKS (presenter: Steve Kibler)

AWARD OF 2015 FLEET FUEL CONTRACT**A Motion to Award a Contract to Rex Oil in the Amount of \$2,000,000; Authorize the City Manager to Sign the Contract; and Authorize the Public Works Director to Lock Prices if it is in the Best Interest of the City**

This is an administrative action to approve a Contract with Rex Oil Company for \$2,000,000 (two million dollars) for diesel and unleaded fuel purchases for various City locations including the fleet management fueling center, golf courses, the water and wastewater treatment plants, and the airport for a period covering February 1, 2015 to January 31, 2016. This also authorizes the City Manager to sign the Contract and authorizes the Public Works Director to lock prices if determined to be in the best interest of the City. Budget dollars are available in various departments with the bulk (\$1,500,000) budgeted in the Public Works Vehicle Maintenance Fleet Operations Fund (501-23-261-1902-42030). Should City Council approve this recommended award of contract and fuel prices remain favorable, City staff intends to pursue the price lock in option. Assuming January 13, 2015 per gallon prices compared to per gallon pricing assumed at the time of budget development, estimated 2015 budgetary savings could exceed \$500,000. (Please note, however, that final budgetary saving estimates are also dependent on gallons actually purchased compared to original projections.)

11. HUMAN RESOURCES (presenter: Julia Holland)

CITY EMPLOYEE CLINIC (HEALTHSTAT) CONTRACT RENEWAL**A Motion to Ratify and Approve the Contract Dated May 2, 2014 Between the City and Healthstat, Inc. for Operation of the City Employee Clinic**

This is an administrative action to ratify and approve the contract with Healthstat for operation of the Employee Clinic and related services. The agreement may cover operations and services for up to five years, and the cost for the term of the contract in 2015, will be an amount not to exceed \$526,000. Healthstat will provide clinic services to eligible participants during 2015 as outlined in the contract. The amount of \$526,000 is within the projected and approved 2015 Budget.

END OF CONSENT AGENDA**CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA****PUBLIC COMMENT**

Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.

PROCEDURAL INFORMATION

Anyone in the audience will be given time to speak to any item on the Regular Agenda before the Council acts upon it. The Mayor will call for public comment following the staff report. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

12. **WATER & POWER** (presenter: Larry Howard)
AMENDMENT TO THE AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR
A Motion to Approve Resolution #R-11-2015 Approving the Second Amendment to Agreement for Home Supply Big Dam Flood Repair
 This is an administrative action. On October 7, 2014 Council authorized a First Amendment to the Agreement for Home Supply Big Dam Flood Repair, which modified the January 15, 2014 Agreement. The First Amendment added work during construction and mitigation measures to protect against future flood damages to the original scope and increased the City's maximum 50% contribution to \$800,000. Home Supply's application to FEMA for the mitigation measures restarted the approval process for the entire project, causing delay in the expected FEMA and State Office of Emergency Management repayment schedule. All Project Worksheets submitted by Home Supply for the Project have been approved by FEMA and are currently being processed by the State, and payment is expected. This action, if approved by Council, will not change the Project scope of work. It will increase the City's not-to-exceed amount from \$800,000 to \$1M to fund continuation and completion of the FEMA eligible work of repair and mitigation (referred to as Phase I and Phase IA in the First Amendment) on a 50:50 basis, pending receipt of FEMA reimbursement by Home Supply. Proceeds from FEMA funds on all shared portions of the repairs and mitigation will also benefit Home Supply and the City on a 50:50 basis. Funds are available in the 2014 budget to cover this cost.
13. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
SUPPLEMENTAL APPROPRIATION FOR ASSOCIATED COSTS RELATED TO THE SOUTH CATALYST PROJECT
A Motion to Approve and Order Published on Second Reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget to Reappropriate Funding Approved in 2014 for the Purchase of Property and other Costs Associated with Downtown Land Purchases for the South Catalyst Project
 This is an administrative action. The ordinance reappropriates funding of \$3,218,877.30 approved in 2014 for the acquisition of Downtown property in support of the South Catalyst redevelopment project. The proposed project, a partnership with the Michaels Development Company and Larimer County, is expected to result in a vertically dense mixed-use project that would include office, residential and retail. The total investment is expected to generate between \$50 to \$70 million. Ten properties were purchased in 2014 with an additional property under contract scheduled to close in February, 2015. This action does not increase the Council's original appropriations of funds; it only continues funding into early Fiscal Year 2015 to allow purchases of properties. The funding for the appropriation of \$3,218,877.30 is from Unreserved Fund Balance in the General Fund. The appropriation of this fund balance reduces the flexibility to fund other projects. On January 6, 2015 City Council approved the first reading of the supplemental appropriation by a vote of six to three.

BUSINESS FROM CITY COUNCIL

This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.

CITY MANAGER REPORT

CITY ATTORNEY REPORT

ADJOURN



PROCLAMATION

- WHEREAS,** Dr. Martin Luther King, Jr. devoted his life to the advancement of civil rights, social justice, equality and opportunity; and
- WHEREAS,** Dr. King inspired a non-violent national civil rights movement, working to end segregation in all areas of public life; and
- WHEREAS,** the civil rights movement Dr. King inspired led to the enactment of the Civil Rights Act of 1964, prohibiting discrimination based on race, color, religion, or national origin and paving the way to future civil rights legislation at the Federal and State level to advance equality in our society including the Voting Rights Act of 1965, the Fair Housing Act of 1968, and the Americans with Disabilities Act of 1990; and
- WHEREAS,** the State of Colorado has embraced the rights of a diverse population through the Colorado Anti-Discrimination Act; and
- WHEREAS,** the City of Loveland, Colorado recognizes protections under the Colorado Anti-Discrimination Act including disability, race, creed, color, sex, sexual orientation, religion, age, national origin, and ancestry as they apply to employment, public accommodation, and fair housing; and
- WHEREAS,** the City of Loveland has a diverse population, whose contributions to the community are vital to its economy, culture and civic character, and the preservation of civil rights and liberties is essential to the well-being of a democratic society; and
- WHEREAS,** the Mayor and City Council of the City of Loveland believe that honoring diversity and equal rights are the cornerstone of a thriving democracy and a moral imperative to the actions of a local government that contribute to the health and well-being of everyone and the strength of our city; and
- WHEREAS,** the City of Loveland, Colorado recognizes that Martin Luther King Day is an opportunity to recognize Dr. King's teachings on advancing equal rights and to reinforce our commitment to honoring and protecting diversity in our community.

Now, Therefore, we, the City Council of Loveland do hereby declare January 2015 to honor

MARTIN LUTHER KING, JR. and renew our commitment to civil rights

in the City of Loveland, Colorado.

Signed this 20th day of January, 2015

Cecil A. Gutierrez, Mayor

MINUTES
LOVELAND CITY COUNCIL MEETING
LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS
TUESDAY, DECEMBER 16, 2014
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

6:30 P.M. REGULAR MEETING - City Council Chambers

CALL TO ORDER: Mayor Gutierrez called the meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL: Gutierrez, Clark, Trenary, Taylor, McKean, Farley, Shaffer, Krenning. Councilor Fogle arrived at 6:33 p.m.

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. Members of the public will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit comments to no more than three minutes.

CONSENT AGENDA

Councilor Shaffer moved to approve the consent agenda with the exception of items 5 and 11, which were pulled by Councilor Krenning and Shaffer respectfully. The motion, seconded by Councilor Taylor, carried with all councilors present voting in favor thereof.

1.**CITY CLERK** **(presenter: Terry Andrews)**

APPROVAL OF MEETING MINUTES

1. A Motion to Approve the City Council Special Meeting Minutes for the October 31, 2014 Special Meeting was approved.

This is an administrative action to approve the City Council Special Meeting minutes for the October 31, 2014 Special Meeting.

2. A Motion to Approve the City Council Meeting Minutes for the November 4, 2014 Regular Meeting was approved.

This is an administrative action to approve the City Council meeting minutes for the November 4, 2014 Regular Meeting.

3. A Motion to Approve the City Council Meeting Minutes for the November 18, 2014 Regular Meeting was approved.

This is an administrative action to approve the City Council Meeting Minutes for the November 18, 2014 Regular meeting.

4. A Motion to Approve the City Council Study Session Minutes for the November 25, 2014 Study Session was approved.

This is an administrative action to approve the City Council Study Session Minutes for

the November 25, 2014 Study Session.

2. **CITY MANAGER** (presenter: Bill Cahill)
APPOINTMENT TO THE HUMAN SERVICES COMMISSION
A Motion to Appoint Marcy Yoder to the Human Services Commission for a Partial Term Effective Until June 30, 2016 was approved.
 This is administrative action recommending the appointment of a member to the Human Services Commission.

3. **CITY MANAGER** (presenter: Bill Cahill)
2015 CITY COUNCIL AND BOARDS & COMMISSIONS MEETING DATES SCHEDULE
A Motion to Approve Resolution #R-89-2014 Adopting the Schedule of the 2015 Meeting Dates for the Loveland City Council and the City's Boards and Commissions was approved.
 This is an administrative action pursuant to City Code Section 2.14.020B to set the 2015 Meeting Dates, Times, and Locations for the City Council and for the City's Boards and Commissions.

4. **CITY MANAGER** (presenter: Rod Wensing)
CITY OF LOVELAND 2015 LEGISLATIVE POLICY AGENDA BROCHURE
A Motion to Adopt the 2015 City Council Legislative Policy Agenda and Authorize the City Manager and Designees to Respond Promptly, Carefully, and Appropriately to Legislative Positions Indicated within the Legislative Policy Agenda, as well as other Legislative Items or Action that May Adversely Impact the Interests of the City and its Citizens as They Arise was approved.
 This is an administrative action. The Council Legislative Review Committee and City staff is recommending approval of the attached 2015 Loveland City Council Legislative Policy Agenda and the authorization of the City Manager and his designees to respond to legislative issues as they arise.

5. **DEVELOPMENT SERVICES** (presenter: Bethany Clark)
LURA FAÇADE GRANT FOR 136-140 EAST 4TH STREET
This item was moved to the Regular Agenda.

6. **HUMAN RESOURCES** (presenter: Bettie Greenberg)
WORKERS' COMPENSATION INSURANCE COVERAGE RENEWAL
A Motion to Award the City's Workers' Compensation Coverage to Pinnacol Assurance and Authorize the City Manager to Enter into a Contract with Pinnacol, Execute Security and Collateral Agreements Required in Connection with the Contract, and Establish a Purchase Order in the Amount of \$1,240,000 was approved.
 This is an administrative action to authorize the City Manager to enter into contract with Pinnacol Assurance for 2015 Workers' Compensation coverage, which includes premium costs and claims payable from prior years. This contract is within the budget already approved for 2015.

7. **HUMAN RESOURCES** (presenter: Bettie Greenberg)
PROPERTY AND LIABILITY INSURANCE COVERAGE RENEWAL
A Motion to Award the City's 2015 Property and Liability Insurance Coverage to CIRSA and Authorize the City to Continue the Intergovernmental Agreement with CIRSA and to Establish a Purchase Order in the Amount of \$850,000 was approved.
 This is an administrative action to authorize the City to continue its Intergovernmental Agreement with CIRSA for 2015 property and liability insurance coverage and establish a purchase order in the amount \$850,000 for premium, claims administration and payment

of estimated claims for 2015 and remaining open claims or new claims from prior years. The \$850,000 is within the projected and approved 2015 Budget. The amount of \$850,000 is within the projected and approved 2015 Budget.

8. **HUMAN RESOURCES** (presenter: Julia Holland)
CITY EMPLOYEE MEDICAL STOP LOSS COVERAGE RENEWAL
A Motion to Award the Contract for City Employee Medical Stop Loss Coverage to Sun Life of Canada in an Amount not to Exceed \$900,000 and to Authorize the City Manager to Execute the Contract on Behalf of the City was approved.
 This is an administrative action to authorize the City Manager to enter into a contract for up to \$900,000 for 2015 with Sun Life of Canada for the City of Loveland employee healthcare stop loss insurance. The contract stipulates that Sun Life of Canada will provide stop loss insurance for health claims over \$175,000 while Cigna retains processing claims under \$175,000. This contract is within the benefits budget already approved for 2015. The amount of \$900,000 is within the projected and approved 2015 Budget.
9. **HUMAN RESOURCES** (presenter: Karen Rees)
2015 PAY PLAN
A Motion to Approve Resolution #R-91-2014 Adopting a Pay Plan for City Employees and Superseding All Prior Ordinances and Resolutions Adopting Such a Pay Plan was approved.
 This is an administrative action for Council to adopt the City's 2015 Pay Plan. The City's Pay Plan assists in delivering cost efficient, high quality services to citizens by establishing a competitive market based plan, while adhering to budgetary constraints. Annually the City utilizes salary survey data for market analysis to develop pay ranges and compare current pay rates with the identified labor market, while also providing a financially sustainable plan. Costs associated with personnel have been approved through the adoption of the 2015 Budget.
10. **FIRE RESCUE AUTHORITY** (presenter: Mark Miller)
AMENDMENT TO THE IGA TO CLOSE THE VOLUNTEER FIRE PENSION PLAN TO NEW MEMBERS
A Motion to Approve Resolution #R-92-2014 to Amend the 1966 Intergovernmental Agreement between the City of Loveland and the Loveland Rural Fire Protection District to Close the Consolidated Firemen's Pension Fund of Loveland and Rural District to Future Volunteer Firefighters was approved.
 This is an administrative action to close the Loveland and Rural Consolidated Volunteer Fire Pension Fund (5153-5) to future reserve (volunteer) firefighters due to a steady and continuous reduction in the number of reserve firefighters serving the City and the Rural District, an increasing likelihood that such reserves would not meet the minimum service requirements to qualify to receive benefits from the volunteer fire pension fund and the recent change to a two-tier staffing plan that no longer recruits additional LFRA reserve firefighters.
11. **ECONOMIC DEVELOPMENT** (presenter: Chris Conrardy)
This item was moved to the Regular Agenda.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

PUBLIC COMMENT

Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.

None

PROCEDURAL INFORMATION

Anyone in the audience will be given time to speak to any item on the Regular Agenda before the Council acts upon it. The Mayor will call for public comment following the staff report. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA**CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA****COUNCIL ADJOURNED AS CITY COUNCIL AND CONVENED AS THE LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS (LURA) AT 6:51 P.M.**

**5. DEVELOPMENT SERVICES (presenter: Bethany Clark)
LURA FAÇADE GRANT FOR 136-140 EAST 4TH STREET**

Planning Technician, Bethany Clark introduced this item to Council. This item is an administrative action to adopt a resolution. The Facade Incentive Program provides grants of up to 10 percent of total development costs for buildings in the Urban Renewal Area, not to exceed 100 percent of the façade costs. City Council appropriated general seed funds for the LURA Façade program in November of 2007 and appropriated additional TIF funds in December of 2011 to be dedicated for the Façade Improvement Program. In 2013, a fund balance of \$36,310 was rolled over into the 2014 Façade Program budget. Added to this fund balance were TIF funds generated in 2013 of \$23,680, for a total fund balance of \$59,990. One \$12,500 Matching Grant was awarded in July 2014, resulting in the current fund balance \$47,490.

Commissioner Shaffer moved to Approve Resolution #R-90-2014 of the Loveland Urban Renewal Authority Awarding a Facade Incentive Grant to the Owner of the Building Located at 136-140 East 4th Street and Authorizing a Façade Incentive Grant Agreement. The motion, seconded by Commissioner Farley, carried with all councilors present voting in favor.

COUNCIL ADJOURNED AS THE LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS (LURA) AND RECONVENED AS CITY COUNCIL

**11. ECONOMIC DEVELOPMENT (presenter: Marcie Erion)
EDISON WELDING INSTITUTE SUPPLEMENTAL APPROPRIATION INCENTIVE**

Business Development Specialist, Marcie Erion introduced this item to Council. This is an administrative action. The City of Loveland proposes to enter into a Services Contract with Edison Welding Institute, Inc., dba "EWI" to perform a regional manufacturing and technology needs assessment and the EWI Colorado business plan. This item was brought before Council at the October 7, 2014 regular meeting as an informational item. At that time, City Council provided direction to staff to bring a funding ordinance for the EWI contract to Council for formal consideration. The ordinance funding reduces the flexibility to fund other projects. The \$300,000 would come out of the Economic Development Incentive Fund in 2015. The current balance in the incentive fund for 2015 is \$450,000 with a rollover of \$762,790. Mayor Gutierrez opened the public hearing at 7:47 p.m. and with no public comment the public hearing was closed.

Councilor Shaffer moved to Approve and Order Published on First Reading an Ordinance Enacting a Supplemental Appropriation to the 2015 City of Loveland Budget for a Services Contract with Edison Welding Institute, Inc. Councilor

McKean seconded the motion which carried with all councilors present voting in favor thereof.

12. ECONOMIC DEVELOPMENT (presenters: Betsey Hale, Alan Krcmarik, Lucia Liley and Members of the LDP Board)

DOWNTOWN STRATEGIC PLAN AND SERVICES CONTRACT

Economic Development Director, Betsey Hale and Executive Fiscal Advisor, Alan Krcmarik introduced this item to Council. This is an administrative action to consider a resolution supporting the Downtown Strategic Plan and approving a services contract with the Loveland Downtown Partnership (LDP) for implementation of the Downtown Strategic Plan. City Council has approved the 2015 budget with an appropriation of \$500,000 for the operations and programs of the LDP. Council has directed the City Manager to negotiate a contract for services with the LDP board. This resolution emphasizes the Council's long term commitment to: the redevelopment of downtown Loveland, it extends support of the funding for a period of 10 years and it endorses the organization's strategic plan. The LDP will present a draft DDA Plan of Development that will be used as part of the DDA election process, but will not be officially adopted until after a successful DDA formation election. City Staff will present to Council a 30 year forecast of the financial performance of the proposed Downtown Development Authority project area. \$500,000 of sales tax revenue that is collected in the Downtown geo area will be committed to the operations and programs of the LDP. This commitment is intended to be annually approved for a period of 10 years.

Councilor Shaffer moved to Approve Resolution #R-93-2014 Supporting the Downtown Strategic Plan and Approving a Services Contract with the Loveland Downtown Partnership for Implementation of the Downtown Strategic Plan. The motion seconded Councilor McKean carried with all councilors present voting in favor thereof.

**13. CITY MANAGER (presenter: Rod Wensing)
ONE-YEAR FLOOD RECOVERY UPDATE**

Assistant City Manager, Rod Wensing introduced this item to Council. This is an informational only presentation summarizing the City's flood recovery efforts, including: overall flood recovery efforts, specific flood recovery costs, reimbursements, and pending reimbursement applications. Key members of the City's Flood Recovery Team was available to answer questions.

**14. PUBLIC WORKS (presenters: Luke Hecker, Ken Cooper and Will Welch)
REGIONAL TRAINING CAMPUS FOR LAW ENFORCEMENT – RFP**

Discussion, feedback, and direction regarding the potential for an RFP process to solicit alternative project and service delivery methods for the Regional Training Campus project.

Police Chief, Luke Hecker, Ken Cooper and Will Welch introduced this item to Council. This is an informational item to receive direction. Regional Training Campus project team members will provide a framework to support a possible RFP process, shared by the Cities of Loveland and Fort Collins, to solicit proposals to provide potential alternative project and/or service delivery methods. This is currently planned as a shared capital project between the Cities of Loveland and Fort Collins with costs shared evenly. The potential RFP process itself does not create any significant budgetary impact. Discussion ensued. **Consensus of Council was to direct the City Manager to explore buying out the County at the Police and Courts Building and provide a timeline.**

BUSINESS FROM CITY COUNCIL

This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.

Farley: Attended the Parks & Recreation Director presentations.
 Shaffer: Attended the Loveland Rotary Club discussion of grandparents raising grandchildren.
 Fogle: Attended the Historic Preservation Commission Christmas Party.
 Krenning: Suggested closing the City on Friday, December 26th.
 Gutierrez: Platte River Power Authority handout; Strategic Plan- RFP; Thanks to Loveland Visitor's Center for the 2014 Christmas ornaments; Announced this is the last City Council meeting of 2014; Announced the Menorah Lighting Tuesday, December 23rd at the Museum.

CITY MANAGER REPORT City Council workshop would be held on January 24, 2015 at the Group Building. City Council topics should be into the City Manager this week. Commended Judy Schmidt for an outstanding job as interim city attorney and for her assistance through the hiring process for the new City Attorney, Tami Yellico, who starts on January 6, 2015.

CITY ATTORNEY REPORT None.

15. **CITY ATTORNEY** (presenter: Judy Schmidt)
EXECUTIVE SESSION

Executive Session to Receive Legal Advice from the City Attorney Regarding Contracts with Municipal and Deputy Municipal Judges

Councilor Shaffer moved that the City Council go into executive session for the purpose of obtaining legal advice and discussing personnel matters regarding contracts with municipal and deputy municipal judges as authorized by the following sections of the Colorado Revised Statutes and the City of Loveland Charter: To receive legal advice from the City Attorney's Office as authorized in CRS§24-6-402(4)(b) and Charter Section 4-4(c)(3); and Personnel matters as authorized by CRS§24-6-402(4)(f) and Charter Section 4-4(c)(5) 10:05 p.m. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.

Council reconvened at 11:10. Discussion ensued. Councilor Krenning moved to direct Staff to notify every individual who appeared before Deputy Judge Packard to be notified that any action taken was determined to be invalid and they should contact the City for resolutions on their matter. The motion seconded by Councilor McKean, failed with two councilors voting in favor and Councilors Taylor, Farley, Shaffer, Trenary, Fogle and Gutierrez voting against.

Councilor Shaffer moved to reappoint Judge Packard as Deputy Judge from January 18, 2013 to his date of resignation and to ratify any and all decisions made by Deputy Judge Packard during that time. The motion was seconded by Councilor Farley. The motion, which requires a 2/4 vote of the entire Council, failed with five councilors voting in favor and Councilors Krenning, McKean and Fogle voting against.

Councilor Fogle moved to reconsider the previous motion. The motion seconded by Councilor Farley, carried with six councilors voting in favor and Councilors Trenary and Krenning voting against.

The motion, which requires a 2/4 vote of the entire Council, failed with five councilors voting in favor and Councilors Krenning, McKean and Fogle voting

against.

ADJOURNMENT

With no more business to come before this Council, Mayor Gutierrez adjourned the December 16, 2014 meeting at 12:04 a.m.

Respectively Submitted,

Teresa G. Andrews, City clerk

Cecil A. Gutierrez, Mayor

**CITY OF LOVELAND**
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 2
MEETING DATE: 1/20/2015
TO: City Council
FROM: City Manager
PRESENTER: Bill Cahill

TITLE:

Appointment to the Citizens' Finance Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:

A motion to appoint Frank Kolodziej to the Citizens' Finance Advisory Commission for a term effective until December 31, 2017

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
-

SUMMARY:

This is an administrative action recommending the appointment of a member to the Citizens' Finance Advisory Commission.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

BACKGROUND:

Citizens' Finance Advisory Commission has two term vacancies. Jason Napolitano was approved by Council for reappointment at the January 6, 2015 regular meeting. One applicant was interviewed on January 6, 2015 and the committee recommends the appointment of Frank Kolodziej to the commission for a term effective until December 31, 2017. One vacancy remains with applicant interviews to be scheduled.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None



CITY OF LOVELAND
 ECONOMIC DEVELOPMENT OFFICE
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AGENDA ITEM: 3
MEETING DATE: 1/20/2015
TO: City Council
FROM: Cindy Mackin, Economic Development Department
PRESENTER: Cindy Mackin, Visitor Services Coordinator

TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for the 2015 Pro Challenge Cycling Race and for Completion of the Regional Tourism Authority (RTA) Application

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action. The ordinance on second reading appropriates Lodging Tax Funds: \$75,000 for consultants to develop the application for the Regional Tourism Act to the State Economic Development Commission, and \$100,000 in funding associated with hosting the US Pro Cycling Challenge event. City Council unanimously approved the first reading of the appropriation ordinance on January 6, 2015.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The funding is from reserves in the Lodging Tax Fund and reduces the flexibility for funding other future events or programs. No specific adverse impacts are projected. The current balance of the Lodging Tax reserves is \$976,794.36.

BACKGROUND:

RTA Application- The Regional Tourism Act (RTA) is a legislative bill and a subsequent program developed by the State of Colorado Economic Development Commission to provide financial support for the development of regional tourism attractions and associated amenities. The purpose is to increase the attraction of out-of-state visitors and also increase visitors spending. The RTA provides for the establishment of an authority which will use the State of Colorado sales tax increment collected in a designated RTA zone for the purpose of financing eligible projects.

Larimer County, the City of Loveland and Town of Windsor are developing a joint RTA application. The application effort is being led by a private non-profit; Go NoCo.

The project concept areas are located at:

- The Larimer County Ranch and Fairgrounds
- Water Valley property in Loveland and Windsor
- Centerra
- Sylvan Dale Guest Ranch

Details of the projects were presented at the December 9th Study Session and will be updated at the January 13th Study Session. Total application costs are expected to reach well over \$750,000. The private sector has contributed well over \$400,000 to marketing the region and attracting project operators and partners. With this \$75,000 of lodging tax the City's investment is \$250,000. Windsor has contributed \$50,000 and will be making an additional contribution decision at their January 12th meeting. The services provided by Go NoCo include hiring and managing professional financial, marketing, legal, and tenant recruitment consultants as necessary to prepare the application under the direction of a project manager. Staff and the Go NoCo Board will return to Council for a resolution of support for the RTA application prior to submission.

US Pro Cycling Challenge - Loveland, Fort Collins, Estes Park and Windsor came together in 2012 to submit a bid to host a beginning and ending stage of the 2013 Pro Cycling Challenge. Northern Colorado was awarded the 6th stage of the Pro Cycling Challenge tour which took place on Saturday, August 24, 2013. Historically the Saturday stage has yielded the highest attendance. The communities partnered with a number of local businesses including McWhinney Corporation, the Group Real Estate, and the Ranch among others to bring this event to our part of the State. The event is consistent with the Destination Loveland Strategic Plan, which calls for promoting Loveland as a destination and partnering with regional and state tourism organizations on marketing and promotion efforts.

Loveland, Fort Collins and Windsor came together once again in 2014 to submit a bid to host a beginning and ending stage of the 2015 Pro Cycling Challenge. On Monday, December 22, 2014, Northern Colorado was awarded this bid for Stage 6 which will take place on Saturday, August 22, 2015. The ordinance was supported and recommended by the Community Marketing Commission. This event will create a positive economic impact and a local spending benefit, but more importantly, this event provides media exposure on a statewide, national and international

scale. The US Pro Cycling Challenge will bring an estimated \$2 - \$4 million in publicity. The exact route is yet to be determined; however, it will start and pass through Loveland and end in Fort Collins.

Both of these projects were reviewed by the Community Marketing Commission at its December 2014 meeting and are recommended for appropriations of lodging tax revenues.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING January 6, 2015

SECOND READING January 20, 2015

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2015 CITY OF LOVELAND BUDGET FOR THE 2015 PRO CHALLENGE CYCLING RACE AND FOR COMPLETION OF THE REGIONAL TOURISM AUTHORITY (RTA) APPLICATION

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2015; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2015, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of \$175,000 in the Lodging Tax Fund are available for appropriation. Revenues in the total amount of \$175,000 are hereby appropriated for the 2015 Pro Challenge Cycling Race (\$100,000) and for completion of the Regional Tourism Authority (\$75,000) application. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Lodging Tax Fund 206**

Revenues		
Fund Balance		175,000
Total Revenue		175,000
Appropriations		
206-18-1821504-43450 EDPROCHAL	Professional Services	100,000
206-18-182-1504-43450 EDRTA	Professional Services	75,000
Total Appropriations		175,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 20th day of January, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



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 ECONOMIC DEVELOPMENT OFFICE
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AGENDA ITEM: 4
MEETING DATE: 1/20/2015
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget for an Incentive Agreement with 351 Linden Street LLC for Development of the Arcadia Hotel Property

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action to approve the second reading of a supplemental appropriation ordinance for \$125,000 from Council Reserves. On January 6, 2015 City Council unanimously approved the first reading of the supplemental appropriation ordinance and Resolution #R-6-2015 authorizing the City Manager to sign an incentive agreement with 351 Linden Street LLC (aka Howard Perko), the developer of 140 E. 4th Street.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

This agreement is for \$125,000. The total request, including this agreement, the Urban Renewal Agreement and the commitment from the Loveland Downtown Partnership will be \$298,000. It also includes a Materials Use Tax Waiver, not to exceed \$35,000. There is \$1 million available in Council Reserves, if this project is approved, the balance for 2015 will be \$875,000.

BACKGROUND:

Howard Perko purchased the Arcadia Hotel in December of 2014 with the intention of rehabilitating the building and relocating his engineer business, Magnum Piering Inc. to the 2nd floor. He currently has leases in place for the first floor, which includes a salon business and a residential retail brokerage firm.

The total project cost including the cost of acquisition is \$1,898,931. The City's contribution is \$298,000, which includes both the URA contribution and the Loveland Downtown Partnership contribution. The amount represents 15.7 percent of the total project cost. The project cost is inclusive of only the core and shell. There will be additional private investments made by individual tenants for their tenant improvements and furniture fixtures and equipment.

Source	Amount
City of Loveland	\$125,000
Loveland Downtown Partnership	\$125,000
Urban Renewal Authority	\$48,000
Total	\$298,000

Following the discussion with City Council regarding future URA monies, Mr. Perko has agreed that he will not make any future request to the Urban Renewal Authority for additional money for façade improvements.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING: January 6, 2015

SECOND READING: January 20, 2015

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2015 CITY OF LOVELAND BUDGET FOR AN INCENTIVE AGREEMENT WITH 351 LINDEN STREET LLC FOR DEVELOPMENT OF THE ARCADIA HOTEL PROPERTY

WHEREAS, the City has received and/or reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2015; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2015, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of \$125,000 from Council Reserves in the General Fund are available for appropriation. Revenues in the total amount of \$125,000 are hereby appropriated for an incentive agreement with 351 Linden Street LLC for development of the Arcadia Hotel property. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100**

Revenues	
Fund Balance	125,000
Total Revenue	125,000
Appropriations	
100-18-180-1500-43155 EDARCADIA Economic Incentives	125,000
Total Appropriations	125,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the

amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this ____ day of January, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



CITY OF LOVELAND
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AGENDA ITEM: 5
MEETING DATE: 1/20/2015
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik, Executive Fiscal Advisor

TITLE:

An Ordinance on Second Reading Authorizing the Issuance and Sale of the City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015, Payable Solely Out of the Net Revenues to be Derived from the Operation of the City's Water Enterprise; and Providing Other Details Concerning the Bond, Including, Without Limitation, Covenants and Agreements in Connection Therewith

RECOMMENDED ENTERPRISE BOARD ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action authorizing the Water Enterprise to complete a financial transaction to obtain up to \$3.2 million of bond proceeds to be used by the Water Enterprise to improve the Water Treatment Plant. The need for the additional funding was caused by the bids coming in higher than expected. Council provided direction to obtain the financing by an ordinance in July 2014. This ordinance was approved unanimously on first reading by Council at the January 6, 2015 regular meeting.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The Water Enterprise will benefit from the receipt of proceeds from the proposed bank financing for construction of the capital project, the expansion of the Water Treatment Facility.

BACKGROUND:

UPDATE ON PROGRESS SINCE FIRST READING:

To issue the bonds in 2015, representatives of the City and the Water Enterprise will certify that the Water Enterprise continued to meet the state requirements found in Article 10, section 20, (“TABOR”) to be considered an enterprise. Based on the financials for the Water Fund, less than 10% of its total revenue come from state grants or non-enterprise interfund contributions from the City; therefore, in 2014, the Water Enterprise is qualified.

Based on the preliminary 2014 Water Fund financials, it has been determined that the Water Enterprise is able to meet the additional bonds test. In the 2013 Bond Issue, the Water Enterprise made a covenant to have at least 110% of the maximum debt service on the 2013 Bonds, the interfund loan, and the proposed new bond.

The legal, financial, and banking services providers for the bond issue have confirmed their costs on this transaction.

National Bank Holdings issuance fee	\$8,000
Bank’s Bond Counsel	12,500
US Bank as Paying agent	1,200
Water Enterprise Issuer’s Counsel	30,000
Water Enterprise Financial Advisor	8,500

After the costs of issuance are covered, there will be approximately \$3,140,000 available for the project.

Similar to the 2013 Bond Issue, the City will only pay interest on the Bonds after they have been drawn from the proceeds fund, thereby avoiding interest costs.

After approval on Second Reading, the ordinance will be published. Rates for the borrowing will be set about two weeks after the publication date. Closing on the bonds will occur about 30 days after the publication date.

HISTORY:

The proposed ordinance completes the funding package for the Water Treatment Plant Expansion Project. The Water Utility Enterprise issued \$10 million of revenue bonds in 2013. The bonds provided for in this ordinance would be up to \$3.2 million bringing the total of all bonds issued for the project to \$13.2 million.

The proposed transaction by the Water Enterprise is consistent with Ordinance No. 4454, which in 1999, established and empowered the Enterprise to execute loans, bond issues, and other financial transactions. In Resolution #R-16-2013, Council directed staff to research, consider, and recommend the most advantageous borrowing available. Staff evaluated financing proposals directly from banks, a loan through the Colorado Water Resources & Power Development Authority, and the issuance of Water Enterprise revenue bonds. In 2013, the Enterprise issued

\$10 million of bonds. After the bid opening, it was determined that a second transaction of approximately \$3.2 million would be needed to complete the expansion project.

A financing proposal with National Bank Holdings, National Association (“NBH,” owners of Community Banks of Colorado) was determined to be the most advantageous. NBH presented a financing plan for the entire remaining 18½ year term that would match up consistently with the 2013 \$10 million bond issue. The proposal contains very competitive rates, and a fixed draw schedule of the bond proceeds that will lower interest payments over the next year. The final rate on the bond will be determined after first reading; at current rate levels the loan rate would be approximately 3.10%. Rates will not be finalized until about two weeks from the closing on the bonds, expected to be mid to late February.

The following parties will be involved in the bond transaction:

Issuer	Water Enterprise, City of Loveland
Issuer’s Counsel	Butler, Snow, O’Mara Stevens & Cannada, PLLC Dee Wisor, Esq. and Sarah P. Tasker, Esq.
Bond Purchaser	National Bank Holdings, National Association (“NBH”)
Purchaser’s Counsel	Kline Alvarado Veio, PC Brent Kline
Independent Financial Advisor	FirstSouthwest Company James Manire, Senior Vice President
Paying Agent	US. Bank, Denver

Staff has provided a synopsis of the process that led to the justification for and issuance of bonds in 2013:

The process leading to this Ordinance started with the cost-of-service study for Water and Wastewater beginning in February of 2012. With the review, advice, and support of the Loveland Utilities Commission and the Citizens’ Finance Advisory Commission, Council adopted Resolution #R-16-2013 in February of this year. The Resolution provided for:

- 1) Securing, through the most advantageous source, \$10 million [the amount will be \$13.2 million] of external financing;
- 2) Authorization for an internal loan of \$6 million from the Power Fund to the Water Fund;
- 3) Direction by the Council for future transfers from the General Fund to repay the principal due on the Power Fund internal loan, and
- 4) Adoption of a series of rate increases across all water Utility customer classes for the years 2014 to 2022.

The proposed Bond Ordinance completes the first of the four directives listed above from the Resolution. For the external financing option, staff considered three options.

1. Loan from the Colorado Water Resources & Power Development Authority

City staff met with the CWRPDA and filed an application for a loan. The Authority receives money from Federal sources to make the loan rate lower but required that all labor on the project be paid at prevailing wages (also referred to as “Davis-Bacon” wages). The City will be spending more than the proceeds from an external loan of \$10 million. Total project costs will exceed \$20 million. The prevailing wages requirement applies to all labor in the total project to be done. Information from the engineering consultants indicated that the requirement to pay prevailing wages would increase the cost of the project by 10 percent or more. Staff determined that, although the rate on the loan would be the lowest with this option, the interest savings would be more than offset by the cost of the higher wages. Therefore, this option for external financing was eliminated.

2. City issuance of Water Enterprise Revenue Bonds

City staff, with assistance from the independent financial advisor, determined that the interest rates on a City issued bonds would be higher than rates indicated by the bank financing. The rate differential was determined to be at least one-quarter percent, 0.25%. Annual debt service over the 20 years would be about \$310,000 higher with City-issued revenue bonds. The other drawback was that the City would begin making full interest payments in the first year after the bond issue. Based on the projected higher costs and less flexibility in the construction draw schedule, this option for external financing was eliminated.

3. Bank Loan Option- Recommended

Staff prepared and released a competitive request-for-proposals for the bank loan form of external financing. Ten proposals were received and reviewed by staff and an independent financial advisor (also selected through a competitive RFP process.) Four semi-finalists were identified and interviewed. The list was narrowed to two proposals based on rates and the ability to cover the 20 year repayment period. The finalist, Wells Fargo Bank, provided a very flexible draw down process and an interest only period at the beginning of the financing term. The project management of the construction process will delay the draws from the external financing, thereby reducing the amount of interest to be paid. Based on analysis of the delaying of draws from the bond proceeds, it is estimated that this will save about \$600,000 of interest cost and will delay the requirement to repay principal. The bank offered a prepayment of principal option with no penalty at year five of the repayment schedule. Then internal sources of funds from the Power Fund will be coordinated with the external financing process to minimize the cost to the City.

The Bond Ordinance designates and provides authorization to Enterprise officials to lock in the interest rates after first reading through the Bond Purchase Agreement (which is attached). To make payments on the proceeds from the bond issue, the City will engage US Bank to serve as the paying agent; a copy of the agreement is also attached.

The 2013 issue closed in July, 2013. After the award of the construction contract earlier this year, the construction of the Water Treatment Expansion is currently underway.

The 2015 transaction will close in the latter half of February with proceeds to be drawn after closing.

Contemporaneous with the Water Enterprise Board's adoption of this Bond Ordinance, the City Council will be adopting its own ordinance committing the City to the representations and covenants in the Enterprise's Bond Ordinance and Bond Purchase Agreement.

REVIEWED BY CITY MANAGER:



William D. Cahill

LIST OF ATTACHMENTS:

1. Ordinance
2. Bond Purchase Agreement
3. Paying Agent Agreement

FIRST READING: January 6, 2015

SECOND READING: January 20, 2015

CITY OF LOVELAND, COLORADO, WATER ENTERPRISE

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE REVENUE BOND, SERIES 2015, PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE CITY'S WATER ENTERPRISE; AND PROVIDING OTHER DETAILS CONCERNING THE BOND, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH

WHEREAS, the City of Loveland, in the County of Larimer and State of Colorado (the "City") is a municipal corporation duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the City's Home Rule Charter (the "Charter"); and

WHEREAS, the members of the City Council (the "City Council") have been duly elected or appointed and qualified; and

WHEREAS, the City now owns and operates a municipal water system (the "System"); and

WHEREAS, the City Council has determined that the System constitutes an enterprise pursuant to Article X, Section 20 of the Colorado Constitution; and

WHEREAS, pursuant to Ordinance 4454 adopted by the City Council on August 4, 1999 (the "Enterprise Ordinance") the City Council ratified the establishment of the City of Loveland, Colorado, Water Enterprise (the "Enterprise") and conferred certain powers on the Enterprise; and

WHEREAS, pursuant to the Enterprise Ordinance, the City Council shall serve as the governing body of the Enterprise and the officers of the City Council and of the City shall serve as officers of the governing body of the Enterprise and of the Enterprise; and

WHEREAS, pursuant to the Enterprise Ordinance, the Enterprise has the power to issue revenue bonds in the manner in which City revenue bonds may be issued, without voter approval in advance; may pledge any revenues derived or to be derived from the functions, services, benefits or facilities of the water activities of the City or any other available funds of the Enterprise to the payment of such revenue bonds and to pay such revenue bonds therefrom;

and the Enterprise may make representations, warranties and covenants on behalf of the City and bind the City to perform any obligation relating to the System other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City; and

WHEREAS, pursuant to the Enterprise Ordinance, the City, among other things, continues to own the assets of the System; manages, operates and maintains the System; budgets and appropriates revenues and expenditures of the System; fixes, adjusts and collects water rates, fees, tolls, charges and tap fees relating to the System; and may borrow money, issue bonds or enter into other financial obligations relating to the System as provided in the Colorado Constitution and statutes; and

WHEREAS, the Enterprise Ordinance provides that all bonds or other obligations issued by ordinance of the City Council payable from the net revenues of the System and all revenue bonds or other obligations issued by ordinance of the governing body of the Enterprise payable solely from the net revenues of the System shall be treated as having the same obligor and as being payable in whole or in part from the same source or sources; and

WHEREAS, the Enterprise intends to issue its City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015, in the maximum principal amount of \$3,200,000 (the “Bond”) to finance a portion of the cost of acquiring, constructing, extending, bettering, otherwise improving and equipping the System (the “Project”); and

WHEREAS, pursuant to an ordinance adopted by the City Council (the “City Ordinance”), the City has agreed to be bound by the terms, provisions, representations, warranties and covenants of the City set forth in this Ordinance; and

WHEREAS, the Enterprise has previously issued its City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2013, in the maximum principal amount of \$10,000,000 (the “2013 Bond”) pursuant to Ordinance No. 5787 (the “2013 Ordinance”) to finance improvements to the System; and

WHEREAS, the 2013 Bond is payable from and has an irrevocable lien on the Net Revenues (as hereinafter defined); and

WHEREAS, the Bond will be payable from and have an irrevocable lien upon the Net Revenues equally and on a parity with the 2013 Bond; and

WHEREAS, except for the 2013 Bond and the Interfund Loan from Power Enterprise (hereinafter defined), neither the City nor the Enterprise has ever pledged nor in any way hypothecated revenues derived and to be derived directly or indirectly from the operation of the System to the payment of any securities or for any other purpose and with the result that the Net Revenues may now be pledged lawfully and irrevocably for the payment of the Bond on a parity with the 2013 Bond and on a basis that is superior to the Interfund Loan from Power Enterprise, and they may be made payable from the Net Revenues; and

WHEREAS, NBH Bank, N.A. (the “Purchaser”) has submitted a Bond Purchase Agreement (the “Bond Purchase Agreement”) to the Enterprise and the City concerning the purchase of the Bond; and

WHEREAS, pursuant to Section 11-57-205, Colorado Revised Statutes, as amended, the Enterprise desires to delegate to the President and Treasurer of the Enterprise the independent authority to accept the Bond Purchase Agreement and to make certain determinations with respect to the Bond as permitted thereby, including, without limitation, the rate of interest on the Bond; and

WHEREAS, there has been filed with the Secretary the following documents: (a) the form of Registrar and Paying Agent Agreement between the Enterprise and U.S. Bank National Association, as registrar and paying agent (the “Paying Agent Agreement”); and (b) the form of the Bond Purchase Agreement; and

WHEREAS, the Board of Directors of the Enterprise (the “Board”) has determined and does hereby declare:

- A. In order to meet the present and future needs of the City, it is necessary to extend, better, otherwise improve and equip the System;
- B. The Bond shall be issued to finance a portion of the costs of the Project;
- C. The Net Revenues shall be pledged to the payment of the Bond on a parity with the 2013 Bond;
- D. The Bond shall be sold to the Purchaser in accordance with the Bond Purchase Agreement, and such sale is to the best advantage of the Enterprise and the City; and
- E. All action preliminary to the authorization of the issuance of the Bond has been taken.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE:

ARTICLE I

DEFINITIONS, INTERPRETATION, AND RATIFICATION

Section 101. Short Title. This ordinance shall be known as and may be cited by the short title “2015 Water Enterprise Revenue Bond Ordinance” (this “Ordinance”).

Section 102. Meanings and Construction.

A. Definitions. The terms in this Section for all purposes of this Ordinance and of any ordinance amendatory hereof or supplemental hereto, or relating hereto, and of any other ordinance or any other document pertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

“acquire” or “acquisition” means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from the Federal Government, the State, any body corporate and politic therein, or any other Person, the endowment, bequest, devise, transfer, assignment, option to purchase, other contract, or other acquisition, or any combination thereof, of any properties pertaining to the System, or an interest therein, or any other properties herein designated.

“Advance” means an advance of principal on the Bond made by the Purchaser to the Enterprise in the maximum aggregate principal amount of \$3,200,000, in accordance with this Ordinance and as further set forth in the Bond Purchase Agreement.

“Advance Date” means initially the date of the first advance of principal on the Bond and thereafter shall mean any date on which the Purchaser advances money to the Enterprise as provided herein and in the Bond Purchase Agreement.

“Advance Request” means a request by an Authorized Representative to the Purchaser requesting that the Purchaser Advance moneys to the Enterprise pursuant to the terms of this Ordinance and the Bond Purchase Agreement, in substantially the form attached to the Bond Purchase Agreement.

“Authorized Representative” means the City Manager, the Director of Finance, the Treasurer, or any other person or persons who are officers, employees or agents of the City or the Enterprise at the time designated to act on behalf of the Enterprise for purposes of requesting an Advance of money from the Purchaser pursuant to an Advance Request, by a written certificate furnished to the City, the Enterprise, the Paying Agent and the Purchaser containing the specimen signature of such person or persons and signed on behalf of the Enterprise by the President of the Enterprise.

“Board” means the Board of Directors of the Enterprise.

“Bond” means the security issued hereunder and designated as the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015.”

“Bond Counsel” means an attorney or a firm of attorneys, designated by the Enterprise of nationally recognized standing in matters pertaining to the tax status of interest on Bond issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America or the City of Columbia.

“Bond Fund” means the special fund held by the Enterprise designated as the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Bond Fund” created pursuant to Section 605 hereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement among the City, the Enterprise and the Purchaser.

“Bond Year” means the twelve (12) months commencing on the second day of August of any calendar year and ending on the first day of August of the next succeeding calendar year.

“Business Day” means a day which is not (i) a Saturday, Sunday or legal holiday on which banking institutions in the State of Colorado, the State of New York, or the state in which the principal office of the Paying Agent is located are authorized by law to close, (ii) a day on which the New York Stock Exchange is closed, or (iii) a day on which the Federal Reserve is closed.

“Capital Improvements” means the acquisition of land, easements, facilities, and equipment (other than ordinary repairs and replacements), and those property improvements or any combination of property improvements which will constitute enlargements, extensions or betterments to the System and will be incorporated into the System.

“Charter” means the home rule charter of the City, as from time to time amended.

“City” means the City of Loveland, Colorado, or any successor municipal corporation owning the System.

“City Council” means the City Council of the City, and any successor governing body of the municipal corporation owning the System.

“City Manager” means the duly appointed and acting City Manager of the City.

“City Ordinance” means the ordinance duly adopted by the City Council pursuant to which the City has agreed to be bound to the terms, provisions, representations, warranties and covenants of the City contained in this Ordinance.

“Closing Date” means the date of the initial issuance of the Bond and the delivery thereof to the Purchaser.

“Commercial Bank” means a state or national bank or trust company which is a member of the Federal Deposit Insurance Corporation (or any successors thereto) and of the Federal Reserve System, which has a capital and surplus of \$75,000,000 or more, and which is located within the United States of America.

“Construction Fund” means the special fund held by the City or the Enterprise designated as the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Construction Fund” created pursuant to Section 501A hereof.

“Costs of Issuance” means all financial, legal, and accounting fees, the fees and expenses of the Purchaser and of counsel to the Purchaser, and similar costs incurred in connection with the issuance of the Bond.

“Costs of Issuance Fund” means the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Costs of Issuance Fund” established with the Paying Agent and referred to in Sections 501A and 505 hereof.

“Cost of the Project” means all costs, as designated by the City or the Enterprise, of the Project, or any interest therein, which cost, at the option of the City or the Enterprise (except as may be otherwise limited by law) may include all, any one or other portion of the incidental costs pertaining to the Project, including, without limitation:

(a) All preliminary expenses or other costs advanced by the City or advanced by the Federal Government, the State or by any other Person from any source, with the approval of the City Council, or any combination thereof, or otherwise;

(b) The costs of making surveys and tests, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(c) The costs of contingencies;

(d) The costs of premiums on any builders’ risk insurance and performance bonds during the construction, installation and other acquisition of the Project, or a reasonably allocated share thereof;

(e) The costs of appraising, printing, estimates, advice, inspection, other services of engineers, architects, accountants, financial consultants, attorneys at law, clerical help and other agents and employees;

(f) The costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the Project and the issuance of the Bond;

(g) All costs and expenses of issuing the Bond including, without limitation, fees and expenses of bond counsel, counsel to the Purchaser, financial advisor and similar expenses to the extent not defrayed as an Operation and Maintenance Expense;

(h) The costs of the filing or recording of instruments and the cost of any title insurance premiums;

(i) The costs of funding any construction loans and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;

(j) The costs of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired for the Project, and of acquiring lands to which such buildings, structures or other facilities may be moved or relocated;

(k) The costs of machinery and equipment;

(l) The costs of any properties, rights, easements or other interests in properties, or any licenses, privileges, agreements and franchises;

(m) The costs of labor, material and obligations incurred to contractors, builders and materialmen in connection with the acquisition and construction of the Project;

(n) The costs of amending any ordinance, resolution or other instrument pertaining to the Bond or otherwise to the System; and

(o) All other expenses pertaining to the Project.

“Debt Service Requirements” means the principal of, any prior redemption premiums due in connection with, and the interest on the Bond, the 2013 Bond, and other securities payable from the Net Revenues and heretofore or hereafter issued, if any, or such part of such securities as may be designated; provided that the determination of the Debt Service Requirements of any securities shall assume the redemption and payment of such securities on any applicable mandatory redemption date.

When computing the Debt Service Requirements for the Bond, the Default Interest Rate shall not be used unless an Event of Default has occurred and is continuing hereunder and at the time of any such computation the Bond is bearing interest at the Default Interest Rate.

When computing the Debt Service Requirements for any issue of Variable Rate Bonds, it shall be assumed that any such securities Outstanding at the time of the computation will bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the securities are not yet outstanding, the initial rate (if established and binding), (b) if the securities have been outstanding for at least twelve (12) months, the average rate over

the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the securities is excludable from gross income under the applicable provisions of the Tax Code, the average of the SIFMA Index during the preceding twelve (12) months plus one hundred (100) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It is to be further assumed that any such Variable Rate Bonds that may be tendered prior to maturity for purchase at the option of the owner thereof will mature on their stated maturity dates or mandatory redemption dates.

For purposes of calculating the Debt Service Requirements, if a Parity Financial Products Agreement has been entered into by the City or the Enterprise with respect to the Bond or any Parity Bonds, interest on the Bond or such Parity Bonds shall be included in the calculation of such principal and interest by including for each Fiscal Year an amount equal to the amount of interest payable on the Bond or such Parity Bonds in such Fiscal Year during such period determined as hereinabove provided plus any Financial Products Payments payable in any such Fiscal Year minus any Financial Products Receipts receivable in any such Fiscal Year; provided that in no event shall any calculation made pursuant to this sentence result in a number less than zero being included in the calculation of such interest.

In determining the amount of any Financial Products Payments or Financial Products Receipts on any interest rate swaps or other similar Financial Products Agreement which Payments or Receipts are based on interest rates which are not fixed in percentage for the entire term of the Financial Products Agreement, such amount shall be calculated by assuming such variable interest rate is a fixed interest rate equal to the average of the daily interest rate for such Payments or Receipts under such Financial Products Agreement during the twelve months preceding the calculation or during the time the Financial Products Agreement has been in effect if less than twelve months and if such Financial Products Agreement is not then in effect, the variable interest rate shall be deemed to be a fixed interest rate equal to the average daily interest rate for such Payments or Receipts which would have been applicable if such Financial Products Agreement had been in effect for the preceding twelve month period, all as set forth in a certificate of the Director of Finance.

In determining the amount of any Financial Products Payments or Financial Products Receipts on any interest rate cap, floor, collar or other similar Financial Products Agreement with respect to Parity Bonds which are Variable Rate Bonds, such amount shall be calculated by assuming the interest rate on the related Variable Rate Bonds will be a fixed interest rate equal the average of the daily interest rate on such Variable Rate Bonds during the twelve months preceding the calculation or during the time the Variable Rate Bonds are Outstanding if less than twelve months and if such Variable Rate Bonds are not at the time of calculation Outstanding, the variable interest rate shall be deemed to be a fixed interest rate equal to the average daily interest rate which such Variable Rate Bonds would have borne if they had been Outstanding for the preceding twelve month period as estimated by the Director of Finance, all as set forth in a certificate of the Director of Finance. In determining the amount of any Financial Products Payments or Financial Products Receipts on any interest rate cap, floor, collar or other similar Financial Products Agreement with respect to Parity Bonds bearing interest at a

fixed rate, such amount shall be the amount payable or receivable annually determined as of the date of issuance of the Parity Bonds as set forth in a certificate of the Director of Finance.

“Default Interest Rate” means a rate equal to the Prime Rate plus 4.00%, which is the interest rate to be borne by the Bond upon the occurrence and continuation of an Event of Default hereunder.

“Director of Finance” means the duly appointed Director of Finance of the City, or his or her successor in functions, if any.

“Enterprise” means the City of Loveland, Colorado, Water Enterprise.

“Enterprise Ordinance” means Ordinance 4454, adopted by the City Council on August 4, 1999, pursuant to which the establishment of the Enterprise was ratified, approved and confirmed and pursuant to which certain powers were conferred upon the Enterprise.

“Executive Fiscal Advisor” means the Executive Fiscal Advisor of the City or his or her successors in function.

“Events of Default” means the events stated in Section 1003 hereof.

“Federal Government” means the United States of America and any agency, instrumentality or corporation thereof.

“Federal Securities” means bills, certificates of indebtedness, notes, or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America.

“Final Advance Date” means the last day on which the Purchaser may advance funds to the Enterprise pursuant to the Bond Purchase Agreement. The Final Advance Date shall be set forth in the Bond Purchase Agreement.

“Financial Products Agreement” means an interest rate swap, cap, collar, floor, other hedging agreement, arrangement or security, however denominated, entered into by the City or the Enterprise with a Provider not for investment purposes but with respect to the Bond or specific Parity Bonds and providing that any payments by the City or the Enterprise thereunder shall be made only from Net Revenues and for the purpose of (i) reducing or otherwise managing the City’s or the Enterprise’s risk of interest rate changes or (ii) effectively converting the City’s or the Enterprise’s interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

“Financial Products Payments” means payments periodically required to be paid to a Provider by the City or the Enterprise pursuant to a Financial Products Agreement

but specifically not including any termination, settlement or similar payments required to be paid upon an early termination of the Financial Products Agreement or as a result of any event of default thereunder.

“Financial Products Receipts” means amounts periodically required to be paid to the City or the Enterprise by a Provider pursuant to a Financial Products Agreement but specifically not including any termination, settlement or similar payments required to be paid upon an early termination of the Financial Products Agreement or as a result of any event of default thereunder.

“Fiscal Year” means the calendar year or any other 12 month period hereafter selected by the City as its fiscal year.

“Gross Revenues” means all income, charges and revenues derived directly or indirectly by the City from the operation and use of and otherwise pertaining to the System, or any part thereof, whether resulting from Capital Improvements or otherwise, and includes all income, charges and revenues received by the City from the System, including without limitation:

(a) All fees, rates and other charges for the use of the System, or for any service rendered by the City in the operation thereof, directly or indirectly, the availability of any such service, or the sale or other disposal of any commodities derived therefrom, including, without limitation, connection charges, but:

(i) Excluding any moneys borrowed and used for the acquisition of Capital Improvements or for the refunding of securities, and all income or other gain from any investment of such borrowed moneys;

(ii) Excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of Capital Improvements, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom; and

(iii) Excluding any Financial Products Receipts;

(b) All income or other gain from any investment of Gross Revenues (including without limitation the income or gain from any investment of all Net Revenues, but excluding borrowed moneys and all income or other gain thereon in any acquisition or construction fund, reserve fund, or any escrow fund for any other Parity Bonds payable from Net Revenues heretofore or hereafter issued and excluding any

unrealized gains or losses on any investment of Gross Revenues) unless the Board otherwise provides by ordinance; and

(c) All income and revenues derived from the operation of any other utility or other income-producing facilities added to the System and to which the pledge and lien herein provided are extended by ordinance adopted by the Board.

“improve” or “improvement” means the extension, reconstruction, alteration, betterment or other improvement by the construction, purchase or other acquisition of facilities, including, without limitation, appurtenant machinery, apparatus, fixtures, structures and buildings.

“Income Fund” means the special fund held by the City and designated as the “City of Loveland, Colorado, Water Enterprise Gross Income Fund” created in the 2013 Ordinance and referred to in Section 602 hereof.

“Independent Accountant” means any certified public accountant, or any firm of certified public accountants, duly licensed to practice and practicing as such under the laws of the State:

- (a) Who is, in fact, independent and not under the domination of the City;
- (b) Who does not have any substantial interest, direct or indirect, with the City, and
- (c) Who is not connected with the City as an officer or employee thereof, but who may be regularly retained to make annual or similar audits of any books or records of the City.

“Independent Engineer” means an individual, firm or corporation engaged in the engineering profession of recognized good standing and having specific experience in respect of business and properties of a character similar to those of the System, which individual, firm or corporation has no substantial interest, direct or indirect, in the City and in the case of an individual, is not a member of the City Council or the Board, or an officer or employee of the City or the Enterprise, and in the case of a firm or corporation, does not have a partner, director, officer or employee who is a member of the City Council or the Board or an officer or employee of the City or the Enterprise.

“Independent Rate Consultant” means a nationally recognized individual, firm or corporation of independent rate consultants of recognized good standing and having specific experience in respect of business and properties of a character similar to those of the System, which individual, firm or corporation has no substantial interest, direct or indirect, in the City and in the case of an individual, is not a member of the City Council or the Board, or an officer or employee of the City or the Enterprise, and in the case of a firm or corporation, does

not have a partner, director, officer or employee who is a member of the City Council or the Board or an officer or employee of the City or the Enterprise.

“Interfund Loan from Power Enterprise” means the \$6 million interfund loan made from the City’s Power Enterprise to the City’s Water Enterprise to finance a portion of the costs of the Project. The Interfund Loan from Power Enterprise shall be a Subordinate Security.

“Maximum Annual Debt Service Requirements” means the maximum aggregate amount of Debt Service Requirements (excluding redemption premiums) due on the securities for which such computation is being made in any Fiscal Year beginning with the Fiscal Year in which Debt Service Requirements of such securities are first payable after the computation date and ending with the Fiscal Year in which the last of the Debt Service Requirements are payable.

“Net Revenues” means the Gross Revenues remaining after the payment of the Operation and Maintenance Expenses of the System.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System or any component division or other part thereof, or any other designated facilities in connection with which such term is used including, without limitation, all salaries, labor, materials and repairs necessary to render efficient service; and the term includes, at the option of the City, acting by and through the City Council, except as limited by law, without limitation:

(a) Engineering, auditing, reporting, legal and other overhead expenses of the various departments of the City directly related and reasonably allocable to the administration, operation and maintenance of the System;

(b) Fidelity bond premiums and property and liability insurance premiums pertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the System;

(c) Payments to pension, retirement, health and hospitalization funds, other insurance, and to any self-insurance fund;

(d) Any general (ad valorem) taxes, assessments, excise taxes or other charges which may be lawfully imposed on the City, the System, revenues therefrom, or the City’s income from or operations of any properties under its control and pertaining to the System, or any privilege in connection with the System or its operation (but no payments made in lieu of taxes);

(e) The reasonable charges of the Paying Agent, any alternate Paying Agent, any paying agents or escrow agent for any securities payable from the Net Revenues which have been or will be refunded, and any other depository bank

pertaining to the Bond and any other securities payable from the Net Revenues or otherwise pertaining to the System;

(e) Contractual services, professional services, salaries, other administrative expenses and costs of materials, supplies, repairs and labor pertaining to the System or to the issuance of the Bond or any other securities relating to the System, including, without limitation, the expenses and compensation of any trustee, receiver or other fiduciary;

(f) The costs incurred by the City in the collection and any refunds of all or any part of the Gross Revenues;

(g) Any costs of utility services furnished to the System by the City or otherwise, including, without limitation, the contracting by the City for water from any Person, for distribution through the System or for the transmission or treatment of water for use by the City and its customers and the obligations due under any contract pertaining thereto on a take-and-pay basis or take-or-pay basis or otherwise; and

(h) All other administrative, general and commercial expenses pertaining to the System and all other current expenses pertaining to the System which are properly classified as operation and maintenance expenses under generally accepted accounting principles; but

(i) Excluding any allowance for depreciation;

(ii) Excluding any costs of Capital Improvements (or any combination thereof);

(iii) Excluding any reserves for major capital replacements (other than normal repairs);

(iv) Excluding any reserves for operation, maintenance or repair of the System;

(v) Excluding any allowance for the redemption of the Bond or other security evidencing a loan or other obligation, or the payment of any interest thereon, or any prior redemption premium due in connection therewith, or any reserve therefor;

(vi) Excluding any liabilities for Financial Products Payments; and

(vii) Excluding any liabilities incurred in the acquisition or improvement of any properties comprising any project or any

existing facilities (or any combination thereof) incorporated into the System, or otherwise.

“Outstanding” when used with reference to the Bond, Parity Bonds, or any other designated securities and as of any particular date means all the Bond, Parity Bonds, or any such other securities payable from the Net Revenues or otherwise pertaining to the System, as the case may be, in any manner theretofore and thereupon being executed and delivered:

(a) Except the Bond or other security canceled by the Enterprise or the City, by any paying agent, or otherwise on the Enterprise’s or City’s behalf, at or before such date;

(b) Except the Bond or other security deemed to be paid as provided in Section 1201 hereof or any similar provision of the ordinance authorizing the issuance of such other security;

(c) Except the Bond or other security in lieu of or in substitution for which another Bond or other security shall have been executed and delivered pursuant to Sections 306, 307 or 1108 hereof or any similar provisions of the ordinance authorizing the issuance of such other security.

“Owner” means the registered owner of any designated Bond or other designated security.

“Parity Bonds” means, collectively, the 2013 Bond and any bonds, warrants, notes, securities, leases, contracts or other financial obligations hereafter issued or executed by the Enterprise or the City and payable in whole or in part from and having an irrevocable lien upon the Net Revenues equally or on a parity with the Bond.

“Parity Bond Ordinances” means the 2013 Ordinance and any agreements or other instruments hereafter entered into by the Enterprise or the City with respect to Parity Bonds and, without duplication, any ordinances hereafter adopted by the Board or the City Council authorizing the issuance of Parity Bonds.

“Parity Financial Products Agreement” means any Financial Products Agreement pursuant to which Financial Products Payments are payable from Net Revenues on a parity with the Bond.

“Paying Agent” initially shall mean U.S. Bank National Association, Denver, Colorado, or its successors, acting as paying agent for the Bond, and any successor thereto appointed pursuant to the provisions of the Paying Agent Agreement.

“Paying Agent Agreement” means the Registrar and Paying Agent Agreement, between the Enterprise and the Paying Agent.

“Permitted Investments” means any securities or other obligations permitted as investments of moneys of the City under the laws of the State and the Charter.

“Person” means a corporation, firm, other body corporate (including, without limitation, the Federal Government, the State, or any other body corporate and politic other than the City or the Enterprise), partnership, limited liability company, association or individual, and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

“President” means the President of the Enterprise.

“Prime Rate” means the prevailing prime rate from time to time in effect as published in the Wall Street Journal in its Money Rates section and changing simultaneously with each published change in such published prime rate.

“Project” means the land, facilities and rights constructed, installed, purchased and otherwise acquired for the System, the cost of which is to be defrayed with a portion of the proceeds of the Bond and which constitute Capital Improvements.

“Provider” means any financial institution or insurance company which is a party to a Financial Products Agreement with the Enterprise or the City.

“Purchaser” means NBH Bank, N.A., as the initial purchaser of the Bond.

“Purchaser’s Letter” means a letter delivered and executed by the Purchaser on the Closing Date in substantially the form attached to the Bond Purchase Agreement.

“Rebate Fund” means the special account designated as the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Rebate Fund” created pursuant to Section 607 hereof.

“Record Date” means the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding an interest payment date.

“Redemption Date” means the date fixed for the redemption prior to the maturity date of the Bond or other designated securities payable from Net Revenues in any notice of prior redemption or otherwise fixed and designated by the Enterprise.

“Registrar” initially shall mean U.S. Bank National Association, Denver, Colorado, or its successors, acting as registrar for the Bond, and any successor thereto appointed pursuant to the provisions of the Paying Agent Agreement.

“Sale Certificate” means the sale certificate of the Enterprise relating to the Bond executed and delivered pursuant to the Supplemental Public Securities Act and described in Section 212 hereof.

“Secretary” means the Secretary of the Enterprise, or his or her successor in functions, if any.

“SIFMA Index” means the Securities Industry and Financial Markets Association Municipal Swap Index, produced by Municipal Market Data, or if such index is not published, then such other index selected by the Executive Fiscal Advisor which reflects the yield of tax-exempt seven-day variable rate demand bonds.

“Special Record Date” means a special date fixed by the Paying Agent to determine the name and address of the Owner of the Bond for the purpose of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 302C hereof.

“State” means the State of Colorado.

“Subordinate Securities” means any bonds, warrants, notes, securities, leases, contracts or other financial obligations payable from the Net Revenues subordinate and junior to the lien thereon of the Bond and any Parity Bonds. The Interfund Loan from Power Enterprise shall constitute a Subordinate Security.

“Supplemental Public Securities Act” means Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended.

“System” means the municipal water system, consisting of all properties, real, personal, mixed or otherwise, now owned or hereafter acquired by the City, through purchase, construction and otherwise, and used in connection with such system of the City, and in any way pertaining thereto, whether or not located within or without or both within and without the boundaries of the City; and such defined term includes any other utility or other income-producing facilities added to the System and to which the lien and pledge herein provided are extended by ordinance adopted by the Board.

“Tax Code” means the Internal Revenue Code of 1986, as amended.

“Tax Compliance Certificate” means the Tax Compliance Certificate executed by the Enterprise in connection with the initial issuance and delivery of the Bond as it may from time to time be modified pursuant to its terms.

“Treasurer” means the Treasurer of the Enterprise, which shall be the Director of Finance of the City.

“Trust Bank” means a Commercial Bank which is authorized to exercise and is exercising trust powers located within or without the State, and also means any branch of the Federal Reserve Bank.

“2013 Bond” means the City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2013, issued in the maximum principal amount of \$10,000,000 pursuant to the 2013 Ordinance.

“2013 Ordinance” means Ordinance No. 5787 adopted by the Enterprise on July 2, 2013 pursuant to which the 2013 Bond was issued.

“Variable Rate Bonds” means any securities payable from Net Revenues issued with a variable, adjustable, convertible or other similar interest rate which is not fixed in percentage for the entire term thereof at the date of issue. The Bond shall not be deemed to be a Variable Rate Bond unless at the time of any applicable calculation the Bond is bearing interest at the Default Interest Rate.

“Water Activity Act” means part 1 of article 45.1 of title 37, Colorado Revised Statutes.

B. City-Held and Enterprise-Held Securities. Any securities payable from any Net Revenues held by the City or the Enterprise shall not be deemed to be Outstanding for the purpose of redemption nor Outstanding for the purpose of consents hereunder or for any other purpose herein.

Section 103. Parties Interested Herein. Nothing herein expressed or implied confers any right, remedy or claim upon any Person, other than the Enterprise, the Board, the City, the City Council, the Paying Agent, the Owner of the Bond and the Owners of any Parity Bonds or other securities payable from the Net Revenues when reference is expressly made thereto. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the City shall be for the sole and exclusive benefit of the Enterprise, the Board, the City, the City Council, the Paying Agent, the Owner of the Bond and the Owners of any such other securities in the event of such a reference.

Section 104. Ratification; Approval of Documents. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board, the officers of the Enterprise and otherwise taken by the Enterprise directed toward the Project and the sale and delivery of the Bond for such purposes, be, and the same hereby is, ratified, approved and confirmed.

Section 105. Repealer. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 106. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

Section 107. Ordinance Irrepealable. After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Enterprise, the City and the Owner of the Bond and this Ordinance shall be and shall remain irrepealable until the Bond, as to all Debt Service Requirements, shall be fully paid, canceled, and discharged, except as herein otherwise provided.

ARTICLE II

DETERMINATION OF THE ENTERPRISE'S AUTHORITY AND OBLIGATIONS; APPROVAL OF RELATED DOCUMENTS; AND ELECTION TO APPLY SUPPLEMENTAL PUBLIC SECURITIES ACT TO THE BOND

Section 201. Authority. This Ordinance is adopted and the Bond shall be issued pursuant to the Enterprise Ordinance, the Water Activity Act and the Supplemental Public Securities Act. The Enterprise Ordinance provides that the Enterprise may make representations, warranties and covenants on behalf of the City and the City has further agreed to be bound by the terms, provisions, representations, warranties and covenants of the City contained in this Ordinance pursuant to the City Ordinance adopted by the City Council concurrently with the adoption of this Ordinance by the Board.

Section 202. Bond, 2013 Bond and Parity Bonds Equally Secured. The covenants and agreements herein set forth to be performed on behalf of the Enterprise and the City shall be for the equal benefit, protection and security of the Owner of the Outstanding Bond, the Outstanding 2013 Bond and any Outstanding Parity Bonds hereafter authorized and issued, and any Parity Credit Facility Obligations relating thereto and any Providers of Parity Financial Products Agreements hereafter entered into, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any of such securities over any other thereof, except as otherwise expressly provided in or pursuant to this Ordinance.

Section 203. Special Obligations. All of the Debt Service Requirements of the Bond shall be payable and collectible solely out of the Net Revenues, which revenues are hereby so pledged, on a parity with the 2013 Bond and any Parity Bonds hereafter issued, and shall be payable to the extent provided herein, from moneys on deposit in the Construction Fund and the Bond Fund. Amounts on deposit in the Construction Fund and the Bond Fund shall not secure the payment of the 2013 Bond or any Parity Bonds hereafter issued.

The Owner of the Bond may not look to any general or other fund for the payment of such Debt Service Requirements, except the herein designated special funds pledged therefor.

The Bond shall not constitute an indebtedness or a debt within the meaning of any constitutional, Charter or statutory provision or limitation; and the Bond shall not be considered or held to be general obligations of the Enterprise or the City but shall constitute its special, limited obligation. No Charter, statutory or constitutional provision enacted after the issuance of the Bond shall in any manner be construed as limiting or impairing the obligation of the Enterprise or the City to comply with the provisions of this Ordinance or to pay the Debt Service Requirements of the Bond as herein provided.

Section 204. Character of Agreement. None of the covenants, agreements, representations and warranties contained herein or in the Bond shall ever impose or shall be construed as imposing any liability, obligation or charge against the Enterprise or the City (except the special funds pledged therefor), or against its general credit, or as payable out of its general fund or out of any funds derived from taxation or out of any other revenue source (other than those pledged therefor).

Section 205. No Pledge of Property. The payment of the Bond is not secured by an encumbrance, mortgage or other pledge of property of the Enterprise or the City, except for the Net Revenues and other moneys pledged for the payment of the Debt Service Requirements of the Bond. No property of the Enterprise or the City, subject to such exception, shall be liable to be forfeited or taken in payment of the Bond.

Section 206. No Recourse Against Officers and Agents. No recourse shall be had for the payment of the Debt Service Requirements of the Bond or for any claim based thereon or otherwise upon this Ordinance or any other ordinance pertaining hereto, against any individual member of the Board, the City Council or any officer, employee or other agent of the Enterprise or the City, past, present or future, either directly or indirectly through the Board, the City Council, the Enterprise or the City, or otherwise, whether by virtue of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bond and as part of the consideration of their issuance specially waived and released.

Section 207. Authorization of the Project. The Board of the Enterprise, on behalf of the City, does hereby determine to undertake the Project, which is hereby authorized, and the net proceeds of the Bond shall be used therefor.

Section 208. Enterprise Status. In the City Ordinance, the City has confirmed that the Enterprise qualifies as an “enterprise” for the purposes of Article X, Section 20 of the State Constitution. In particular, (i) the System is owned by the City, (ii) the Enterprise has received under 10% of its annual revenues from all Colorado state and local governments combined, and (iii) the Enterprise has the power to issue its own revenue bonds in the manner and payable from the sources set forth in this Ordinance.

Section 209. Sale of the Bond; Bond Purchase Agreement. The Board hereby finds and determines that the Bond shall be sold to the Purchaser substantially in accordance with the provisions of the Bond Purchase Agreement filed with the Secretary, provided that the Bond

Purchase Agreement may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. Pursuant to the Supplemental Public Securities Act, the Board hereby delegates to both the President and the Treasurer the independent authority to accept the Bond Purchase Agreement from the Purchaser, subject to the parameters set forth herein and the other terms and provisions set forth in this Ordinance. Certain terms of the Bond that are not set forth in this Ordinance shall be set forth in the Sale Certificate as hereinafter provided.

Section 210. Paying Agent Agreement. The Board hereby approves the Paying Agent Agreement in substantially the form filed with the Secretary, provided that such document may be completed corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate.

Section 211. Execution of Documents; Taking of Necessary Action. The President, the Secretary and any deputy thereof, the Treasurer, the Attorney to the Enterprise, and other officers and employees of the Enterprise are hereby independently authorized and directed to take all action necessary or appropriate to finance and construct the Project, issue the Bond and otherwise effect the provisions of this Ordinance, including without limitation, executing, attesting, authenticating and delivering for and on behalf of the Enterprise, the Bond, the Paying Agent Agreement and such other agreements, instruments, certificates and opinions as may be required to implement the transactions contemplated hereby, or as may otherwise be reasonably required by the Enterprise's bond counsel. The execution of any document or instrument by the appropriate officers of the Enterprise herein authorized shall be conclusive evidence of the approval by the Enterprise of such document or instrument in accordance with the terms hereof.

Section 212. Election to Apply Supplemental Public Securities Act to the Bond. Pursuant to Section 11-57-204 of the Supplemental Public Securities Act, a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act. The Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the Bond. The Bond is issued under the authority of the Supplemental Act and shall so recite.

Pursuant to such election to apply Section 11-57-205 of the Supplemental Public Securities Act to the Bond, the Board hereby delegates to both the President and the Treasurer the authority to independently make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act, in relation to the Bond and to execute a Sale Certificate setting forth such determinations, without any requirement that the Board approve such determinations, subject to the following parameters and restrictions:

A. The maximum annual interest rate to be borne by the Bond shall not exceed 5.00%; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, the Bond may bear interest at the Default Interest Rate.

B. The maximum principal amount of the Bond shall not exceed \$3,200,000.

- C. The Bond shall mature no later than August 1, 2033.
- D. The closing fee to be paid to the Purchaser shall not exceed \$8,000.

The delegation set forth in this Section 212 shall be effective for one year following the date of adoption of this Ordinance.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF THE BOND

Section 301. Authorization of the Bond. For the purpose of protecting the public health, conserving the property and advancing the general welfare of the citizens of the City and of defraying wholly or in part the costs of the Project, there shall be and there is hereby authorized to be issued by the Enterprise pursuant to this Ordinance, the Water Activity Act and the Supplemental Act the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015” and the Enterprise hereby pledges irrevocably, but not necessarily exclusively, the Net Revenues to the payment of the Debt Service Requirements of the Bond. The maximum principal amount of the Bond shall be \$3,200,000 or such lesser amount as shall represent the aggregate principal amount Advanced to the Enterprise by the Purchaser on or prior to the Final Advance Date. The Board hereby finds and determines that the issuance of the Bond in the form and manner provided herein is advantageous to the City.

Section 302. Bond Details.

A. Basic Provisions. The Bond shall be issued as one term bond in the maximum principal amount of \$3,200,000, in fully registered form (*i.e.* registered as to payment of both principal and interest), and shall initially be registered in the name of the Purchaser, and shall not be registered in the name of a securities depository. The Bond shall be numbered in the manner determined by the Paying Agent.

The obligation of the Enterprise as represented by the Bond shall be \$3,200,000 or such lesser amount as shall represent the aggregate principal amount Advanced by the Purchaser to the Enterprise in accordance with the Bond Purchase Agreement, as shown on the records of the Enterprise kept by the Paying Agent. When an Advance is made by the Purchaser to the Enterprise, the amount of such advance shall be noted on the Table of Advances attached to the Bond. When payments of principal are made on the Bond, such payments shall also be noted on the appropriate schedule attached to the Bond.

The Bond shall be dated as of the Closing Date and shall bear interest at the rate set forth in the Sale Certificate on the unpaid balance of the total principal Advanced from their respective Advance Dates to maturity or prior redemption, with interest payable on each February 1 and August 1, beginning on the date set forth in the Sale Certificate. Interest shall be computed on the basis of a 360-day year consisting of twelve months of thirty days each. The

Bond shall mature on the date set forth in the Sale Certificate and shall be subject to prior redemption as set forth in the Sale Certificate. Upon the occurrence and continuation of an Event of Default hereunder, the Bond shall bear interest at the Default Interest Rate.

B. Advances from the Purchaser. Principal Advances on the Bond made by the Purchaser to the Enterprise shall be in accordance with the schedule set forth in the Bond Purchase Agreement. In connection with the initial Advance, the Enterprise shall receive an executed copy of the Purchaser's Letter. Except for the initial Advance, the Authorized Representative shall provide an Advance Request to the Purchaser and the Paying Agent at least three (3) Business Days prior to an Advance Date. Upon receipt of funds equal to the amount referenced in the Advance Request by the Enterprise, the outstanding principal amount of the Bond shall be increased by such Advance amount. Upon receipt of confirmation that the Enterprise has received funds in an amount equal to the Advance Request, the Paying Agent shall record the amount of each Advance on the records of the Enterprise kept by the Paying Agent and the Owner of the Bond shall record the Advance on the Table of Advances attached to the Bond. By acceptance of the Bond, the Purchaser shall be deemed to have agreed to make a notation on the Bond on the Table of Advances attached thereto upon Advancing money to the Enterprise. The Paying Agent's records relating to the outstanding principal amount of the Bond shall in all cases prevail.

C. Payment of the Bond. The principal of and final interest payment due on the Bond shall be payable at the principal corporate trust office of the Paying Agent, or at such other office as the Paying Agent directs in writing to the Owner of the Bond, or at the principal office of its successor, upon presentation and surrender of the Bond. Payment of interest on the Bond shall be made to the Owner thereof by check or draft mailed by the Paying Agent on or before each interest payment date, (or, if such interest payment date is not a Business Day, on or before the next succeeding Business Day), to such Owner at his or her address as it appears on the registration records kept by the Paying Agent on the Record Date or by wire transfer to such bank or other depository as the Owner shall designate in writing to the Paying Agent; but any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Owner thereof at the close of business on the Record Date and shall be payable to the person who is the Owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date and the date fixed for payment of such defaulted interest shall be fixed by the Paying Agent whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Owner not less than ten days prior to the Special Record Date by first-class mail to the Owner as shown on the Paying Agent's registration books on a date selected by the Paying Agent, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. The Paying Agent may make payments of interest on the Bond by such alternative means as may be mutually agreed to between the Owner of the Bond and the Paying Agent. If the Bond is not paid upon its presentation and surrender at or after its maturity or prior redemption, interest shall continue at its stated rate per annum until the principal thereof is paid in full. All such payments shall be made in lawful money of the United States of America.

So long as the Purchaser is the Owner of the Bond, the Purchaser shall not be required to surrender the Bond to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption. Except in the case of a transfer of the Bond, the Purchaser shall be required to surrender the Bond to the Paying Agent only on the final maturity date of the Bond or upon prior optional redemption of the Bond. On each mandatory sinking fund redemption date, the Bond shall be partially redeemed by payment to the Purchaser of the amount set forth in the mandatory sinking fund schedule in the Bond and the Sale Certificate, and such redemption shall be noted by the Purchaser on the prepayment panel attached to the Bond. By acceptance of the Bond, the Purchaser shall be deemed to have agreed to make a notation on the Bond on the prepayment panel attached thereto upon the receipt of all mandatory sinking fund payments.

Section 303. Execution of the Bond. The Bond shall be executed in the name of the Enterprise by the manual or facsimile signature of the President, shall be sealed with the corporate seal of the Enterprise or a facsimile thereof thereunto affixed, imprinted, engraved or otherwise reproduced and shall be attested by the manual or facsimile signature of the Secretary. The Bond may be signed (manually or by facsimile), sealed or attested on behalf of the Enterprise by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office. The President and the Secretary may adopt as and for his or her own facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears on the Bond. Before the execution of the Bond, the President and the Secretary shall each file with the Secretary of State of the State his or her manual signature certified by him or her under oath.

Section 304. Authentication Certificate. The authentication certificate upon the Bond shall be substantially in the form and tenor provided in the form of the Bond attached to this Ordinance as Exhibit A. The Bond shall not be secured hereby or entitled to the benefit hereof, nor shall the Bond be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Paying Agent and such certificate of the Paying Agent upon the Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder. The certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer or employee of the Paying Agent, but it shall not be necessary that the same officer or employee sign the certificate of authentication on all of the Bond.

Section 305. Registration and Payment. The Paying Agent shall keep or cause to be kept sufficient records for the registration and transfer of the Bond, which shall at all times be open to inspection by the Enterprise. Upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said records, the Bond as herein provided. Except as provided in the first paragraph of Section 307 hereof, the Person in whose name the Bond shall be registered on the registration records kept by the Paying Agent shall be deemed and regarded as the absolute owner thereof for the purpose of making payment of the Debt Service Requirements thereof and

for all other purposes; and payment of or on account of the Debt Service Requirements of the Bond shall be made only to the Owner thereof or his or her legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid. The foregoing provisions of this Section are subject to the provisions of Section 308 hereof.

Section 306. Transfer and Exchange. The Bond may be transferred upon the records required to be kept pursuant to the provisions of Section 305 hereof by the Person in whose name it is registered, in person or by his or her duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. Whenever the Bond shall be surrendered for transfer, the Paying Agent shall authenticate and deliver a new Bond for a like principal amount and of the same maturity and bearing interest at the same interest rate.

The Bond may only be transferred in whole, and not in part.

The Paying Agent shall not be required to transfer or exchange (a) the Bond subject to redemption during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of the Bond and ending at the close of business on the day such notice is mailed, or (b) after the mailing of notice calling such Bond or any portion thereof for prior redemption except the unredeemed portion of the Bond being redeemed in part.

The Paying Agent shall require the payment by any Owner requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer, and may charge a sum sufficient to pay the cost of preparing each new Bond upon each exchange or transfer and any other expenses of the Enterprise or the Paying Agent incurred in connection therewith.

Notwithstanding the foregoing or any other provisions to the contrary contained herein, the Bond shall not be transferable by the Purchaser prior to the Final Advance Date. On and after the Final Advance Date, the transfer of the Bond is limited to (a) an affiliate of NBH Bank, N.A., (b) a trust or other custodial arrangement established by NBH Bank, N.A. or one of its affiliates, the owners of any beneficial interests in which are limited to "qualified institutional buyers" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, or (c) a qualified institutional buyer that is a commercial bank with capital and surplus of \$5,000,000,000 or more, provided that as a condition precedent to any such transfer, such buyer shall deliver to the Enterprise and the Paying Agent a sophisticated investor letter in substantially the form delivered by the Purchaser on the Closing Date. In addition, any transfer of the Bond must be in compliance with the securities laws of the United States of America; provided, however, that the Paying Agent and Registrar shall have no duty to determine whether any requested transfer is in compliance with any such applicable securities laws.

Section 307. Bond Replacement. Upon receipt by the Enterprise and the Paying Agent of evidence satisfactory to them of the ownership of and the loss, theft, destruction or mutilation of the Bond and, in the case of a lost, stolen or destroyed Bond, of indemnity satisfactory to them, and in the case of a mutilated Bond upon surrender and cancellation of the Bond, (a) the Enterprise shall execute and the Paying Agent shall authenticate and deliver a new Bond of the same date, interest rate and denomination in lieu of such lost, stolen, destroyed or mutilated Bond or (b) if such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Enterprise may pay such Bond. Any such new Bond shall bear a number not previously assigned. The applicant for any such new Bond may be required to pay all expenses and charges of the Enterprise and of the Paying Agent in connection with the issuance of such Bond. The Bond shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost or stolen Bond, negotiable instruments or other securities.

Section 308. Bond Cancellation. Whenever the Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled and destroyed by the Paying Agent, and a certificate of such cancellation and destruction shall be furnished by the Paying Agent to the Enterprise.

Section 309. Negotiability. Subject to the registration and payment provisions herein provided, the Bond shall be fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code -- Investment Securities, and each Owner shall possess all rights enjoyed by owners of negotiable instruments under the Uniform Commercial Code -- Investment Securities.

Section 310. Incontestable Recital in Bond. The Bond shall recite that it is issued under the authority of this Ordinance, the Water Activity Act and the Supplemental Public Securities Act. Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and regularity of the issuance of the Bond after its delivery for value.

Section 311. Bond Form. Subject to the provisions of this Ordinance, the Bond shall be in substantially the form attached hereto as Exhibit A, with such omissions, insertions, endorsements and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this Ordinance or the Sale Certificate, be consistent with this Ordinance or be necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto. The terms and provisions of Exhibit A are hereby incorporated by this reference.

ARTICLE IV

REDEMPTION

Section 401. Optional Redemption. The Bond shall be subject to redemption at the option of the Enterprise as set forth in the Sale Certificate.

Section 402. Mandatory Sinking Fund Redemption. The Bond shall be subject to mandatory sinking fund redemption at the times, in the amounts and at the prices provided in the Sale Certificate.

If the Purchaser has not Advanced \$3,200,000 to the Enterprise by the Final Advance Date, the difference between the \$3,200,000 and the amount actually Advanced shall be deemed to be automatically redeemed and the Enterprise shall receive a credit against its mandatory sinking fund obligations set forth in the Sale Certificate in an amount equal to the difference between the amount previously Advanced and \$3,200,000. Within ten (10) Business Days after the Final Advance Date, the Enterprise shall notify the Paying Agent in writing of the amount of any such credit to be applied to its sinking fund obligations. The Paying Agent shall thereafter revise the mandatory sinking fund schedule by equally reducing the sinking fund obligations in each year in an aggregate amount equal to such credit. The Paying Agent shall thereafter provide the revised sinking fund schedule to the Enterprise, the City and the registered Owner of the Bond.

On or before the thirtieth day prior to each such sinking fund payment date, the Paying Agent shall proceed to call the Bond for redemption from the sinking fund on the next August 1, and give notice of such call without further instruction or notice from the Enterprise.

Section 403. Partial Optional Redemption. In the event that a portion of the Bond is optionally redeemed, the Paying Agent shall, without charge to the owner of the Bond, authenticate and issue a replacement Bond for the unredeemed portion thereof. Upon any partial optional redemption, the Paying Agent shall thereafter revise the mandatory sinking fund schedule by equally reducing the sinking fund obligations in each year in an aggregate amount equal to such partial redemption. Notwithstanding the foregoing provisions, the Purchaser shall not be required to present the Bond for mandatory sinking fund redemption.

Notwithstanding the foregoing or any other provision to the contrary contained herein or in the Sale Certificate, no partial optional redemption shall result in the amount of the outstanding principal of the Bond being less than \$250,000.

Section 404. Notice of Prior Redemption. Unless otherwise waived by the Paying Agent, the Enterprise shall give written instructions concerning any optional prior redemption of the Bond to the Paying Agent at least thirty-five days prior to such Redemption Date. Notice of optional or mandatory redemption shall be given by the Paying Agent in the name of the Enterprise by sending a copy of such notice by first-class, postage prepaid mail, not more than sixty nor less than thirty days prior to the Redemption Date to the Owner at his address as it last

appears on the registration books kept by the Paying Agent. Such notice shall identify the amount of the Bond to be so redeemed and the Redemption Date, and shall further state that on such Redemption Date there will become due and payable upon the Bond so to be redeemed, at the Paying Agent, the principal amount thereof to be redeemed, accrued interest to the Redemption Date, and the stipulated premium, if any, and that from and after such date interest will cease to accrue on the amount to be redeemed. Notice having been given in the manner hereinabove provided, the principal amount of the Bond so called for redemption shall become due and payable on the Redemption Date so designated; and upon presentation thereof at the Paying Agent, the Paying Agent will pay such principal amount of the Bond so called for redemption. No further interest shall accrue on the principal of the Bond called for redemption from and after the Redemption Date, provided sufficient funds are deposited with the Paying Agent and available on the Redemption Date. Notwithstanding the foregoing, the Paying Agent may provide notice of redemption by such alternative means as may be mutually agreed to between the Owner of the Bond and the Paying Agent.

Notwithstanding the provisions of this Section, any notice of redemption shall either (a) contain a statement that the redemption is conditioned upon the receipt by the Paying Agent on or before the Redemption Date of funds sufficient to pay the redemption price of the Bond so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the Owner of the Bond called for redemption in the same manner as the original redemption notice was given, or (b) be given only if funds sufficient to pay the redemption price of the Bond so called for redemption are on deposit with the Paying Agent in the applicable fund or account.

ARTICLE V

USE OF BOND PROCEEDS

Section 501. Disposition of Bond Proceeds. The net proceeds derived from the sale of the Bond on the Closing Date, upon the receipt thereof, and any additional Advances received by the Enterprise from the Purchaser in accordance with the Bond Purchase Agreement shall be deposited by the Enterprise as follows:

A. To the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Construction Fund” (the “Construction Fund”) which is hereby created and to be held by the Enterprise or the City, the initial amount set forth in the Sale Certificate.

B. To the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015, Costs of Issuance Fund” (the “Costs of Issuance Fund”) created with the Paying Agent pursuant to the Paying Agent Agreement, an amount equal to the Costs of Issuance of the Bond, as set forth in the Sale Certificate.

Upon receipt of future Advances by the Enterprise from the Purchaser, all such amounts shall be deposited by the Enterprise in the Construction Fund or the Costs of Issuance Fund, as

designated by the Authorized Representative. Notwithstanding the foregoing, the Enterprise may request in the Advance Request that the Purchaser remit all or a portion of each Advance directly to designated payees as payment for Costs of the Project or Costs of Issuance, as the case may be.

Section 502. Construction Fund. Moneys deposited in the Construction Fund shall be used solely for the purpose of paying the Cost of the Project or reimbursing the Enterprise or the City for Costs of the Project previously incurred by the Enterprise or the City; provided, however, that to the extent that moneys on deposit in the Bond Fund are insufficient to pay the Debt Service Requirements on the Bond when due, moneys on deposit in the Construction Fund shall be applied to the payment of such Debt Service Requirements on the Bond. Moneys on deposit in the Construction Fund shall not be applied to the payment of the 2013 Bond or any other Parity Bonds or Subordinate Securities.

Section 503. Completion of Project. When the Project is completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses and all administrative costs of the Project are paid, or for which full provision is made, the Executive Fiscal Advisor shall cause all surplus moneys remaining in the Construction Fund, if any, except for any moneys designated in the certificate to be retained to pay any unpaid accrued costs or contingent obligations, to be transferred to the Bond Fund to the extent of any remaining balance of such moneys to be applied against the next principal payment or payments coming due on the Bond. Nothing herein prevents the transfer from the Construction Fund to the Bond Fund, at any time prior to the termination of the Construction Fund, of any moneys which the Executive Fiscal Advisor by certificate determines will not be necessary for the Project.

Section 504. Lien on Bond Proceeds. Until the proceeds of the Bond deposited in the Construction Fund are applied as herein provided, such Bond proceeds are subject to a lien thereon and pledge thereof for the benefit of the Owner of the Outstanding Bond as provided in Section 601 hereof.

Section 505. Costs of Issuance Fund. Upon the issuance of the Bond, there shall be deposited in the Costs of Issuance Fund, created with the Paying Agent pursuant to the Paying Agent Agreement, from the proceeds of the Bond an amount equal to the Costs of Issuance of the Bond, as set forth in the Sale Certificate. Amounts on deposit in the Costs of Issuance Fund shall be disbursed in accordance with the provisions set forth in the Paying Agent Agreement.

Section 506. Purchaser Not Responsible. The validity of the Bond is not dependent upon nor affected by the validity or regularity of any proceedings relating to the application of the Bond proceeds. The Purchaser and any subsequent Owner of the Bond is not responsible for the application or disposal by the Enterprise or the City or by any of its officers, agents and employees of the moneys derived from the sale of the Bond or of any other moneys herein designated.

ARTICLE VI

ADMINISTRATION OF AND ACCOUNTING FOR PLEDGED REVENUES

Section 601. Pledge Securing Bond. The Net Revenues are hereby pledged to secure the payment of the Debt Service Requirements of the Outstanding Bond, the 2013 Bond and any Parity Bonds hereafter issued. The pledge of the Net Revenues to secure the payment of the Debt Service Requirements of the Outstanding Bond is on a parity with the pledge of the Net Revenues for, and lien thereon of the 2013 Bond and any Parity Bonds hereafter issued in compliance with the provisions of Article VIII hereof. In addition, moneys on deposit in the Construction Fund and the Bond Fund are hereby pledged to secure the payment of the Debt Service Requirements of the Outstanding Bond. Moneys on deposit in the Construction Fund and the Bond Fund are not pledged to the payment of the 2013 Bond or any Parity Bonds hereafter issued. The pledge of the Net Revenues and of the moneys on deposit in the Construction Fund and the Bond Fund shall be valid and binding from and after the date of the delivery of the Bond. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond as provided herein shall be governed by §11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Bond, as received by or otherwise credited to the Enterprise or the City shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Bond and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the Enterprise and the City (except as herein otherwise expressly provided), and the lien of such pledge shall be valid, binding, and enforceable as against all persons or entities having claims of any kind in tort, contract, or otherwise against the Enterprise or the City irrespective of whether such persons or entities have notice of such liens.

Section 602. Income Fund Deposits. So long as the Bond shall be Outstanding, as to any Debt Service Requirements related to the Bond, the entire Gross Revenues, upon their receipt from time to time by the City, shall be set aside and credited immediately to the special and separate account created pursuant to the 2013 Ordinance and held by the City, and known as the “City of Loveland, Colorado, Water Enterprise Gross Income Fund.”

Section 603. Administration of Income Fund. So long as the Bond shall be Outstanding, as to any Debt Service Requirements related to the Bond, the following payments shall be made from the Income Fund, as provided in Sections 604 through 609 hereof.

Section 604. Operation and Maintenance Expenses. Firstly, as a first charge on the Income Fund, from time to time there shall continue to be held therein moneys sufficient to pay Operation and Maintenance Expenses, as they become due and payable, and thereupon they shall be promptly paid. Any surplus remaining in the Income Fund at the end of the Fiscal Year and not needed for Operation and Maintenance Expenses shall be used for other purposes of the Income Fund as herein provided.

Section 605. Bond Fund Payments. Secondly, from any remaining Net Revenues, there shall be credited, concurrently with amounts required to meet the Debt Service Requirements for the 2013 Bond and any Outstanding Parity Bonds hereafter issued, or any Parity Financial Products Agreements hereafter entered into, to the special and separate fund hereby created and held by the Enterprise and to be known as the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Bond Fund” (the “Bond Fund”) the following amounts:

A. Interest Payments. Monthly to the Bond Fund, commencing on the first day of the month immediately succeeding the delivery of the Bond, or commencing on the first day of the month six months next prior to the first interest payment date of the Bond, whichever commencement date is later, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the interest due and payable on the Outstanding Bond on the next succeeding interest payment date.

B. Principal Payments. Monthly to the Bond Fund, commencing on the first day of the month immediately succeeding the delivery of the Bond, or commencing on the first day of the month one year next prior to the first principal payment date of the Bond, whichever commencement date is later, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the principal and redemption premium, if any, due and payable on the Outstanding Bond on the next succeeding principal payment date.

If prior to any interest payment date or principal payment date, there has been accumulated in the Bond Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in paragraph A or B (whichever is applicable) of this Section 605 may be appropriately reduced; but the required annual amounts again shall be so credited to such account commencing on such interest payment date or principal payment date.

The moneys credited to the Bond Fund shall be used to pay the Debt Service Requirements of the Bond then Outstanding, as such Debt Service Requirements become due, except as provided in Section 1201 hereof.

Moneys on deposit in the Bond Fund shall be transferred or deposited with the Paying Agent for the Bond at least three Business Days prior to each interest payment date and each maturity or mandatory Redemption Date herein designated in amounts sufficient to pay the Debt Service Requirements then becoming due on the Outstanding Bond.

Section 606. Termination of Deposits. No payment need be made into the Bond Fund if the amount in the Bond Fund is at least sufficient so that the Outstanding Bond is deemed to have been paid pursuant to Section 1201 hereof, in which case moneys therein (taking into account the known minimum gain from any investment of such moneys in Permitted Investments from the time of any such investment or deposit shall be needed for such payment which will not be designated for transfer to the Rebate Fund) shall be used (together with any such gain from such investments) solely to pay the Debt Service Requirements of the Outstanding Bond as the

same become due; and any moneys in excess thereof and any other moneys derived from the Net Revenues or otherwise pertaining to the System may be used to make required payments into the Rebate Fund or in any other lawful manner determined by the Board or the City Council.

Section 607. Rebate Fund. Thirdly, concurrently with any payments required to be made pursuant to any Parity Bond Ordinances with respect to any rebate funds established thereby, there shall be deposited into the special and separate fund hereby created and to be held by the Enterprise and to be known as the “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 Rebate Fund” (the “Rebate Fund”) moneys in the amounts and at the times specified in the Tax Compliance Certificate so as to enable the Enterprise to comply with Section 930 hereof. Amounts on deposit in the Rebate Fund shall not be subject to the lien and pledge of this Ordinance to the extent that such amounts are required to be paid to the United States Treasury. The Enterprise shall cause amounts on deposit in the Rebate Fund to be forwarded to the United States Treasury (at the address provided in the Tax Compliance Certificate) at the times and in the amounts set forth in the Tax Compliance Certificate.

Upon receipt by the Enterprise of an opinion of the Bond Counsel to the effect that the amount in the Rebate Fund is in excess of the amount required to be contained therein, such excess may be transferred to the Income Fund.

Section 608. Payment of Subordinate Securities. Fourthly, and subject to the provisions hereinabove in this Article, but subsequent to the payments required by Sections 605 and 607 hereof, any moneys remaining in the Income Fund may be used by the Enterprise or the City for the payment of Debt Service Requirements of Subordinate Securities, including reasonable reserves for such Subordinate Securities and for rebate of amounts to the United States Treasury with respect to such Subordinate Securities, and any payments on Financial Products Agreements which have a lien on Net Revenues subordinate and junior to the lien thereon of the Bond.

Section 609. Use of Remaining Revenues. After the payments hereinabove required to be made by Sections 602 through 608 hereof are made or provided for in each month, any remaining Net Revenues in the Income Fund in such month may be used for any one or any combination of necessary purposes relating to the operation, improvement or debt management of the System and for any one or any combination of lawful purposes as the City may from time to time determine.

ARTICLE VII

GENERAL ADMINISTRATION

Section 701. Administration of Accounts. The special funds and accounts designated in Articles V and VI hereof that are to be maintained by the Enterprise or the City shall be administered as provided in this Article (but not any account under Section 1201 hereof). The Costs of Issuance Fund shall be maintained and applied in accordance with the Paying Agent Agreement.

Section 702. Places and Times of Deposits. Except as hereinafter provided, each of such special accounts that are to be maintained by the Enterprise and the City shall be maintained as a book account and kept separate from all other accounts as a trust account solely for the purposes herein designated therefor. The moneys accounted for in such special book accounts may be in one or more bank accounts in one or more Commercial Banks. Each such bank account shall be continuously secured to the fullest extent required or permitted by the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall not be a Business Day, then such payment shall be made on or before the next preceding Business Day.

Section 703. Investment of Moneys. Any moneys in the Income Fund, Construction Fund, Bond Fund and Rebate Fund and not needed for immediate use shall be invested or reinvested by the Executive Fiscal Advisor in Permitted Investments. All such investments shall (a) either be subject to redemption at any time at a fixed value by the holder thereof at the option of such holder, or (b) mature not later than the estimated date or respective dates on which the proceeds are to be expended as estimated by the Executive Fiscal Advisor at the time of such investment or reinvestment; provided that collateral securities of any Permitted Investments may have a maturity of more than five years from the date of purchase thereof. For the purpose of any such investment or reinvestment, Permitted Investments shall be deemed to mature at the earliest date on which the obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligations.

Section 704. Accounting for Investments. The Permitted Investments so purchased as an investment or reinvestment of moneys in any such account hereunder shall be deemed at all times to be a part of the account. Any interest or other gain from any investments and reinvestments of moneys accounted for in the Income Fund, the Construction Fund, the Bond Fund and the Rebate Fund shall be credited to such Fund, and any loss resulting from any such investments or reinvestments of moneys accounted for in the Income Fund, the Construction Fund, the Bond Fund and the Rebate Fund shall be charged or debited to such Fund. No loss or profit in any account on any investments or reinvestments in Permitted Investments shall be deemed to take place as a result of market fluctuations of the Permitted Investments prior to the sale or maturity thereof. In the computation of the amount in any account for any purpose

hereunder, except as herein otherwise expressly provided or for rebate purposes, as described in the Tax Compliance Certificate, Permitted Investments shall be valued at the cost thereof (including any amount paid as accrued interest at the time of purchase of the obligation); provided that any time or demand deposits shall be valued at the amounts deposited, in each case exclusive of any accrued interest or any other gain to the Enterprise or the City until such gain is realized by the presentation of matured coupons for payment or otherwise.

Section 705. Redemption or Sale of Permitted Investments. The Executive Fiscal Advisor shall present for redemption or sale on the prevailing market at the best price obtainable any Permitted Investments so purchased as an investment or reinvestment of moneys in the account whenever it shall be necessary in order to provide moneys to meet any withdrawal, payment or transfer from such account. Neither the Executive Fiscal Advisor nor any other officer or employee of the Enterprise or the City shall be liable or responsible for any loss resulting from any such investment or reinvestment made in accordance with this Ordinance.

Section 706. Character of Funds. The moneys in any account designated in Articles V and VI hereof shall consist either of lawful money of the United States or Permitted Investments, or both such money and such Permitted Investments. Moneys deposited in a demand or time deposit account in a bank or savings and loan association, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States.

Section 707. Payment of Debt Service Requirements. The moneys credited to any fund or account designated in Article VI hereof for the payment of the Debt Service Requirements of the Bond shall be used without requisition, voucher, warrant, further order or authority (other than is contained herein), or any other preliminaries, to pay promptly the Debt Service Requirements of the Bond payable from such fund or account as such amounts are due, except to the extent any other moneys are available therefor.

ARTICLE VIII

SECURITIES LIENS AND ADDITIONAL SECURITIES

Section 801. First Lien Bond. The Bond constitutes an irrevocable and first lien (but not necessarily an exclusive first lien) upon the Net Revenues. The Bond also constitutes an irrevocable and first lien upon the moneys on deposit in the Construction Fund and the Bond Fund. The 2013 Bond shall have a lien on the Net Revenues on a parity with the Bond and shall not have a lien on the Construction Fund or the Bond Fund. The Interfund Loan from Power Enterprise shall have a lien on the Net Revenues that is junior and subordinate to the lien thereon of the Bond and shall not have a lien on the Construction Fund or the Bond Fund.

Section 802. Equality of Bond, 2013 Bond and Parity Bonds. The Bond, the 2013 Bond and any Parity Bonds hereafter authorized to be issued and from time to time Outstanding and any Parity Financial Products Agreements hereafter entered into are equitably and ratably secured by a lien on the Net Revenues and 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 the issuance of the Bond, the 2013 Bond and any other such Parity Bonds, or of the entering into of the Parity Financial Products Agreements, it being the intention of the Board that there shall be no priority among the Bond, the 2013 Bond, any such Parity Bonds and any Parity Financial Products Agreements regardless of the fact that they may be actually issued and delivered at different times, except that (a) moneys in the Construction Fund and the Bond Fund shall secure only the Bond, and (b) other Parity Bonds may have a lien on Net Revenues on a parity with the lien thereon of the Bond whether or not a reserve fund is established for such Parity Bonds.

Section 803. Issuance of Parity Bonds. The Enterprise and the City may issue additional Parity Bonds payable from the Net Revenues and constituting a lien thereon on a parity with, but not prior nor superior to, the lien thereon of the Bond; but before any such additional Parity Bonds are authorized or actually issued the following conditions shall be satisfied:

A. Absence of Payment Default. At the time of the adoption of the ordinance or other instrument authorizing the issuance of the additional Parity Bonds, the Enterprise and the City shall not be in default in making any payments required by Article VI hereof.

B. Historic Earnings Test. Except as hereinafter provided in the case of additional Parity Bonds issued for the purpose of refunding less than all of the Bond and other Parity Bonds then Outstanding, the Net Revenues derived in any consecutive twelve month period within the eighteen months immediately preceding the date of issuance of the additional Parity Bonds shall be not less than the sum of (i) 110% of the Maximum Annual Debt Service Requirements of the Outstanding Bond, the Outstanding 2013 Bond, any Outstanding Parity Bonds and the Parity Bonds proposed to be issued, plus (ii) 110% of the Maximum Annual Debt Service Requirements of any Outstanding Subordinate Securities, plus (iii) 100% of any policy costs then due and owing, if any, except as hereinafter otherwise expressly provided. If any adjustment in water rates, fees, tolls or charges or tap fees, or any combination thereof, is made by the City during such twelve month period, the calculation of the Net Revenues shall be adjusted to reflect the amount thereof that would have been received if such adjustment had been in effect throughout such twelve month period. In the case of additional Parity Bonds issued for the purpose of refunding less than all of the Bond, the Outstanding 2013 Bond and other Parity Bonds then Outstanding, compliance with this Section 803B shall not be required so long as the Debt Service Requirements payable on the Bond, the Outstanding 2013 Bond and all other Parity Bonds Outstanding after the issuance of such additional Parity Bonds in the Bond Year does not exceed the Debt Service Requirements payable on the Bond, the Outstanding 2013 Bond and all other Parity Bonds Outstanding prior to the issuance of such additional Parity Bonds in such Bond Year.

Section 804. Certification of Revenues. Where certifications of revenues are required by this Ordinance, the specified and required written certifications of an Independent Accountant, an Independent Engineer, an Independent Rate Consultant or the Director of Finance that revenues are sufficient to pay the required amounts shall be conclusively presumed

to be accurate in determining the right of the Enterprise or the City to authorize, issue, sell and deliver additional Parity Bonds.

Section 805. Subordinate Securities Permitted. Nothing herein prevents the Enterprise or the City from issuing additional securities payable from the Net Revenues and having a lien thereon subordinate, inferior and junior to the lien thereon of the Bond.

Section 806. Superior Securities Prohibited. Nothing herein permits the Enterprise or the City to issue additional securities payable from the Net Revenues and having a lien thereon prior and superior to the lien thereon of the Bond.

ARTICLE IX

PROTECTIVE COVENANTS

Section 901. General. The Enterprise and the City hereby covenant and agree with the Owner of the Bond and make provisions which shall be a part of its contract with such Owner to the effect and with the purpose set forth in the following Sections of this Article.

Section 902. Performance of Duties. The City, acting by and through the City Council or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Gross Revenues and the System required by the Constitution and laws of the State and the Charter and various ordinances of the City, including, without limitation, the making and collection of reasonable and sufficient fees, rates and other charges for services rendered or furnished by or the use of the System, as herein provided, and the proper segregation of the proceeds of the Bond and of any securities hereafter authorized and the Gross Revenues and their application from time to time to the respective accounts provided therefor.

Section 903. Contractual Obligations. The Enterprise and the City shall perform all contractual obligations undertaken by it under any agreements relating to the Bond, the Gross Revenues, the Project, or the System, or any combination thereof, with any other Persons.

Section 904. Further Assurances. At any and all times the Enterprise and the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Gross Revenues and other moneys and accounts hereby pledged or assigned, or intended so to be, or which the Enterprise or the City may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Ordinance and to comply with any instrument of the Enterprise or the City amendatory thereof, or supplemental thereto and the Charter. The Enterprise, acting by and through the Board, and the City, acting by and through the City Council, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Gross Revenues and other moneys and accounts pledged hereunder

and all the rights of every Owner of the Bond hereunder against all claims and demands of all Persons whomsoever.

Section 905. Conditions Precedent. Upon the date of issuance of the Bond, all conditions, acts and things required by the Federal or State Constitution, the Charter of the City, the Water Activity Act, the Supplemental Public Securities Act, the Enterprise Ordinance and this Ordinance to exist, to have happened and to have been performed precedent to or in the issuance of the Bond shall exist, have happened, and have been performed; and the Bond, together with all other obligations of the Enterprise and the City, shall not contravene any debt or other limitation prescribed by the State Constitution or the Charter of the City.

Section 906. Efficient Operation and Maintenance. The City shall at all times operate the System properly and in a sound and economical manner; and the City shall maintain, preserve and keep the same properly or cause the same so to be maintained, preserved and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the maintenance, repair and operation of the System shall be reasonable and proper.

Section 907. Rules, Regulations and Other Details. The City, acting by and through the City Council, shall establish and enforce reasonable rules and regulations governing the operation, use and services of the System. The City shall observe and perform all of the terms and conditions contained in this Ordinance and the Charter, and shall comply with all valid acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to the System or to the City.

Section 908. Payment of Governmental Charges. The City shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System, or upon any part thereof, or upon any portion of the Gross Revenues, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. Neither the Enterprise nor the City shall create or suffer to be created any lien upon the System, or any part thereof, or upon the Gross Revenues, except the pledge and lien created by this Ordinance for the payment of the Debt Service Requirements of the Bond and except as herein otherwise permitted. The City shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within 60 days after the same shall become payable, 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 any part thereof, or the Gross Revenues; but nothing herein requires the City to pay or cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

Section 909. Protection of Security. The Enterprise, the City, the officers, agents and employees of the City and the Enterprise, the City Council and the Board shall not take any action in such manner or to such extent as might materially prejudice the security for the payment of the Debt Service Requirements of the Bond and any other securities payable from the Net Revenues or any Financial Products Agreement according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of the Owner of the Bond or other security payable from Net Revenues or any Financial Products Agreement might be prejudicially and materially impaired or diminished.

Section 910. Prompt Payment of the Bond. The Enterprise shall promptly pay the Debt Service Requirements of the Bond at the places, on the dates and in the manner specified herein and in the Bond according to the true intent and meaning hereof.

Section 911. Use of the Bond Fund. The Bond Fund shall be used solely and only and the moneys credited to such account is hereby pledged for the purpose of paying the Debt Service Requirements of the Bond to its maturity or any Redemption Date or Dates, subject to the provisions of Section 1201 hereof.

Section 912. Other Liens. Other than as provided herein, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Gross Revenues on a parity with or superior to the lien thereon of the Bond.

Section 913. Corporate Existence. The City shall maintain its corporate identity and existence so long as the Bond remains Outstanding, unless another body corporate and politic by operation of law succeeds to the powers, privileges, rights, liabilities, disabilities, duties and immunities of the City and is obligated by law to operate and maintain the System and to fix and collect the Gross Revenues as herein provided without adversely and materially affecting at any time the privileges and rights of any Owner of the Outstanding Bond.

Section 914. Disposal of System Prohibited. Except for the use of the System and services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until the Bond has been paid in full, as to all Debt Service Requirements, or unless provision has been made therefor, or until the Bond has otherwise been redeemed in whole, including, without limitation, the termination of the pledge as herein authorized; and the City shall not dispose of its title to the System or to any useful part thereof, including any property necessary to the operation and use of the System and the lands and interests in lands comprising the sites of the System, except as provided in Section 915 hereof.

Section 915. Disposal of Unnecessary Property. The City at any time and from time to time may sell, exchange, lease or otherwise dispose of any property constituting a part of the System and not useful in the construction, reconstruction or operation thereof, or which shall cease to be necessary for the efficient operation of the System, or which shall have been replaced by other property of at least equal value. Any proceeds of any such sale, exchange or other

disposition received and not used to replace such property so sold or so exchanged or otherwise so disposed of, shall be deposited by the City in the Income Fund or into a special book account for the betterment, enlargement, extension, other improvement and equipment of the System, or any combination thereof, as the City Council may determine, and any proceeds of any such lease received shall be deposited by the City as Gross Revenues in the Income Fund.

Section 916. Competing System. So long as the Bond is Outstanding, the City shall not grant any franchise or license to any competing facilities so that the Gross Revenues shall not be sufficient to satisfy the covenant in Section 921 hereof.

Section 917. Loss From Condemnation. If any part of the System is taken by the exercise of the power of eminent domain, the amount of any award received by the City as a result of such taking shall be paid into the Income Fund or into a capital improvement account pertaining to the System for the purposes thereof, or, applied to the redemption of the Outstanding Bond and any Outstanding Parity Bonds relating thereto, all as the City may determine.

Section 918. Employment of Management Engineers. If the Enterprise or the City default in paying the Debt Service Requirements of the Bond or any other securities payable from the Gross Revenues promptly as the same fall due, or in the keeping of any covenants herein contained, and if such default continues for a period of 60 days, or if the Net Revenues in any Fiscal Year fail to equal at least the amount of the Debt Service Requirements of the Outstanding Bond and any other securities (including all reserves therefor specified in the authorizing proceedings, including, without limitation, this Ordinance) or any Financial Products Agreements payable from the Net Revenues in that Fiscal Year, the City shall retain a firm of competent management engineers skilled in the operation of such facilities to assist the management of the System so long as such default continues or so long as the Net Revenues are less than the amount hereinabove designated in this Section.

Section 919. Budgets. The City Council and officials of the City shall annually and at such other times as may be provided by law prepare and adopt a budget pertaining to the System. So long as the Purchaser is the owner of the Bond and is in compliance with the Bond Purchase Agreement, the City shall submit a copy of such budget to the Purchaser within 30 days following the end of the City's fiscal year.

Section 920. Reasonable and Adequate Charges. While the Bond remains Outstanding and unpaid, the fees, rates and other charges due to the City for the use of or otherwise pertaining to and services rendered by the System to the City, to its inhabitants and to all other users within and without the boundaries of the City shall be reasonable and just, taking into account and consideration public interests and needs, the cost and value of the System, the Operation and Maintenance Expenses thereof, and the amounts necessary to meet the Debt Service Requirements of the Bond and any other securities payable from the Net Revenues, including, without limitation, reserves and any replacement accounts therefor and, without duplication, its obligations under any Financial Products Agreements.

Section 921. Adequacy and Applicability of Charges. There shall be charged against users of service pertaining to and users of the System, including the City, except as provided by Section 922 hereof, such fees, rates and other charges so that the Gross Revenues shall be adequate to meet the requirements of this and the preceding Sections hereof. Such charges pertaining to the System shall be at least sufficient so that the Gross Revenues annually are sufficient to pay in each Fiscal Year:

A. Operation and Maintenance Expenses. An amount equal to the annual Operation and Maintenance Expenses for such Fiscal Year;

B. Debt Service Requirements. An amount equal to 110% of the Debt Service Requirements on the Bond, the Outstanding 2013 Bond and any Parity Bonds then Outstanding payable from the Net Revenues in that Fiscal Year (excluding the reserves therefor) in each case computed as of the beginning of such Fiscal Year, plus 110% of the Debt Service Requirements on any Subordinate Securities then Outstanding payable from the Net Revenues in that Fiscal Year (excluding the reserves therefor) in each case computed as of the beginning of such Fiscal Year;

C. Other Charges. Amounts necessary to pay and discharge all charges and liens on the System currently coming due and required to be paid out of the Gross Revenues during such Fiscal Year; and

D. Deficiencies. Any amounts required to pay all sums, if any, due and owing to meet then existing deficiencies pertaining to any fund or account relating to the Gross Revenues or any securities payable therefrom and any amounts necessary to satisfy its covenants under any Financial Products Agreements (other than Financial Products Payments).

In the event that Gross Revenues collected during a Fiscal Year are not sufficient to meet the requirements of the rate covenant set forth above in this Section, the City shall, within 90 days of the end of such Fiscal Year, cause an Independent Accountant, Independent Engineer or Independent Rate Consultant, to prepare a rate study for the purpose of recommending a schedule of rates, fees and charges for the use of the System which in the opinion of the firm conducting the study will be sufficient to provide Gross Revenues to be collected in the next succeeding Fiscal Year which will provide compliance with said rate covenant. The City shall, within six months of receipt of such study, adopt rates, fees and charges for the use of the System, based upon the recommendations contained in such study, which provide compliance with said rate covenant.

Section 922. Limitations Upon Free Service. No free service or facilities shall be furnished by the System, except as hereinafter provided. If the City elects to use for municipal purposes any water, water facilities, or other services and facilities provided by the System or otherwise to use the System or any part thereof, any such use will be paid for from the City's general fund or from other available revenues other than Gross Revenues at the reasonable value of the use so made; provided that the City shall not be required to pay for any such use by the

City of any facilities of the water system for fire protection purposes and the City shall not be required to pay any system development fees. All the income so derived from the City shall be deemed to be income derived from the operation of the System, to be used and to be accounted for in the same manner as any other income derived from the operation of the System.

Section 923. Levy of Charges. The City shall forthwith and in any event prior to the delivery of the Bond, fix, establish and levy the fees, rates and other charges which are required by Section 921 of this Ordinance, if such action is necessary therefor. No reduction in any initial or existing rate schedule for the System may be made except as follows:

A. Proper Application. Unless the City has fully complied with the provisions of Article VI of this Ordinance for at least the full Fiscal Year immediately preceding such reduction of the initial or any other existing rate schedule; and

B. Sufficient Revenues. Unless the audit required by the Independent Accountant by Section 927 hereof for the full Fiscal Year immediately preceding such reduction discloses that the estimated revenues resulting from the proposed rate schedule for the System, after the schedule's proposed reduction, shall be at least sufficient to produce the amounts required by Section 921 hereof.

Section 924. Collection of Charges. The City shall cause all fees, rates and other charges pertaining to the System to be collected as soon as is reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment of such charges, and for the use of the System, and shall provide methods of collection and penalties, to the end that the Gross Revenues shall be adequate to meet the requirements of this Ordinance and any other ordinance supplemental thereto.

Section 925. Procedure for Collecting Charges. All bills for water services or facilities, and all other services or facilities furnished or served by or through the System shall be rendered to customers on a regularly established basis. The fees, rates and other charges due shall be collected in a lawful manner, including, without limitation, discontinuance of service.

Section 926. Maintenance of Records. So long as the Bond and any other Parity Bonds or any Financial Products Agreement payable from the Gross Revenues remain Outstanding, proper books of record and account shall be kept by the Enterprise and the City, separate and apart from all other records and accounts. So long as the Purchaser is the owner of the Bond and is in compliance with the Bond Purchase Agreement, the Purchaser shall have the right to inspect such records during regular business hours upon reasonable notice to the City. Any costs incurred by the Purchaser in connection with any such inspection shall be paid by the Purchaser.

Section 927. Audits Required. The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of such books and accounts to be made forthwith by an Independent Accountant, and order an audit report showing the receipts and disbursements for each account pertaining to the System and the Gross Revenues. So long as the Purchaser is the

owner of the Bond and is in compliance with the Bond Purchase Agreement, the City shall submit a copy of such audit to the Purchaser within 240 days of the end of the City's fiscal year.

Section 928. Accounting Principles. System records and accounts, and audits thereof, shall be currently kept and made, as nearly as practicable, in accordance with the then generally accepted accounting principles, methods and terminology followed and construed for utility operations comparable to the System, except as may be otherwise provided herein or required by applicable law or regulation or by contractual obligation existing on the effective date of this Ordinance.

Section 929. Insurance and Reconstruction. Except to the extent of any self-insurance, the City shall at all times maintain with responsible insurers fire and extended coverage insurance, worker's compensation insurance, public liability insurance and all such other insurance as is customarily maintained with respect to utilities of like character against loss of or damage to the System and against loss of revenues and against public and other liability to the extent reasonably necessary to protect the interests of the City and the Owner of the Bond. If any useful part of the System shall be damaged or destroyed, the City shall, as expeditiously as may be possible, commence and diligently proceed with the repair or replacement of the damaged property so as to restore the same to use. The proceeds of any such insurance shall be payable to the City and (except for proceeds of any use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement and to the extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Income Fund by the City as revenues derived from the operation of the System. If the costs of such repair and replacement of the damaged property exceed the proceeds of such insurance available for the payment of the same, moneys in the Income Fund shall be used to the extent necessary for such purposes, as permitted by Section 611 hereof.

Section 930. Tax Exemption. The Enterprise and the City each covenant for the benefit of the Owner of the Bond that it will not take any action or omit to take any action with respect to the Bond, the proceeds thereof, any other funds of the Enterprise or the City or any facilities financed with the proceeds of the Bond if such action or omission (a) would cause the interest on the Bond to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Tax Code, (b) would cause interest on the Bond to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Tax Code in calculating corporate alternative minimum taxable income or (c) would cause interest on the Bond to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present State law. In furtherance of this covenant, the Enterprise and the City agree to comply with the procedures set forth in the Tax Compliance Certificate. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bond until the date on which all obligations of the City in fulfilling the above covenant under the Tax Code and Colorado law have been met.

The Enterprise and the City hereby determine that neither the Enterprise, the City nor any entity subordinate thereto reasonably anticipates issuing in the aggregate more than \$10,000,000 face amount of tax-exempt bonds or any other similar obligations during calendar year 2015. For the purpose of Section 265(b)(3)(B) of the Tax Code, the Enterprise hereby designates the Bond as a qualified tax-exempt obligation.

Section 931. Financial Products Agreements. No payments under a Financial Products Agreement shall be secured by a lien on Net Revenues prior and superior to the lien thereon of the Bond. Notwithstanding any other provision of this Ordinance, no termination, settlement or similar payments required to be paid upon an early termination of a Financial Products Agreement or as a result of any event of default thereunder shall be secured by a lien on Net Revenues on a parity with the Bond.

Section 932. Inspection by Purchaser During Construction Period. So long as the Purchaser is the owner of the Bond and is in compliance with the provisions of the Bond Purchase Agreement, the Purchaser shall have the right, during regular business hours and upon reasonable notification of the City, to inspect the Project during the construction period. Such inspections shall be conducted by the Purchaser no more frequently than once a month. Any costs incurred by the Purchaser in connection with any such inspection shall be paid by the Purchaser.

Section 933. Banking Relationship. So long as the Purchaser is the owner of the Bond and is in compliance with the provisions of the Bond Purchase Agreement, the City covenants that in connection with any requests made by the City for banking services proposals that it shall provide the Purchaser with an opportunity to present a proposal for any such services.

ARTICLE X

PRIVILEGES, RIGHTS AND REMEDIES

Section 1001. Owners' Remedies. The Owner of the Bond shall be entitled to all of the privileges, rights and remedies provided or permitted in this Ordinance, and as otherwise provided or permitted by law or in equity or by any statutes, except as provided in Sections 202 through 206 hereof, but subject to the provisions herein concerning the pledge of and the covenants and the other contractual provisions concerning the Gross Revenues and the proceeds of the Bond.

Section 1002. Right to Enforce Payment. Nothing in this Article affects or impairs the right of the Owner of the Bond to enforce the payment of the Debt Service Requirements due in connection with his or her Bond or the obligation of the Enterprise to pay the Debt Service Requirements of the Bond to the Owner thereof at the time and the place expressed in the Bond.

Section 1003. Events of Default. Each of the following events is hereby declared an "Event of Default:"

A. Nonpayment of Principal. Payment of the principal of the Bond is not made when the same becomes due and payable, either at maturity or by proceedings for prior redemption, or otherwise.

B. Nonpayment of Interest. Payment of any installment of interest on the Bond is not made when the same becomes due and payable.

C. Cross Defaults. The occurrence and continuance of an “event of default,” as defined in any Parity Bond Ordinance.

D. Bankruptcy. The City shall file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City, or of the whole or any substantial portion of its property.

E. Failure to Reconstruct. The City unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any part of the System which is destroyed or damaged and is not promptly repaired or replaced (whether such failure promptly to repair the same is due to impracticability of such repair or replacement or is due to a lack of moneys therefor or for any other reason), but it shall not be an Event of Default if such reconstruction is not essential to the efficient operation of the System.

F. Appointment of Receiver. An order or decree is entered by a court of competent jurisdiction with the consent or acquiescence of the City appointing a receiver or receivers for the System or for the Gross Revenues and any other moneys subject to the lien to secure the payment of the Bond, or if an order or decree having been entered without the consent or acquiescence of the City is not vacated or discharged or stayed on appeal within 60 days after entry.

G. Default of Any Other Provision. The Enterprise or the City defaults in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bond or in this Ordinance on its part to be performed, and such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given to the Enterprise or the City, as the case may be, specifying the failure and requiring that it be remedied, which notice may be given by the Paying Agent in its discretion and shall be given by the Paying Agent at the written request of the Owner of the Bond then Outstanding.

Section 1004. Remedies for Defaults. Upon the happening and continuance of any Event of Default, the Owner of the Bond, including, without limitation, a trustee or trustees therefor, may proceed against the Enterprise, the City and its agents, officers and employees to protect and to enforce the rights of the Owner of the Bond under this Ordinance by mandamus or by 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 herein or in an award of execution of any power herein granted for the enforcement of any proper legal or equitable remedy as such Owner may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of the Owner of the Bond, or to require the Enterprise or the City to act as if it were the trustee of an expressed trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of the Owner of the Bond and any other Parity Bonds and the Providers of any Parity Financial Products Agreements.

Section 1005. Receiver's Rights and Privileges. Any receiver appointed in any proceedings to protect the rights of such Owner hereunder, the consent to any such appointment being hereby expressly granted by the Enterprise and the City, may enter and may take possession of the System, may operate and maintain the same, may prescribe fees, rates and other charges, and may collect, receive and apply all Gross Revenues arising after the appointment of such receiver in the same manner as the Enterprise or City itself might do.

Section 1006. Rights and Privileges Cumulative. The failure of any Owner of the Outstanding Bond to proceed in any manner herein provided shall not relieve the Enterprise, the City, or any of its officers, agents or employees of any liability for failure to perform or carry out any duty, obligation or other commitment. Each right or privilege of any such Owner (or trustee thereof) is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof.

Section 1007. Duties upon Defaults. Upon the happening of any Event of Default, the Enterprise and the City shall do and perform all proper acts on behalf of and for the Owner of the Bond to protect and to preserve the security created for the payment of the Bond and to insure the payment of the Debt Service Requirements promptly as the same become due. While any Event of Default exists, except to the extent it may be unlawful to do so, all Gross Revenues shall be paid into the Bond Fund and into bond or similar funds established for other Parity Bonds then Outstanding, pro rata based upon the aggregate principal amount of the Bond and Parity Bonds then Outstanding. If the Enterprise or the City fails or refuses to proceed as in this Section provided, the Owner of the Bond, after demand in writing, may proceed to protect and to enforce the rights of the Owner of the Bond as hereinabove provided, and to that end any such Owner of the Outstanding Bond shall be subrogated to all rights of the Enterprise or the City under any agreement, lease or other contract involving the System or the Gross Revenues entered into prior to the effective date of this Ordinance or thereafter while the Bond is Outstanding.

ARTICLE XI

AMENDMENT OF ORDINANCE

Section 1101. Amendment of Ordinance.

A. Amendment of Ordinance Not Requiring Consent of the Bond Owner.

The Enterprise may, with the written consent of the City, but without the consent of the Owner of the Bond, but with written notice to the Purchaser (so long as the Purchaser is the Owner of the Bond), adopt such ordinances supplemental hereto (which amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

- (1) To cure or correct any formal defect, ambiguity or inconsistent provision contained in this Ordinance;
- (2) To appoint successors to the Paying Agent or Registrar;
- (3) To add to the covenants and agreements of the Enterprise, the City or the limitations and restrictions on the Enterprise or the City set forth herein;
- (4) To subject to the covenants and agreements of the Enterprise or the City in this Ordinance additional System revenues, to be defined and treated as Gross Revenues, for the purpose of providing additional security for the Bond and any Parity Bonds;
- (5) To cause this Ordinance to comply with the Trust Indenture Act of 1939, as amended from time to time; or
- (6) To effect any such other changes hereto which do not materially adversely affect the interests of the Owner of the Bond.

B. Amendment of Ordinance Requiring Consent of the Bond Owner.

Exclusive of the amendatory ordinances covered by Section 1101A hereof, this Ordinance may be amended or modified by ordinances or other instruments duly adopted by the Enterprise, without receipt by it or any additional consideration, but only with the written consent of the City and the Owner of the Bond then Outstanding at the time of the adoption of such amendatory ordinance.

Whenever the Board proposes to amend or modify this Ordinance under the provisions of this Section 1101B, it shall cause notice of the proposed amendment to be mailed or otherwise delivered to the City and to the Owner of the Bond at its address as the same last appears on the registration records maintained by the Paying Agent. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance is on file in the office of the Secretary for public inspection. Time for Amendment. If the ordinance is required to be consented to by the Owner of the Bond, whenever at any time within one year from the date of the giving of such notice there shall be

filed in the office of the Secretary an instrument or instruments executed by the Owner of the Bond then Outstanding, which instrument or instruments shall refer to the proposed amendatory ordinance described in such notice and shall specifically consent to and approve the adoption of such ordinance, the Board may adopt such amendatory ordinance and such ordinance shall become effective. If the ordinance is not required to be consented to by the Owner of the Bond, the amendatory ordinance may be adopted by the Board at any time upon the written consent of the City.

Section 1103. Binding Consent to Amendment. If the Owner of the Bond Outstanding at the time of the adoption of such amendatory ordinance requiring consent of the Owner of the Bond, or the predecessors in title of such Owner, shall have consented to and approved the adoption thereof as herein provided, no future Owner of the Bond shall have any right or interest to object to the adoption of such amendatory ordinance or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the Enterprise or the City from taking any action pursuant to the provisions thereof.

Section 1104. Time Consent Binding. Any consent given by the Owner of a Bond pursuant to the provisions of this Article shall be irrevocable for a period of 6 months from the date of the giving of the notice above provided for and shall be conclusive and binding upon all future Owners of the Bond during such period. If the amendatory ordinance has not been adopted during such 6 month period, such consent may be revoked at any time after 6 months from the date of such giving of such notice by the Owner who gave such consent or by a successor in title by filing notice of such revocation with the Secretary.

Section 1105. Notation on Bond. If the Bond is transferred after the effective date of any action taken as in this Article provided, such Bond may bear a notation by endorsement or otherwise in form approved by the Board as to such action; and after the approval of such notation, then upon demand of the Owner of the Bond Outstanding and upon presentation of his or her Bond for that purpose at the principal office of the Paying Agent, suitable notation shall be made on such Bond by the Paying Agent as to any such action. If the Board so determines, a new Bond, so modified as in the opinion of the Board conform to such action, shall be prepared, executed, authenticated and delivered; and upon demand of the Owner of the Bond then Outstanding, shall be exchanged without cost to such Owner for a Bond then Outstanding upon surrender of such Bond.

Section 1106. Proof of Instruments and Bond. The fact and date of execution of any instrument under the provisions of this Article, the amount and number of the Bond held by any Person executing such instrument, and the date of his or her holding the same may be proved as provided by Section 1203 hereof.

ARTICLE XII

MISCELLANEOUS

Section 1201. Defeasance. If, when the Bond shall be paid in accordance with its terms (or payment of the Bond has been provided for in the manner set forth in the following paragraph), together with all other sums payable hereunder, then this Ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. Also if the Outstanding Bond shall have been purchased by the Enterprise or the City and delivered to the Paying Agent for cancellation, and all other sums payable hereunder have been paid, or provision shall have been made for the payment of the same, then this Ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied.

Payment of the Outstanding Bond shall prior to the maturity or Redemption Date thereof be deemed to have been provided for within the meaning and with the effect expressed in this Section if (a) in case the Bond is to be redeemed in whole on any date prior to its maturity, the Enterprise shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give on a date in accordance with the provisions of Section 404 hereof notice of redemption of the Bond on said Redemption Date, such notice to be given in accordance with the provisions of Section 404 hereof, (b) there shall have been deposited with the Paying Agent or other Trust Bank either moneys in an amount which shall be sufficient, or Federal Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Paying Agent or other Trust Bank at the same time, shall be sufficient to pay when due the Debt Service Requirements due and to become due on the Bond on and prior to the Redemption Date or maturity date thereof, as the case may be, and (c) in the event the Bond is not by its terms subject to redemption within the next sixty days, the Enterprise shall have given the Paying Agent in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 404 hereof, a notice to the Owner of the Bond that the deposit required by (b) above has been made with the Paying Agent or other Trust Bank and that payment of the Bond has been provided for in accordance with this Section and stating such maturity or Redemption Date upon which moneys are to be available for the payment of the Debt Service Requirements of the Bond. Neither such securities nor moneys deposited with the Paying Agent or other Trust Bank pursuant to this Section or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Debt Service Requirements of the Bond; provided any cash received from such principal or interest payments on such Federal Securities deposited with the Paying Agent or other Trust Bank, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities of the type described in (b) of this paragraph maturing at times and in amounts sufficient to pay when due the Debt Service Requirements to become due on the Bond on or prior to such Redemption Date or maturity date thereof, as the case may be. At such time as payment of the Bond has been provided for as

aforesaid, the Bond shall no longer be secured by or entitled to the benefits of this Ordinance, except for the purpose of any payment from such moneys or securities deposited with the Paying Agent or other Trust Bank.

In the event that the Bond is deemed to have been paid and defeased in accordance with (b) of the preceding paragraph, then in connection therewith, the Enterprise shall cause to be delivered to the Owner of the Bond a verification report of an independent nationally recognized certified public accountant.

The release of the obligations of the Enterprise and the City under this Section shall be without prejudice to the right of the Paying Agent to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements incurred on or about the administration of and performance of its powers and duties hereunder.

Upon compliance with the foregoing provisions of this Section with respect to the Bond then Outstanding, this Ordinance may be discharged in accordance with the provisions of this Section but the liability of the Enterprise in respect of the Bond shall continue; provided that the Owner thereof shall thereafter be entitled to payment only out of the moneys or Federal Securities deposited with the Paying Agent or other Trust Bank as provided in this Section.

Section 1202. Delegated Powers. The officers and employees of the Enterprise and the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limitation:

A. The execution and delivery of such documents, instruments and certificates as may be reasonably required by the Enterprise's bond counsel or the Purchaser.

B. The execution and delivery of the Bond, the Paying Agent Agreement and the Bond Purchase Agreement.

Section 1203. Evidence of the Bond Owner. Any request, consent or other instrument which this Ordinance may require or may permit to be signed and to be executed by the Owner of the Bond may be in one or more instruments of similar tenor and shall be signed or shall be executed by the Owner in person or by his or her attorney appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or the holding by any Person of the Bond shall be sufficient for any purpose of this Ordinance (except as otherwise herein expressly provided) if made in the following manner:

A. Proof of Execution. The fact and the date of the execution by the Owner of the Bond or his or her attorney of such instrument may be established by a certificate, which need not be acknowledged or verified, of an officer of a bank or trust company satisfactory to the Secretary or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act, that the individual signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit

of a witness of such execution, duly sworn to before such notary public or other officer; the authority of the individual or individuals executing any such instrument on behalf of a corporate Owner of any securities may be established without further proof if such instrument is signed by an individual purporting to be the president or vice president of such corporation with a corporate seal affixed and attested by an individual purporting to be its secretary or an assistant secretary; and the authority of any Person or Persons executing any such instrument in any fiduciary or representative capacity may be established without further proof if such instrument is signed by a Person or Persons purporting to act in such fiduciary or representative capacity; and

B. Proof of Holdings. The amount of the Bond held by any Person and the numbers, date and other identification thereof, together with the date of his or her holding the Bond, shall be proved by the registration records maintained by the Paying Agent.

Section 1204. Notices. Except as otherwise may be provided in this Ordinance, all notices, certificates, requests or other communications pursuant to this Ordinance shall be in writing and shall be sufficiently given and shall be deemed given by personal delivery or when mailed by first class mail, and either delivered or addressed as follows:

If to the Enterprise at: City of Loveland, Colorado, Water Enterprise
500 E. Third Street, Suite 240
Loveland, CO 80537
Attention: Treasurer

If to the City at: City of Loveland, Colorado
500 E. Third Street, Suite 240
Loveland, CO 80537
Attention: Director of Finance

If to the Paying Agent at: U.S. Bank National Association
Attention: Global Corporate Trust Services
950 17th Street, 12th Floor
Denver, CO 80202

If to the Purchaser at: NBH Bank, N.A.
7800 E. Orchard, Suite 300
Greenwood Village, Colorado 80111
Attention: Brian Martorella

The Enterprise, the City, the Paying Agent and the Purchaser may, by written notice, designate any further means of communication – such as electronic mail – and further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 1205. Business Days. If the date for making any payment or the last date for performance of any act or the exercising of any rights, as provided in this Ordinance, shall not be a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Ordinance, and no interest shall accrue for the period after such nominal date.

Section 1206. Publication. As provided in Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the Secretary after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 1207. Effective Date. This Ordinance shall be in full force and effect ten days after its final publication, as provided in Charter Section 4-8(b).

ADOPTED this ____ day of January, 2015.

**CITY OF LOVELAND, COLORADO,
WATER ENTERPRISE**

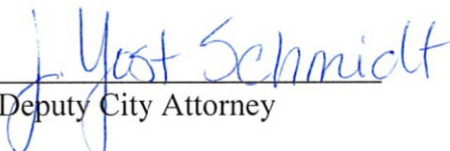
(SEAL)

Cecil A. Gutierrez, President

ATTEST:

Secretary

APPROVED AS TO FORM:



Deputy City Attorney
Attorney to Enterprise

I, Teresa G. Andrews, Secretary of the City of Loveland, Colorado, Water Enterprise hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the Board of the Enterprise, held on January __, 2015 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published with the City limits in full on January __, 2015 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on January __, 2015.

Secretary

Effective Date: January __, 2015

EXHIBIT A

(FORM OF THE BOND)

THIS BOND MAY ONLY BE TRANSFERRED BY THE REGISTERED OWNER HEREOF SOLELY TO (A) AN AFFILIATE OF NBH BANK, N.A., (B) A TRUST OR OTHER CUSTODIAL ARRANGEMENT ESTABLISHED BY NBH BANK, N.A. OR ONE OF ITS AFFILIATES, THE OWNERS OF ANY BENEFICIAL INTERESTS IN WHICH ARE LIMITED TO “QUALIFIED INSTITUTIONAL BUYERS” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (C) A QUALIFIED INSTITUTIONAL BUYER THAT IS A COMMERCIAL BANK WITH CAPITAL AND SURPLUS OF \$5,000,000,000 AND WHICH HAS EXECUTED A LETTER CONTAINING REPRESENTATIONS AND WARRANTIES AS TO IT BEING A SOPHISTICATED INVESTOR. IN ADDITION, ANY TRANSFER OF THIS BOND MUST BE IN COMPLIANCE WITH THE SECURITIES LAWS OF THE UNITED STATES OF AMERICA; PROVIDED, HOWEVER, THAT THE PAYING AGENT AND REGISTRAR SHALL HAVE NO DUTY TO DETERMINE WHETHER ANY REQUESTED TRANSFER IS IN COMPLIANCE WITH ANY SUCH APPLICABLE SECURITIES LAWS.

UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTY OF LARIMER

CITY OF LOVELAND, COLORADO
 WATER ENTERPRISE REVENUE BOND
 SERIES 2015

No. R-1

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>ISSUE DATE</u>
As Stated Below	_____, 20__	_____

REGISTERED OWNER:

MAXIMUM PRINCIPAL AMOUNT: THREE MILLION TWO HUNDRED THOUSAND DOLLARS

The City of Loveland, Colorado, Water Enterprise (the “Enterprise”), for value received, hereby promises to pay to the registered owner specified above, or registered assigns, upon the presentation and surrender of this Bond or as otherwise provided in the Ordinance (hereinafter provided), solely from the special funds provided therefor, a principal amount equal to the lessor

of: (a) \$3,200,000 (the “Maximum Principal Amount”) or (b) the sum of the advances made by NBH Bank, N.A. (the “Purchaser”) in accordance with the Bond Purchase Agreement (hereinafter defined) and as reflected in the Table of Advances attached hereto and by this reference made a part hereof (the “Advanced Amount”), together with interest thereon on the unpaid balance of the total Advanced Amount from the respective Advance dates, at the interest rates determined as set forth in the Ordinance adopted by the Board of Directors of the Enterprise on January __, 2015 (the “Ordinance”) and the Sale Certificate executed in accordance therewith (the “Sale Certificate”), but only from the sources and in the manner provided in the Ordinance. Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Ordinance.

Interest on this Bond shall be payable semiannually on February 1 and August 1 in each year, beginning on _____ 1, 2015, until the principal hereof is paid or duly provided for upon redemption or maturity. When an Advance is made by the Purchaser to the Enterprise, the Enterprise shall notify the Paying Agent in writing of such Advance and the Paying Agent shall record the amount of each Advance on the records of the Enterprise kept by the Paying Agent. In addition, the Purchaser, as the initial Owner of this Bond, hereby agrees that it shall note the amount of such Advance on the Table of Advances attached to this Bond. In the event of a conflict between the Table of Advances and the records of the Enterprise kept by the Paying Agent, the records of the Paying Agent shall control.

If the Purchaser has not advanced the Maximum Principal Amount to the Enterprise by the Final Advance Date, the Enterprise shall receive a credit against its mandatory sinking fund obligations in an amount equal to the difference between \$3,200,000 and the Advanced Amount. Within ten (10) Business Days after the Final Advance Date, the Enterprise shall notify the Paying Agent in writing of the amount of any such credit to be applied to its sinking fund obligations. The Paying Agent shall thereafter revise the mandatory sinking fund schedule by equally reducing the sinking fund obligations in each year in an aggregate amount equal to such credit. The Paying Agent shall thereafter provide the revised sinking fund schedule to the Enterprise, the City of Loveland, Colorado (the “City”) and the registered Owner of this Bond.

This Bond is issued pursuant to the terms and provisions of the Ordinance and is secured by and entitled to the security of the Ordinance. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Ordinance. This Bond bears interest, matures, is payable, is subject to redemption and is transferable as provided in the Ordinance and the Sale Certificate.

So long as NBH Bank, N.A. is the owner of this Bond, partial payments of the principal on this Bond may be noted on the Table of Partial Redemptions attached herein in lieu of surrendering this Bond in connection with such payment.

Reference is made to the Ordinance and to all Ordinances supplemental thereto, with respect to the nature and extent of the security for this Bond, the accounts, funds or revenues pledged, rights, duties and obligations of the Enterprise, the City and the Paying Agent, the rights

of the Owner of this Bond, the events of defaults and remedies, the circumstances under which the Bond is no longer Outstanding, the issuance of additional bonds and the terms on which such additional bonds may be issued under and secured by the Ordinance, the ability to amend the Ordinance, and to all the provisions of which the Owner hereof by the acceptance of this Bond assents.

THIS BOND IS ISSUED PURSUANT TO AND IN FULL COMPLIANCE WITH THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, AND PURSUANT TO THE ORDINANCE. THIS BOND IS A SPECIAL, LIMITED OBLIGATION OF THE ENTERPRISE, SECURED BY THE NET REVENUES ON A PARITY WITH THE 2013 BOND AND ANY PARITY BONDS HEREAFTER ISSUED. THIS BOND DOES NOT CONSTITUTE A DEBT OF THE ENTERPRISE, THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE ENTERPRISE, THE CITY, THE STATE NOR ANY OF THE POLITICAL SUBDIVISIONS THEREOF IS LIABLE THEREFOR. NEITHER THE MEMBERS OF THE BOARD OF DIRECTORS OF THE ENTERPRISE, THE CITY COUNCIL OF THE CITY NOR ANY PERSONS EXECUTING THIS BOND SHALL BE PERSONALLY LIABLE FOR THIS BOND.

FOR PURPOSES OF SECTION 265(b)(3)(B) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THE ENTERPRISE HAS DESIGNATED THIS BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION.

It is certified, recited and warranted that all the requirements of law have been fully complied with by the proper officers of the Enterprise in the issuance of this Bond; that it is issued pursuant to and in strict conformity with the Constitution of the State and with the Ordinance and any ordinances supplemental thereto; and that this Bond does not contravene any Constitutional or statutory limitation.

It is also certified, recited, and warranted that this Bond is issued under the authority of the Ordinance, the Water Activity Act and the Supplemental Public Securities Act. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, such recital shall be conclusive evidence of the validity and regularity of the issuance of this Bond after its delivery for value

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the certificate of authentication hereon shall have been duly executed by the Paying Agent.

IN WITNESS WHEREOF, the Enterprise has caused this Bond to be signed and executed in its name and upon its behalf with the manual or facsimile signature of its President, and has caused the facsimile of the seal of the Enterprise to be affixed hereon, and has caused this Bond to be signed, executed and attested with the manual or facsimile signature of its Secretary, all as of the date specified above.

CITY OF LOVELAND, COLORADO,
WATER ENTERPRISE

(SEAL)

By (Manual or Facsimile Signature)
President

ATTEST:

 (Manual or Facsimile Signature)
Secretary

(FORM OF CERTIFICATE OF AUTHENTICATION)

This is the Bond described in the within mentioned Ordinance.

U.S. BANK NATIONAL ASSOCIATION,
as Paying Agent

By _____
Authorized Signatory

Date of Authentication and Registration: _____

(END OF FORM OF CERTIFICATE OF AUTHENTICATION)

(FORM OF ASSIGNMENT)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ to transfer the within Bond on the records kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed by an eligible guarantor institution as defined in 17 CFR § 240.17 Ad-15(a)(2).

Signature Guaranteed by Member of the Medallion Signature Program:

Address of Transferee:

Social Security or other tax identification number of transferee:

(END OF FORM OF ASSIGNMENT)

TABLE OF ADVANCES

Upon receipt of any Advance described in the Bond Purchase Agreement, the Owner of this Bond shall make the appropriate notation on the table below. The Paying Agent's records relating to the outstanding principal amount of this Bond shall in all cases prevail.

<u>Date</u>	<u>Installment Amount Paid</u>	<u>Total Principal Payments</u>	<u>Signature of Bondholder</u>

TABLE OF PARTIAL REDEMPTIONS

Upon all partial redemptions (whether optional, mandatory or otherwise) the above Bond may be surrendered to the Paying Agent for the appropriate notation by it on the table below or the Owner of this Bond may make such notation itself. The Paying Agent’s records relating to the outstanding principal amount of this Bond shall in all cases prevail:

<u>Date</u>	<u>Amount Redeemed</u>	<u>Remaining Unpaid Principal Amount</u>	<u>Signature of Bondholder</u>

(End of Form of the Bond)

**\$3,200,000 Maximum Principal Amount
City of Loveland, Colorado
Water Enterprise Revenue Bond
Series 2015**

BOND PURCHASE AGREEMENT

THIS AGREEMENT, dated as of February __, 2015, is by and among the City of Loveland, Colorado (the “City”), the City of Loveland, Colorado, Water Enterprise (the “Enterprise”) and NBH Bank, N.A. (the “Purchaser”).

WITNESSETH:

WHEREAS, the Enterprise proposes to issue \$3,200,000 principal amount of its City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 (the “Bond”) pursuant to an ordinance adopted by the Board of Directors of the Enterprise on January __, 2015 (the “Bond Ordinance”); and

WHEREAS, the Bond Ordinance, among other things, contains certain terms, provisions, warranties, representations and covenants by the City, which the City Council of the City has approved pursuant to an ordinance adopted by the City Council on January __, 2015 (the “City Ordinance”); and

WHEREAS, the Purchaser desires to purchase the Bond from the Enterprise; and

WHEREAS, this Bond Purchase Agreement (this “Agreement”) states the terms and conditions upon which the Enterprise will sell and the Purchaser will purchase the Bond from the Enterprise and supersedes any prior agreement between the Enterprise and the Purchaser with respect to the Bond; and

WHEREAS, any capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance and the Sale Certificate authorized in connection therewith.

ARTICLE I

Terms of Bond

The Bond shall bear interest, mature, be payable, be subject to redemption prior to maturity, and be transferable as provided in the Bond Ordinance and the Sale Certificate; provided, however, that the Bond cannot be transferred in part, but can only be transferred in whole, and in the event that the outstanding principal amount of the Bond is less than \$250,000, the Bond may not be transferred without the prior written consent of the Enterprise. A copy of the executed Sale Certificate is attached hereto as Exhibit A and by this reference made a part hereof.

ARTICLE II

Sale, Purchase and Delivery of the Bond

Section 2.1. Sale. Upon the terms and subject to the conditions stated in this Agreement, the Enterprise agrees to issue and sell to the Purchaser, and the Purchaser agrees to purchase from the Enterprise, the Bond in a principal amount equal to the lesser of \$3,200,000 or the aggregate principal amount of all Advances made to the Enterprise in accordance with the Bond Ordinance and this Agreement, at a purchase price equal to the aggregate principal amount of all such Advances made to the Enterprise.

Section 2.2 Advances of Principal; Delivery of Bond.

A. Unless otherwise agreed to in writing by the Enterprise and the Purchaser, the Purchaser hereby agrees to deliver immediately available funds to the Enterprise, upon compliance with the procedures hereinafter set forth, in the following amounts (each, an “Advance”) and on the following dates (each, an “Advance Date”):

Advance Date

Amount of Advance

B. Except as hereinafter provided, within three (3) Business Days prior to each Advance Date, the Authorized Representative shall deliver an Advance Request to the Purchaser and the Paying Agent in substantially the form attached hereto as Exhibit B and by this reference made a part hereof.

Notwithstanding the foregoing, in connection with the initial issuance and delivery of the Bond to the Purchaser, the Purchaser shall deliver an Advance in an amount equal to \$_____ without the requirement of the Enterprise executing and delivering an Advance Request. In connection with the initial issuance and delivery of the Bond to the Purchaser, the Purchaser shall deliver the Purchaser’s Letter dated as of the Advance Date in substantially the form attached hereto as Exhibit C and by this reference made a part hereof.

C. If the Advance Request substantially complies with the form set forth as Exhibit B hereto and has been properly executed and submitted by the Enterprise to the Purchaser, by the end of the business day on each Advance Date, the Purchaser hereby agrees to deliver immediately available funds to the Enterprise in the amount of the applicable Advance.

D. Upon receipt by the Enterprise of funds equal to the amount Advanced, the outstanding principal amount of the Bond shall be increased by such Advance amount. In accordance with the Bond Ordinance, upon receipt of confirmation that the Enterprise has received funds in an amount equal to the applicable Advance, the Paying Agent shall record the amount of each Advance on the records of the Enterprise kept by the Paying Agent and the Owner of the Bond shall record the Advance on the Table of Advances attached to the Bond.

By acceptance of the Bond, the Purchaser shall be deemed to have agreed to make a notation on the Bond on the Table of Advances attached thereto upon Advancing money to the Enterprise. The Paying Agent's records relating to the outstanding principal amount of the Bond shall in all cases prevail.

E. The maximum aggregate principal amount of Advances that the Purchaser will make to the Enterprise shall be \$3,200,000. The final date on which the Purchaser shall make Advances to the Enterprise shall hereinafter be referred to as the "Final Advance Date," which shall be _____, 20__, unless otherwise agreed to in writing by the Enterprise and the Bank. In no event shall the Final Advance Date be a date that is more than three years from the date of this Agreement.

ARTICLE III

Conditions of Sale and Purchase

The obligations of the Enterprise to sell and of the Purchaser to purchase the Bond shall be subject to the satisfaction of each of the following conditions:

Section 3.1. Enterprise Closing Certificate. As of the Closing Date, the Enterprise shall deliver to the Purchaser a certificate signed by duly authorized officials of the Enterprise relating to its status as an enterprise under the Colorado constitution, absence of litigation and due authorization and delivery of the Bond, the Bond Ordinance, the Sale Certificate, the Paying Agent Agreement and this Agreement in a form reasonably satisfactory to the Purchaser.

Section 3.2. City Closing Certificate; Closing Fee. As of the Closing Date, the City shall deliver to the Purchaser (i) a certificate signed by duly authorized officials of the City relating to due organization, absence of litigation and due adoption of the City Ordinance and due authorization and delivery of this Agreement in a form reasonably satisfactory to the Purchaser, and (ii) a closing fee in the amount of \$8,000.

Section 3.3. Bond Opinion. As of the Closing Date, the Enterprise shall receive the approving opinion of Butler Snow LLP, Denver, Colorado, as Bond Counsel, dated the Closing Date, as to the validity of the Bond and the excludability of interest thereon from gross income and alternative minimum taxable income, and that the Bond is "bank-qualified" under Section 265(b)(3) of the Code, subject to the qualifications and exceptions contained therein, and the Purchaser shall receive a reliance letter relating to such opinion.

Section 3.4. Other Documents. As of the Closing Date, the City, the Enterprise and the Purchaser shall receive, in form and substance reasonably satisfactory to the City, the Enterprise and the Purchaser, (a) an executed copy of the Bond Ordinance, (b) an executed copy of the City Ordinance, (c) an executed copy of the Enterprise Ordinance, (d) an executed copy of the Sale Certificate, (e) an executed copy of the Paying Agent Agreement, and (e) such additional certificates or other documents as the City, the Enterprise or the Purchaser may reasonably require to provide evidence of the satisfaction of all the conditions stated in this Article or elsewhere in this Agreement.

As of each Advance Date, the Bond Ordinance, the City Ordinance and this Agreement, and any other agreements contemplated thereby shall be in full force and effect and shall not have been modified or changed except as is permitted by the Bond Ordinance or except as agreed to in writing by the Purchaser. As of each Advance Date, no Event of Default shall have occurred and be continuing under the Bond Ordinance.

Section 3.5. No Litigation. As of the Closing Date and each Advance Date, there shall not have been entered or issued by any court, administrative agency, or other governmental body of any jurisdiction, and there shall not have been commenced or threatened in writing any proceeding in any court, administrative agency, or other governmental body of any jurisdiction which could reasonably be expected to lead to the entry or issuance of any judgment, order, decree, injunction, or other adjudication having the purpose or effect, actual or threatened, of prohibiting the issuance, sale or delivery of the Bond by the Enterprise or the pledge of the Net Revenues pursuant to the Bond Ordinance, the performance by the Enterprise or the City of any of its obligations as provided in the Bond, the Bond Ordinance or this Agreement, relating in any material way to the imposition or collection of any water rates, fees, tolls or charges to pay the principal of or interest on the Bond, or in any way contesting the City's right to undertake the Project or seeking to prohibit, restrain or enjoin the undertaking of the Project.

ARTICLE IV

Miscellaneous

Section 4.1. City and Enterprise Representations. The City and the Enterprise hereby represent and warrant to the Purchaser as follows:

(a) The execution and delivery of, and the due performance of all obligations represented by, the Bond, the Bond Ordinance, the City Ordinance, the Sale Certificate, the Paying Agent Agreement, this Agreement, and the other agreements and documents contemplated in the Bond Ordinance and the Enterprise's or City's compliance with the provisions thereof, as the case may be, will not conflict with or constitute on the Enterprise's or City's part a breach of or a default under any existing law, court or administrative regulation, decree or order, or any agreement, indenture, lease or other instrument to which the Enterprise or the City is subject or by which the Enterprise or the City is or may be bound.

(b) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board, or body pending or threatened in writing seeking to restrain or to enjoin the issuance or delivery of the Bond, or the fixing and collection of the rates, charges and other revenues derived from the operation and use of the System, or the application of the Net Revenues to the payment of the principal of and interest on the Bond; the use of the proceeds of the Bond to accomplish the Project; or affecting in any way the right or authority of the Enterprise to pay the Bond and the interest thereon, or otherwise carrying out the terms and provisions of the Bond Ordinance and the covenants and agreements therein and of other proceedings authorizing the issuance of or otherwise concerning the Bond.

(c) The Basic Financial Statements of the City for the fiscal years ended December 31, 2012 and December 31, 2013, and the independent auditors' reports with respect thereto, copies of which have heretofore been furnished to the Purchaser, are complete and correct and fairly present the financial condition of the City at such dates and for such periods.

(d) Since the most current date of the information, financial or otherwise, supplied by the City to the Purchaser, there has been no material adverse change in the assets, liabilities, financial position or results of operations of the City which has not been disclosed in writing to the Purchaser.

(e) Within the last seven years: (i) the City has not filed a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, (ii) a court of competent jurisdiction has not approved a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, and (c) under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction has not assumed custody or control of the City, or of the whole or any substantial portion of its property.

(f) Except for the 2013 Bonds and as otherwise permitted by the Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Gross Revenues on a parity with or superior to the lien thereon of the Bond.

(g) The City and the Enterprise are in compliance with all applicable laws and regulations related to the System.

(h) There are no existing defaults under the Bond Ordinance or under the ordinance authorizing the issuance of the 2013 Bond.

Section 4.2. Payment of Purchaser Fees and Expenses. So long as the Purchaser is in compliance with the provisions of this Agreement, the City agrees to pay the reasonable fees and expenses of the Counsel to the Purchaser, regardless of whether the Bond is actually issued by the Enterprise. On the Closing Date, the City shall pay the Purchaser a closing fee in the amount of \$8,000, provided that such fee may be paid from the proceeds of the Bond deposited in the Costs of Issuance Fund.

Section 4.3. Conflict with Bond Ordinance. In the event of any conflict between the provisions of this Agreement and the provisions of the Bond Ordinance, the provisions of the Bond Ordinance shall be controlling.

Section 4.4. Governing Law. This Agreement is deemed to have been executed and delivered in the State of Colorado, and shall be governed by, construed and enforced in all respects in accordance with the laws of the State of Colorado, applicable to contracts made and to be performed entirely therein.

Section 4.5. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Purchaser, the City and the Enterprise have caused this Agreement to be duly executed and delivered as of the day and year first above written.

NBH BANK, N.A.

By: _____
Title _____

CITY OF LOVELAND, COLORADO

By: _____
Director of Finance

CITY OF LOVELAND, COLORADO,
WATER ENTERPRISE

By: _____
Treasurer

EXHIBIT A

(Attach Executed Sale Certificate)

EXHIBIT B

Form of Advance Request

[At least Three Business Days prior to Advance Date]

Advance Request Number _____

NBH Bank, N.A.
 7800 E. Orchard Road, Suite 300
 Greenwood Village, CO 80111

U.S. Bank National Association
 Attention: Global Corporate Trust Services
 950 17th Street, 12th Floor
 Denver, CO 80202

The undersigned Authorized Representative of the City of Loveland, Colorado, Water Enterprise (the "Enterprise") hereby requests from NBH Bank, N.A. (the "Purchaser") an advance of principal (the "Advance") with respect to the City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015 (the "Bond"), pursuant to the Ordinance adopted by the Board of Directors of the Enterprise on January __, 2015 (the "Bond Ordinance") and the Bond Purchase Agreement dated February __, 2015, among the Enterprise, the Purchaser and the City of Loveland, Colorado. All capitalized terms used in this Advance Request and not otherwise defined have the same meaning as the terms defined in the Bond Ordinance.

a) The Enterprise is requesting an Advance in the amount of \$_____ payable on _____, 201__ (the "Advance Date"). (Principal advances on the Bond shall be in integral multiples of \$1,000).

b) The Enterprise requests that the Advance be made as follows:

<u>Name and Address of Payee</u>	<u>Purpose for Which Obligation was Incurred</u>	<u>Date Payment Made By the City or Enterprise**</u>	<u>Amount To Be Paid</u>
_____	_____	_____	_____
_____	_____	_____	_____

The Authorized Representative further certifies that:

**Applicable only for reimbursement to City or Enterprise.

- c) The disbursements requested are due and payable and will be used for “Costs of the Project” permitted under the Bond Ordinance, and have not been the basis of any previous request for an Advance.
- d) All conditions required by the Bond Ordinance and the Bond Purchase Agreement to be met prior to the disbursement of the Advance requested above have been satisfied.
- e) No Event of Default has occurred and is continuing under the Bond Ordinance.
- f) No litigation described in Section 3.5 of the Bond Purchase Agreement has commenced or been threatened in writing.
- g) The bills, invoices or statements of account for the requested Advance are attached to this Advance Request, as applicable.
- h) There has been no change in existing law relating to the issuance of bonds by the Enterprise.
- i) The Enterprise is in compliance with all certifications and representations of the Enterprise in the Bond Ordinance, the Bond Purchase Agreement and the Tax Compliance Certificate.
- j) In the preceding fiscal year and in the current fiscal year, the Enterprise received under 10% of annual revenue in grants from all Colorado state and local governments combined.

Upon receipt of funds equal to the amount referenced in paragraph (a) above, the outstanding principal amount of the Bond shall be increased by such Advance amount. For purposes hereof, any amounts disbursed by the Purchaser to the Payees listed above shall be deemed to be Advanced to the Enterprise.

In accordance with the Bond Ordinance, upon receipt of confirmation that the Enterprise has received funds in an amount equal to the Advance Request, the Paying Agent shall record the amount of each Advance on the records of the Enterprise kept by the Paying Agent and the Owner of the Bond shall record the Advance on the Table of Advances attached to the Bond. By acceptance of the Bond, the Purchaser shall be deemed to have agreed to make a notation on the Bond on the Table of Advances attached thereto upon Advancing money to the Enterprise. The Paying Agent’s records relating to the outstanding principal amount of the Bond shall in all cases prevail.

Dated:_____.

Authorized Representative

EXHIBIT C
Form of Purchaser's Letter

[Closing Date or Date of Transfer]

City of Loveland, Colorado
500 E. Third Street, Suite 240
Loveland, CO 80537

City of Loveland, Colorado,
Water Enterprise
500 E. Third Street, Suite 240
Loveland, CO 80537

Butler Snow LLP
1801 California Street, Suite 5100
Denver, CO 80202

\$3,200,000 Maximum Principal Amount
City of Loveland, Colorado
Water Enterprise Revenue Bond, Series 2015

Ladies and Gentlemen:

[PURCHASER] (the "Purchaser") has agreed to purchase \$3,200,000 maximum principal amount of the captioned Bond (the "Bond") which is to be issued by the City of Loveland, Colorado, Water Enterprise (the "Enterprise") pursuant to an ordinance adopted by the Board of Directors on January __, 2015 (the "Bond Ordinance") and a Bond Purchase Agreement among the City of Loveland, Colorado (the "City"), the Enterprise and the Purchaser. All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Bond Ordinance. The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Bond.
2. The Purchaser has authority to purchase the Bond and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bond.
3. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.
4. The Purchaser is (a) an affiliate of NBH Bank, N.A., (b) a trust or other custodial arrangement established by NBH Bank, N.A. or one of its affiliates, the owners of the beneficial interests in which are limited to "qualified institutional buyers" as defined in Rule 144A

Error! Unknown document property name.

promulgated under the Securities Act of 1933, as amended (the "1933 Act") or (c) a qualified institutional buyer that is a commercial bank with capital and surplus of \$5,000,000,000 or more.

5. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Bond. The Purchaser has made its own inquiry and analysis with respect to the Enterprise, the City, the Project, the Bond and the security therefor, and other material factors affecting the security for and payment of the Bond.

6. The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Enterprise and the City, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Enterprise, the City, the Project, the Bond and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Bond.

7. The Purchaser understands that the Bond (i) is not registered under the 1933 Act and is not registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) is not listed on any stock or other securities exchange, and (iii) carries no rating from any credit rating agency.

8. The Bond is being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or redistribute the Bond after the Final Advance Date, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

- (a) that is an affiliate of NBH Bank, N.A.
- (b) that is a trust or other custodial arrangement established by NBH Bank, N.A. or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or accredited investors; or
- (c) that is a qualified institutional buyer and a commercial bank having capital and surplus of \$5,000,000,000 or more.

9. Notwithstanding the foregoing, the Bond may not be transferred if the principal amount outstanding is less than \$250,000 without the prior written consent of the Enterprise.

[PURCHASER]

By _____
Name _____
Title _____

CITY OF LOVELAND, COLORADO
WATER ENTERPRISE REVENUE BOND
SERIES 2015

REGISTRAR AND PAYING AGENT AGREEMENT

THIS REGISTRAR AND PAYING AGENT AGREEMENT, dated February __, 2015, is by and between the CITY OF LOVELAND, COLORADO, WATER ENTERPRISE (the "Enterprise") and U.S. BANK NATIONAL ASSOCIATION, Denver, Colorado, a national banking association having and exercising full and complete trust powers, duly organized and existing under and by virtue of the laws of the United States of America (the "Paying Agent").

WITNESSETH:

WHEREAS, by Ordinance of the Board of Directors of the Enterprise duly adopted on January __, 2015 (the "Bond Ordinance"), a related Sale Certificate executed by an authorized officer of the Enterprise on February __, 2015 (the "Sale Certificate") and a Bond Purchase Agreement (the "Bond Purchase Agreement") dated February __, 2015, among the City of Loveland, Colorado (the "City"), the Enterprise and NBH Bank, N.A. (the "Purchaser"), the Enterprise has authorized the issuance of the City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015, in the maximum principal amount of \$3,200,000 (the "Bond"); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in the Bond Ordinance, the Sale Certificate and the Bond Purchase Agreement; and

WHEREAS, pursuant to the Bond Purchase Agreement, the Purchaser has agreed to advance principal on the Bond from time to time to the Enterprise, and the principal amount of the Bond shall be an amount equal to the total amount of such Advances made in accordance therewith, up to a maximum amount of \$3,200,000; and

WHEREAS, copies of the Bond Ordinance, the Sale Certificate and the Bond Purchase Agreement have been delivered to the Paying Agent and the provisions therein set forth are incorporated by reference as if set forth herein verbatim in full; and

WHEREAS, it is mutually desirable to the Enterprise and the Paying Agent that the Paying Agent, through its Corporation Trust Department located in Denver, Colorado, act as Paying Agent for the Bond; and

WHEREAS, it is mutually desirable that this agreement (this "Agreement") be entered into between the Enterprise and the Paying Agent to provide for certain aspects of such Paying Agent services.

NOW, THEREFORE, the Enterprise and the Paying Agent, in consideration of the mutual covenants herein contained, agree as follows:

1. The Enterprise hereby appoints the Paying Agent to serve as Paying Agent in accordance with the terms and provisions of the Bond Ordinance, the Sale Certificate, the Bond Purchase Agreement and this Agreement. The Paying Agent hereby accepts all duties and responsibilities of the Paying Agent as provided in the Bond Ordinance, the Sale Certificate, the Bond Purchase Agreement and this Agreement, including without limitation, the authentication, transfer, exchange and replacement of the Bond. In addition, upon an Advance of principal on the Bond, and written notification thereof by the Purchaser and the Enterprise, the Paying Agent shall record the amount of each Advance on the records of the Enterprise kept by the Paying Agent. The Paying Agent shall cause the Bond to be honored in accordance with their terms, provided that the Enterprise causes to be made available to the Paying Agent all funds necessary in order to so honor the Bond. Nothing in this Agreement shall require the Paying Agent to pay or disburse any funds in excess of the amounts then on deposit in the "Principal and Interest Payment Account" provided for in Section 3 of this Agreement or in the "Costs of Issuance Fund" provided for in Section 4 of this Agreement. Nothing in this Agreement shall require the Enterprise to pay or disburse any funds for payment of the principal of the Bond or interest thereon except at the times and in the manner provided in the Bond Ordinance and the Sale Certificate.

2. Not less than five (5) Business Days prior to each payment date on the Bond, the Paying Agent shall give written notice to the Enterprise of the amount of principal and/or interest on the Bond which is due on the payment date. Failure by the Paying Agent to give such written notice to the Enterprise, or any defect therein, shall not relieve the Enterprise of its obligation to remit payment to Bond owner on scheduled payment dates.

3. Not less than three (3) Business Days prior to each regularly scheduled payment date of the Bond, funds for the payment of the Bond and interest thereon are to be transferred by the Enterprise by wire transfer to the Paying Agent, and the Paying Agent shall deposit such amounts so received in an account designated "Principal and Interest Payment Account." At the time of the deposits to the Principal and Interest Payment Account provided herein, the Paying Agent shall notify the Enterprise if the amounts credited (together with any amounts available for such purpose theretofore deposited to the Principal and Interest Payment Account) will not be sufficient to pay the installment of principal or interest, or both, as the case may be, next due on the Bond. In the event of any such deficiency, the Enterprise shall promptly remit any additional amounts necessary to pay the principal and interest on the Bond next due. The funds so deposited in the Principal and Interest Payment Account shall be held uninvested and applied by the Paying Agent through its Corporate Trust Department solely for the payment of principal of and interest on the Bond. From such funds, the Paying Agent agrees to pay at the times and in the manner provided in the Bond Ordinance and the Sale Certificate, the principal of and interest on the Bond.

4. On the date of issuance of the Bond, there shall be deposited into the Costs of Issuance Fund referred to in the Bond Ordinance and hereby created and held by the Paying Agent and designated as the "City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015, Costs of Issuance Fund" (the "Costs of Issuance Fund") an amount equal to \$_____. Funds on deposit in the Costs of Issuance Fund shall remain uninvested. The Paying Agent shall use the funds on deposit in the Costs of Issuance Fund to pay costs of issuance upon the written direction of the Treasurer of the Enterprise or his designee. Any

amounts on deposit in the Costs of Issuance Fund remaining after the payment of all the costs of issuance of the Bond shall be transferred by the Paying Agent to the Enterprise at the written direction of the Treasurer.

5. No provision of this Agreement shall require the Paying Agent to expend or risk its own funds or otherwise incur any financial liability for performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

6. All moneys received by the Paying Agent hereunder shall be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by the Bond Ordinance or by law.

7. The Enterprise shall pay to the Paying Agent fees in accordance with its then existing fee schedule. No new fee schedule shall become effective until 30 days after the Paying Agent has given the Enterprise notice hereof.

8. Unless waived by the Paying Agent, the Enterprise agrees to provide the Paying Agent with not less than 35 days' notice of any prior optional redemption of the Bond. The Enterprise shall not be required to provide the Paying Agent with notice of any mandatory sinking fund redemption of the Bond.

9. If requested by the Paying Agent, the Enterprise agrees to provide the Paying Agent with a supply of blank Bonds for use in the transfer and exchange of the Bond.

10. Any moneys held by the Paying Agent for the owner of the Bond remaining unclaimed for two years after principal of and interest on the Bond with respect to which such moneys have been set aside has become due and payable shall without further request by the Enterprise be paid to the Enterprise.

11. The Paying Agent may become the owner of Bond and may otherwise deal with the Enterprise with the same rights which it would have if it were not the Paying Agent hereunder. The Paying Agent may engage in or be interested in any financial or other transaction with the City and the Enterprise.

12. At least 30 but not more than 60 days prior to February __, 2020, February __, 2025, February __, 2030, and on the date on which the Bond is discharged, the Paying Agent will send written notice to the Enterprise stating that the Enterprise must: (i) compute the amount of rebatable arbitrage, if any, which is due the federal government pursuant to Sections 103 and 148(f) of the Internal Revenue Code of 1986, as amended, and (ii) pay such amount no later than sixty (60) days from February __, 2020, February __, 2025, February __, 2030, and on the date on which the Bond is discharged. The Paying Agent shall have no further obligation or duty related to the Enterprise's arbitrage related obligation under Sections 103 and 148(f) of the Internal Revenue Code of 1986 other than giving notice to the Enterprise as provided herein.

13. This Agreement may be terminated as hereinafter provided. The Paying Agent may resign as Paying Agent at any time upon thirty (30) days written notice to the Enterprise. The Enterprise may remove the Paying Agent as Paying Agent upon thirty (30) days

written notice to the Paying Agent. No resignation or removal of the Paying Agent may take effect until a successor is appointed. If an instrument of acceptance of a successor Paying Agent shall not have been delivered to the Paying Agent within thirty (30) days of the giving of such notice of resignation, the Paying Agent may petition any court of competent jurisdiction for the appointment of a successor Paying Agent. Upon any resignation or removal of the Paying Agent as Paying Agent, the Paying Agent shall deliver to the Enterprise or its designee all funds held by the Paying Agent as Paying Agent and the registration records of the Paying Agent, as registrar and transfer agent for the Bond.

14. As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Paying Agent shall be entitled to rely upon a certificate signed by an authorized officer of the Enterprise as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Paying Agent has been notified, the Paying Agent may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may, at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Paying Agent may accept a certificate of the Enterprise Clerk of the Enterprise to the effect that an ordinance or a resolution in the form therein set forth has been adopted by the Enterprise as conclusive evidence that such ordinance or resolution has been duly adopted and is in full force and effect.

15. At any time, the Paying Agent may apply to the Enterprise for instructions and may consult counsel for the Enterprise or nationally recognized bond counsel with respect to any matter arising in connection with this Agreement and it shall not be liable for any action taken or omitted by it in good faith in accordance with such instructions or upon the advice or opinion of such counsel. The Paying Agent shall be protected in acting upon any paper or document believed by it in good faith to be genuine and to have been signed by any authorized officer of the Enterprise and shall not be held to have notice of any change of authority of any authorized officer until receipt by it of written notice thereof by the Enterprise. The Paying Agent shall also be protected in recognizing a Bond that it reasonably believes bears the manual or facsimile signatures of the authorized officers of the Enterprise. The Paying Agent shall not be responsible, for any reason, for any action taken nor omitted to be taken by it in good faith or for anything whatever in connection with this Agreement or the Bond except for its own negligence, willful misconduct or bad faith in the performance of any duty to be performed by the Paying Agent hereunder.

16. Any company or national banking association into which the Paying Agent may be merged or converted or with which it may be consolidated or any company or national banking association resulting from any merger, conversion or consolidation to which it shall be a party or any company or national banking association to which the Paying Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible, shall be the successor to such Paying Agent without execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

17. The rights of the Enterprise under this Agreement shall be deemed to be a contract made under and shall be construed in accordance with and governed by the laws of the State of Colorado.

18. This Agreement is made solely for the benefit of the Enterprise, the City, the Paying Agent, their successors and assigns, and the registered owner of the Bond, and no other person or entity shall have any right, benefit or interest under or because of the existence of this Agreement.

19. If any section, subsection, paragraph, clause or other provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Agreement.

20. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

21. In the event of any conflict between the provisions of this Agreement and the provisions of the Bond Ordinance, the provisions of the Bond Ordinance shall be controlling.

IN WITNESS WHEREOF, the Paying Agent and the Enterprise have caused this Agreement to be duly executed and delivered as of the day and year first above written.

CITY OF LOVELAND, COLORADO,
WATER ENTERPRISE

[SEAL]

President

ATTESTED:

Secretary

U.S. BANK NATIONAL ASSOCIATION
as paying agent

By: _____
Title:



CITY OF LOVELAND
CITY MANAGER'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 1/20/2015
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik, Executive Fiscal Advisor

TITLE:

An Ordinance on Second Reading of the City of Loveland, Authorizing the Terms and Provisions Relating to the Water Enterprise Revenue Bonds, Series 2015, to be Issued by the City of Loveland, Colorado, Water Enterprise, the Finance Improvements to the City's Water System, Including, Without Limitation, Covenants and Agreement of the City in Connection Therewith

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action by the City Council. Pursuant to Ordinance 4454 adopted by the Council in 1999, the Council ratified the establishment of the City of Loveland Water Enterprise. In separate action, the City Council, acting as the Board of the Water Enterprise, considered on first reading the terms of the Water Enterprise Revenue Bonds, Series 2015. This proposed ordinance indicates the City Council's agreement to and authorization of the bond ordinance. This Ordinance was adopted unanimously on first reading by Council at the January 6, 2015 regular meeting.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The \$3.2 million to be provided from the 2015 series is the final piece of the financing for the Water Treatment Plant Expansion.

BACKGROUND:

There are six important operational parts of the proposed ordinance.

Section 1. Council's proposed ordinance ratifies all actions taken by the City to plan the water treatment expansion project and the steps that have been taken to prepare the bond ordinance.

Section 2. Council finds and determines that the Water Treatment Plant Expansion constitutes a public purpose and that it is in the best interests of the City to finance a portion of the project through the bond ordinance.

Section 3. The Council authorizes and determines that the project should be undertaken and the proceeds of the bond shall be used to pay for a portion of the project.

Section 4. The Council approves the terms and provisions of the bond ordinance and ratifies, approves, and confirms that the City shall be bound by the terms of the bond ordinance.

Section 5. The Council finds that it is to the best advantage of the City that the bond shall be sold to the Bank under the terms of the bond ordinance and the City Manager and Director of Finance are delegated to accept the Bond Purchase Agreement.

Section 6. The Council authorizes and directs appropriate City officials to take the necessary actions to construct and finance the project.

The remaining sections of the ordinance cover legal and administrative aspects, including the Repealer section which repeals any inconsistent actions of the City; the Severability section that maintains the overall intent of the ordinance (even if some subsection may be found unenforceable), the Ordinance Irrepealable section, the Publication sections, and the Effective Date.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING: January 6, 2015

SECOND READING: January 20, 2015

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE TERMS AND PROVISIONS RELATING TO THE WATER ENTERPRISE REVENUE BOND, SERIES 2015, TO BE ISSUED BY THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE, TO FINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM, INCLUDING, WITHOUT LIMITATION, COVENANTS AND AGREEMENTS OF THE CITY IN CONNECTION THEREWITH

WHEREAS, the City of Loveland, in the County of Larimer and State of Colorado, (the "City") is a municipal corporation duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the City's Home Rule Charter (the "Charter"); and

WHEREAS, the members of the City Council (the "City Council") have been duly elected and qualified; and

WHEREAS, the City now owns and operates a municipal water system (the "System"); and

WHEREAS, the City Council has determined that the System constitutes an enterprise pursuant to Article X, Section 20 of the Colorado Constitution; and

WHEREAS, pursuant to Ordinance 4454 adopted by the City Council on August 4, 1999 (the "Enterprise Ordinance"), the City Council ratified the establishment of the City of Loveland, Colorado, Water Enterprise (the "Enterprise") and conferred certain powers on the Enterprise; and

WHEREAS, pursuant to the Enterprise Ordinance, the City Council shall serve as the governing body of the Enterprise and the officers of the City Council and of the City shall serve as officers of the governing body of the Enterprise and of the Enterprise; and

WHEREAS, pursuant to the Enterprise Ordinance, the Enterprise has the power to issue revenue bonds in the manner in which City revenue bonds may be issued, without voter approval in advance; may pledge any revenues derived or to be derived from the functions, services, benefits or facilities of the water activities of the City or any other available funds of the Enterprise to the payment of such revenue bonds and to pay such revenue bonds therefrom; and the Enterprise may make representations, warranties and covenants on behalf of the City and

bind the City to perform any obligation relating to the System other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City; and

WHEREAS, pursuant to the Enterprise Ordinance, the City, among other things, continues to own the assets of the System; manages, operates and maintains the System; budgets and appropriates revenues and expenditures of the System; fixes, adjusts and collects water rates, fees, tolls, charges and tap fees relating to the System; and may borrow money, issue bonds or enter into other financial obligations relating to the System as provided in the Colorado Constitution and statutes; and

WHEREAS, the Enterprise intends to issue its “City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2015” (the “Bond”) in the maximum principal amount of \$3,200,000 to finance a portion of the cost of acquiring, constructing, extending, bettering, otherwise improving and equipping the System (the “Project”); and

WHEREAS, the Bond will be issued pursuant to an ordinance (the “Bond Ordinance”) to be adopted by the Board of Directors of the Enterprise; and

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the Bond Ordinance; and

WHEREAS, the Enterprise has previously issued its City of Loveland, Colorado, Water Enterprise Revenue Bond, Series 2013, in the maximum principal amount of \$10,000,000 (the “2013 Bond”) to finance improvements to the System; and

WHEREAS, the 2013 Bond is payable from and has an irrevocable lien on the Net Revenues; and

WHEREAS, the Bond will be payable from and have an irrevocable lien upon the Net Revenues equally and on a parity with the 2013 Bond; and

WHEREAS, except for the 2013 Bond and the Interfund Loan from Power Enterprise, neither the City nor the Enterprise has ever pledged nor in any way hypothecated revenues derived and to be derived directly or indirectly from the operation of the System to the payment of any securities or for any other purpose and with the result that the Net Revenues may now be pledged lawfully and irrevocably for the payment of the Bond on a parity with the 2013 Bond and on a basis that is superior to the Interfund Loan from Power Enterprise, and they may be made payable from the Net Revenues; and

WHEREAS, the Bond will be payable solely from the Net Revenues of the System and the Bond shall not constitute an indebtedness or a debt within the meaning of any constitutional, Charter or statutory provision or limitation; and the Bond shall not be considered or held to be general obligations of the Enterprise or the City but shall constitute the Enterprise’s special, limited obligation; and

WHEREAS, in accordance with the Enterprise Ordinance, the Bond Ordinance contains certain terms, provisions, representations, warranties and covenants of the City; and

WHEREAS, NBH Bank, N.A. (the “Purchaser”) has submitted a Bond Purchase Agreement (the “Bond Purchase Agreement”) to the Enterprise and the City concerning the purchase of the Bond; and

WHEREAS, pursuant to Section 11-57-205, Colorado Revised Statutes, as amended, the City desires to delegate to the City Manager and the Director of Finance of the City the independent authority to accept the Bond Purchase Agreement on behalf of the City and to make certain representations in connection therewith; and

WHEREAS, there has been filed with the City Clerk of the City (the “City Clerk”) the following documents: (a) the form of the Bond Ordinance to be adopted by the Board of Directors of the Enterprise; and (b) the form of the Bond Purchase Agreement; and

WHEREAS, the City Council has determined and does hereby declare:

A. In order to meet the present and future needs of the City, it is necessary to extend, better, otherwise improve and equip the System;

B. The Bond is being issued by the Enterprise to finance a portion of the costs of the Project;

C. The Net Revenues shall be pledged to the payment of the Bond on a parity with the 2013 Bond; and

D. It is necessary and in the best interests of the City that the Bond shall be issued pursuant to the terms and provisions of the Bond Ordinance and that the City Council authorize, confirm and ratify the terms and provisions of the Bond Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council, the officers of the City and otherwise taken by the City directed toward the Project and the issuance, sale and delivery of the Bond for such purposes, be, and the same hereby is, ratified, approved and confirmed.

Section 2. Public Purpose. The City Council hereby finds and determines that the construction, acquisition and installation of the Project is necessary to meet the present and future needs of the City. The City Council hereby further finds and determines that it is in the best interests of the City to finance a portion of the Project through the issuance of the Bond in accordance with the terms and provisions of the Bond Ordinance and that it is in the best interest

of the City and serves a valid public purpose for the City to facilitate the issuance of the Bond by ratifying and approving the terms and provisions set forth in the Bond Ordinance.

Section 3. Authorization of the Project. The City Council, on behalf of the City, hereby determines to undertake the Project, which is hereby authorized, and the net proceeds of the Bond shall be used therefor in accordance with the terms and provisions of the Bond Ordinance.

Section 4. Approval of Bond Ordinance. The City Council hereby approves the terms and provisions of the Bond Ordinance in substantially the form filed with the City Clerk and hereby ratifies, approves and confirms that the City shall be bound by the terms and provisions of the Bond Ordinance, including without limitation the representations, warranties and covenants of the City contained therein. For purposes of the Bond Ordinance, the Director of Finance shall serve as Treasurer to the Enterprise.

Section 5. Approval of Bond Purchase Agreement. The City Council hereby finds and determines that it is to the best advantage of the City that the Bond shall be sold to the Purchaser substantially in accordance with the provisions of the Bond Purchase Agreement filed with the City Clerk, provided that the Bond Purchase Agreement may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of the Bond Ordinance and this Ordinance. Pursuant to the Supplemental Public Securities Act, which the City hereby elects to apply to the issuance of the Bond, the City Council hereby delegates to the City Manager and the Director of Finance the independent authority to accept the Bond Purchase Agreement from the Purchaser, subject to the parameters set forth in the Bond Ordinance.

Section 6. Taking of Necessary Action. The Mayor, the Mayor Pro Tem, the City Clerk and any deputy thereof, the City Manager, the Director of Finance, the Executive Fiscal Advisor, the City Attorney, and other officers and employees of the City are hereby independently authorized and directed to take all action necessary or appropriate to finance and construct the Project, to facilitate the issuance of the Bond by the Enterprise and the sale thereof to the Purchaser in accordance with the Bond Purchase Agreement and to otherwise effect the provisions of the Bond Ordinance and this Ordinance, including without limitation, executing, attesting, authenticating and delivering for and on behalf of the City, such agreements, instruments, certificates and opinions as may be required to implement the transactions contemplated hereby and by the Bond Ordinance, or as may otherwise be reasonably required by the City's bond counsel. The execution of any document or instrument by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of such document or instrument in accordance with the terms hereof.

Section 7. Repealer. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any such bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 8. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance.

Section 9. Ordinance Irrepealable. After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the City and the Owner of the Bond and this Ordinance shall be and shall remain irrepealable until the Bond, as to all Debt Service Requirements, shall be fully paid, canceled, and discharged, except as herein otherwise provided.

Section 10. Publication. As provided in Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 11. Effective Date. This Ordinance shall be in full force and effect ten days after its final publication, as provided in Charter Section 4-8(b).

ADOPTED this ____ day of January, 2015.

CITY OF LOVELAND, COLORADO

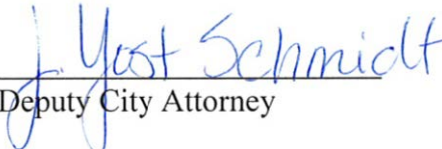
(SEAL)

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

I, Teresa G. Andrews, City Clerk of the City of Loveland, Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on January __, 2015 and was initially published in the Loveland Daily Reporter-Herald, a newspaper published with the City limits in full on January __, 2015 and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on January __, 2015.

City Clerk

Effective Date: January __, 2015



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
 Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 1/20/2015
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Alison Hade, Community Partnership Office Administrator

TITLE:

A Resolution Waiving Certain Development Fees for the Construction of Nine Residences by Loveland Habitat for Humanity

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution as presented.

OPTIONS:

1. Deny the action
2. Adopt a modified action (specify in the motion)
3. Refer back to staff for further development and consideration
4. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

Loveland Habitat for Humanity is requesting a waiver of development fees, consisting of building permit fees, capital expansion fees and enterprise fees, for the construction of four single family detached dwellings, four attached single family dwellings within a four-plex building and one attached single family dwelling within a duplex building, for a total of nine dwelling units to be constructed in 2015. One of these homes will be occupied by a flood survivor. The total fee estimate for all nine dwellings is \$229,885.72. The requested fee waiver will not exceed \$210,000. Habitat for Humanity will pay the balance of any fees.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

\$65,000 was appropriated in the 2015 Budget to backfill enterprise fees waived by the proposed resolution. An additional amount, not to exceed \$145,000, in development and capital expansion fees would be waived by the resolution and not backfilled.

BACKGROUND:

Habitat for Humanity builds and sells homes to households that earn between 30% and 60% of the area median income (AMI), which is a maximum of \$44,100 annually for a family of four. The City of Loveland has been waiving development fees on behalf of Habitat for Humanity since 1995.

Habitat for Humanity homes are always affordable for qualified low income families. For example, a family of three living at 30% of the AMI earning \$1,655 a month would likely have to pay around a \$1,000 for a 2-bedroom apartment, which is more than 60% of their income. As a Loveland Habitat for Humanity homeowner, this same family would pay a monthly mortgage of \$463, or 28% of their income, including principal and escrow. Loveland Habitat for Humanity has provided homeownership for 124 Loveland families since 1987.

Section 16.38.080 of the Loveland Municipal Code allows City Council to grant an exemption from all or part of the capital expansion fees or any other fees imposed by the City upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed is a qualified affordable housing development. The Code requires that any enterprises fees waived be paid by the City's general fund or other appropriate fund. The 2015 City of Loveland Adopted Budget includes an appropriation of \$65,000 to pay the enterprise fees waived on behalf of Habitat for Humanity. Under the recommended resolution and current budget appropriation of \$65,000. Habitat for Humanity will pay the balance of any fees.

In 2014, Habitat for Humanity received a fee waiver of \$197,208 for nine homes, which was approximately \$16,000 less than the fee waiver request for the nine homes in 2015. The difference in fees for the same number of dwellings units is due to the fees for the five attached single family dwellings in 2015 being more than for the multifamily dwelling units included in the 2014 waiver.

See **Attachment B** for more detail on the history of fee waivers for Habitat for Humanity, including the number of homes completed for each year.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Resolution
2. Fee Waiver History

RESOLUTION #R-8-2015**A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR CONSTRUCTION OF NINE RESIDENCES BY LOVELAND HABITAT FOR HUMANITY**

WHEREAS, Loveland Habitat for Humanity, Inc., a Colorado nonprofit corporation (“Habitat”) has requested that the City of Loveland (“City”) waive certain City-imposed development fees, including capital expansion and enterprise fees, for nine residences that it will construct in 2015 in Loveland, Colorado, including 1 residence located in Wards 3rd Addition Subdivision at 1233 Raven Place; and 8 residences located in Sierra Valley First Subdivision at 1641, 1649, 1657, and 1665 Valency Drive; 350 and 353 Primrose Drive; 437 Primrose Court; and 379 Brittlebush Drive (collectively, the “Residences”); and

WHEREAS, Loveland Municipal Code Section 16.38.075 provides that the City Council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed upon new development upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts; and

WHEREAS, the City desires to provide waiver of certain fees in an amount not to exceed \$210,000.00 apportioned between capital expansion fees, development fees and enterprise fees as set forth below; and

WHEREAS, Habitat is willing and able to enter into one or more development agreements with the City pursuant to which Habitat will agree to construct the Residences for the benefit of low and moderate income Loveland households.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City Council finds that the waiver of the development fees, capital expansion fees, and enterprise fees which results from the adoption of this Resolution will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts.

Section 2. That capital expansion fees in a total amount not to exceed \$113,000.00 payable for the construction of the Residences are hereby waived for the purpose described above.

Section 3. That as provided in Loveland Municipal Code Section 16.38.075, when a capital related fee is waived as set forth in Section 2, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund.

Section 4. That development fees, including, but not limited to, all building permit fees, plan review fees, and any and all other fees, due and payable for construction of the Residences between permit application and final certificate of occupancy (but not including capital expansion fees, enterprise fees such as system impact fees, raw water fees, tap fees or other enterprise fees) in a total amount not to exceed \$32,000.00 are hereby waived for the purpose described above.

Section 5. That enterprise fees, including system impact fees, raw water fees, tap fees, or any other enterprise fees, payable for construction of the Residences in a total amount not to exceed \$65,000.00 are hereby waived for the purpose described above.

Section 6. That the amount of the waived enterprise fees, in an amount not to exceed \$65,000.00 as set forth in Section 5 hereof, shall be paid by the City into the City’s enterprise funds from the general fund of the City, and that such funds have been appropriated in the City’s 2015 budget. It is anticipated that the enterprise fees due for the Residences will exceed the \$65,000.00 waived hereunder and the remaining balance of enterprise funds due shall be paid by Habitat.

Section 7. That the waiver of the fees described in Sections 2, 4, and 5 hereof shall be conditioned upon the City, through its City Manager, and Habitat entering into one or more development agreements, which development agreements shall provide for the waiver of said fees in exchange for the construction of the Residences, compliance with the Loveland Municipal Code, including restrictions on conveyance of the Residences, and s such other conditions as the City Manager shall deem necessary.

Section 8. That the City Manager is authorized, following consultation with the City Attorney, to approve a request by Habitat to modify the locations of and/or lots on which the nine (9) Residences will be located and to substitute other locations and/or lots for those described in this Resolution, including signature of any documentation necessary or appropriate to reflect any such approved modification and substitution.

That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 20th day of January 2015.

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney



Habitat for Humanity Fee Waiver History

Year	# Units	\$ Waived	Per Unit	Gen Fund Backfill	Units Built
1995	5	\$43,338	\$8,668	\$21,140	1
1996	2	\$15,450	\$7,725	\$7,748	6
1997	5	\$51,607	\$10,321	\$21,790	1
1998	4	\$48,491	\$12,123	\$19,354	5
1999	5	\$55,908	\$11,182	\$23,962	3
2000	5	\$52,379	\$10,476	\$24,522	6
2001	5	\$66,327	\$13,265	\$28,977	7
2002	5	\$68,736	\$13,747	\$29,622	4
2003	5	\$38,876	\$7,775	\$0	6
2004	5	\$40,437	\$8,087	\$0	7
2005	5	\$41,113	\$8,223	\$0	5
2006	6	\$89,077	\$14,846	\$36,592	5
2007	6	\$136,452	\$22,742	\$64,465	5
2008	6	\$152,425	\$25,404	\$66,733	4
2009	6	\$154,642	\$25,774	\$68,254	7
2010	6	\$148,697	\$24,783	\$65,000	6
2011	6	\$151,462	\$25,244	\$65,000	4
2012	8	\$192,607	\$24,076	\$65,000	7
2013	8	\$185,797	\$23,225	\$65,000	8
2014	9	\$185,797	\$20,644	\$65,000	8
2015	9	\$208,417	\$23,157	\$65,000	7 from 2014
Total	121	\$1,733,821	\$21,405	\$673,159	105



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
 Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
 (970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 8
MEETING DATE: 1/20/2015
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Alison Hade, Community Partnership Office Administrator

TITLE:

A Resolution Amending Resolution #R-24-2014 Pertaining to Fee Waivers for Construction of Nine Residences by Loveland Habitat for Humanity

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution as presented.

OPTIONS:

1. Deny the action
2. Adopt a modified action (specify in the motion)
3. Refer back to staff for further development and consideration
4. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action. On March 18, 2014, City Council adopted a resolution granting Loveland Habitat for Humanity fee waivers for the construction of a total of nine homes in the Koldeway Industrial 3rd Subdivision and the Sierra Valley First Subdivision. One of the lots identified in the resolution for construction of a home receiving a fee waiver is currently unsuitable for construction pending the correction of some drainage issues.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The dollar amount of the fee waiver will remain the same.

BACKGROUND:

Loveland Habitat for Humanity applied for and received fee waivers for nine houses to be built for the benefit of low and moderate income families in Loveland. The home that was going to be built at 438 Primrose Court must now be built at 435 Primrose Court because of drainage issues in the

subdivision. Habitat for Humanity would like to transfer the waiver received for 438 Primrose Court to 435 Primrose Court. The amount of the waiver would not change.



REVIEWED BY CITY MANAGER:

William A. Cabell

LIST OF ATTACHMENTS:

1. Resolution

RESOLUTION #R-9-2015

A RESOLUTION AMENDING RESOLUTION #R-24-2014 PERTAINING TO FEE WAIVERS FOR CONSTRUCTION OF NINE RESIDENCES BY LOVELAND HABITAT FOR HUMANITY

WHEREAS, by adopting Resolution #R-24-2014 on March 18, 2014, City Council approved the waiver of certain development fees for construction of nine residences by Loveland Habitat for Humanity (“Habitat”), subject to execution of one or more development agreements pursuant to which Habitat agreed to construct residences for the benefit of low and moderate income City of Loveland (“City”) households; and

WHEREAS, Resolution #R-24-2014 identifies nine specific properties upon which the residences are to be built, including one located in Sierra Valley 1st Subdivision at 438 Primrose Court, Loveland, Colorado (“438 Property”), but inadvertently listed as 438 Primrose Drive; and

WHEREAS, pursuant to Resolution #R-24-2014 the City and Habitat entered into a Restriction on Conveyance of Property dated May 1, 2014 and recorded on May 7, 2014 at Reception No. 20140022705 in the records of the Larimer County, Colorado Clerk and Recorder and a Development Agreement dated May 1, 2014, both of which pertain to the 438 Property; and

WHEREAS, in lieu of development of the 438 Property for low and moderate income City households, Habitat desires to develop 435 Primrose Court, Loveland, Colorado (“435 Property”), subject to such approvals as may be required under the Loveland Municipal Code (“Code”); and

WHEREAS, Habitat has requested that the City amend Resolution #R-24-2014 to remove the 438 Property from the list of residences for which fee waivers are approved and add to the list the 435 Property (subject to requirements of the Code), and amend the Development Agreement to conform to such amendments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. Resolution #R-24-2014 shall be, and is hereby, amended to provide that the “Residences” listed therein for which certain development fees are waived shall *exclude* the 438 Property and *include* the 435 Property (subject to requirements of the Loveland Municipal Code). Accordingly, the definition of the “Residences” set forth therein shall hereafter read as follows:

“**WHEREAS**, Loveland Habitat for Humanity, Inc., a Colorado nonprofit corporation (“Habitat”) has requested that the City waive certain City-imposed development fees, including capital expansion and enterprise fees, for nine residences that it will construct in 2014 in Loveland, Colorado, including 2 residences located in Koldeway Industrial 3rd

Subdivision at 1926 E 11th Street and 1943 Sagittarius Drive; and 7 residences located in Sierra Valley First Subdivision at 1609, 1617, 1625, and 1633 Valency Drive, and 374, 362, and 435 Primrose Drive, (collectively, the “Residences”); and”

Section 2. That the City Manager is hereby authorized to amend the Development Agreement, remove the conveyance restriction on the 438 Property and place a conveyance restriction on the 435 Property as deemed necessary or appropriate to conform to the foregoing modification of Resolution #24-2014 and the Code; and

Section 3. That Resolution #R-24-2014 shall remain in full force except as modified by this Resolution.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 20th day of January, 2014.

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



CITY OF LOVELAND
CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 1/20/2015
TO: City Council
FROM: Terry Andrews, City Clerk
PRESENTER: Terry Andrews, City Clerk

TITLE:

A Resolution of the Loveland City Council Authorizing the City Clerk to Appoint Election Judges for the Special Election to be Held on February 10, 2015 Concerning the Establishment of a Downtown Development Authority

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

1. Adopt the Resolution
2. Do not adopt the Resolution

SUMMARY:

This is an administrative action. Council approved an ordinance calling for a special election on February 10, 2015, regarding the establishment of a Downtown Development Authority (DDA). This resolution confirms authority to the City Clerk, acting as the Designated Election Official, to appoint election judges pursuant to Section 31-101-401 C.R.S.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

REVIEWED BY CITY MANAGER:

William D. Cavill

LIST OF ATTACHMENTS:

1. Resolution

RESOLUTION #R-10-2015**A RESOLUTION OF THE LOVELAND CITY COUNCIL
AUTHORIZING THE CITY CLERK TO APPOINT ELECTION
JUDGES FOR THE SPECIAL ELECTION TO BE HELD ON
FEBRUARY 10, 2015 CONCERNING THE ESTABLISHMENT OF A
DOWNTOWN DEVELOPMENT AUTHORITY**

WHEREAS, the City Council of the City of Loveland (“Council”) adopted Ordinance No. 5903 (the “DDA Election Ordinance”) establishing election procedures in connection with a downtown development authority election; and

WHEREAS, Council subsequently adopted Ordinance 5906 (the “Special Election Ordinance”) calling a special election for February 10, 2015 (the “Special Election”) to submit to the Qualified Electors of a proposed Loveland Downtown Development Authority (“DDA”) the question concerning the establishment of the DDA and set the ballot title for the question to be submitted to the Qualified Electors at the Special Election; and

WHEREAS, Section 6-5 of the City of Loveland Charter (“Charter”) provides that the Clerk shall have charge of all activities and duties related to the conduct of municipal elections; and

WHEREAS, the Special Election Ordinance further provides that the City Clerk shall serve as the Designated Election Official to conduct the Special Election on behalf of the City and authorizes and directs the City Clerk as the Designated Election Official to proceed with any action necessary or appropriate to effectuate the provisions of this Special Election Ordinance, the Charter, the Colorado Municipal Election Code, the DDA Act, the DDA Election Ordinance and all other applicable laws; and

WHEREAS, Council desires to confirm that the City Clerk, serving as the Designated Election Official for the Special Election, is authorized to appoint election judges for the Special Election pursuant to C.R.S. §31-101-401.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND as follows:

Section 1. That the City Clerk is hereby authorized pursuant to Charter Section 6-5 to have charge of all activities and duties relating to the conduct of the Special Election, including appointment of election judges pursuant to C.R.S. § 31-10-401.

Section 2. That this Resolution shall be effective as of the date and time of its adoption.

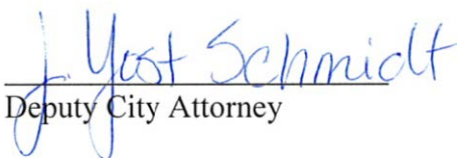
Signed this 20th day of January, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: 10
MEETING DATE: 1/20/2015
TO: City Council
FROM: Leah Browder, Public Works
PRESENTER: Steve Kibler, Public Works Fleet Manager

TITLE:

Award of 2015 Fleet Fuel Contract

RECOMMENDED CITY COUNCIL ACTION:

Motion to award a Contract to Rex Oil in the amount of \$2,000,000; authorize the City Manager to sign the Contract; and authorize the Public Works Director to lock prices if it is in the best interest of the City.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action to approve a Contract with Rex Oil Company for \$2,000,000 (two million dollars) for diesel and unleaded fuel purchases for various City locations including the fleet management fueling center, golf courses, water and wastewater treatment plants, and airport for a period covering February 1, 2015 to January 31, 2016. This also authorizes the City Manager to sign the Contract and authorize the Public Works Director to lock prices if determined to be in the best interest of the City.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Budget dollars are available in various departments with the bulk (\$1,500,000) budgeted in the Public Works Vehicle Maintenance Fleet Operations Fund (501-23-261-1902-42030). Should City Council approve this recommended award of contract and fuel prices remain favorable, City staff intends to pursue the price lock in option. Assuming January 13, 2015 per gallon prices compared

to per gallon pricing assumed at the time of budget development, estimated 2015 budgetary savings could exceed \$500,000. (Please note, however, that final budgetary saving estimates are also dependent on gallons actually purchased compared to original projections.)

SUMMARY:

In 2006, the City began contracting annually for fuel purchases using a cooperative bid with the City & County of Denver. Since the implementation of this approach, the City has found freight and discount charges continuing to be more favorable than what the City could obtain by issuing its own Invitation to Bid. Additionally, engaging in cooperative bidding opportunities increases the efficiency and timeliness of the purchasing process.

Denver bids fuel every four years (2007, 2011, 2015), and requires bidders to make their pricing available to other governmental entities on the same terms and conditions stated in Denver's bid. For 2015, Denver has awarded fuel contracts to Hill Petroleum and Rex Oil. The Public Works Department may lock prices with Rex Oil for deliveries to the fleet management fueling area if it is determined to be in the best interest of the City, thus making this Contract the preferable option.

REVIEWED BY CITY MANAGER:**LIST OF ATTACHMENTS:**

1. Letter of Renewal
 2. Master Purchase Order
-



DENVER
THE MILE HIGH CITY

General Services

Purchasing Division
201 W. Colfax Avenue, Dept. 304
Denver, CO 80202
P: 720.913.8100
F: 720.913.8101
www.denvergov.org/purchasing

Date: November 4, 2014

Gray Oil Company
804 Denver Avenue
Fort Lupton, CO 80612

ATTN: Julie (jmurphy@grayoil.net)

Reference:

Master Purchase Order No.: 0568A0312
Title: Unleaded, Diesel, and Biodiesel Fuel
Item No's: 1-12

Gentlemen/Ladies:

The contract made and entered into by your company and the City and County of Denver pursuant to the above referenced Master Purchase Order Number expires on December 31, 2014. **Please continue to refer to Master Purchase Order Number 0568A0312 in all correspondence, invoicing, billing or other communications.**

Should you desire to extend this contract for an additional one (1) year, to and including December 31, 2015, please return this signed letter to the undersigned prior to November 15, 2014.

Sincerely,

Curtis Subia, CPPB
Buyer

TO: City and County of Denver

I(we) hereby agree to renew the contract cited above for the additional period of time set forth at the same price(s), terms and conditions as in the original contract. **I understand that this documentation is my confirmation of the MPO extension and I will keep a copy for my records.**

GRAY OIL COMPANY INC Date: 11/4/14
Company Name
By: Julie Murphy
Title: Energy Risk Manager

cc: Main File



Master Purchase Order

DO NOT INVOICE TO THIS ADDRESS	 DENVER <small>THE MILE HIGH CITY</small>	Master Purchase Order No.	0568A0312		
City & County of Denver		Date:	December 21, 2011	Revision No.	
Purchasing Division		Payment Terms	Net 30, attempt net 10		
201 West Colfax Avenue, Dept. 304		Freight Terms	See Delivery Pricing Below		
Denver, CO 80202		Ship Via	Company Trucks		
United States		Buyer:	Kenton Janzen		
Phone: 720-913-8100 Fax: 720-913-8101		Phone:	303-342-2183		

Vendor: Gray Oil Company Phone: 303-857-2288

Fax: 303-857-0758

Gray Oil Company
 804 Denver Ave
 Ft Lupton, CO 80621
 Attn: Tina

Ship To: Various City Agencies and Locations

E Mail: FOR DIA
 Bill To: Accounts.Payable@flydenver.com

For the rest of the City
AccountsPayable.Help@denvergov.org

1. Goods/Services:

Gray Oil Company, a Corporation, ("Vendor") shall provide the goods, and any services related thereto, identified and described on attached Exhibit A, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.

2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Agreement for purposes of such Order only.

3. Pricing:

The pricing/rates for the goods/services is contained on Exhibit A and shall be held firm for the term of this Master Purchase Order unless otherwise stated.

4. Extension or Renewal:

The effective period of this Master Purchase Order shall be from January 1, 2012 to and including December 31, 2013. It is also a specific provision of this Master Purchase Order that the City and the vendor may mutually agree to renew and continue the contract or agreement consummated under this Master Purchase Order for additional periods of one year at the same prices, terms and conditions. However, no more than three (3) yearly extensions shall be made to the original Master Purchase Order.

5. Non-Exclusive:

This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.

6. Inspection and Acceptance:

City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

7. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

- 8. Risk of Loss:**
Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.
- 9. Invoice:**
Each invoice shall include: (i) the Master Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.
- 10. Payment:**
Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq. after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of Fifty Million and no/100 Dollars (\$50,000,000.00). The Vendor acknowledges that any goods/services provided beyond those specifically described in Exhibit A are performed at Contractor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.
- 11. Amendments/Changes:**
Only the Manager of General Services or his delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.
- 12. Warranty:**
Vendor warrants and guarantees to City that all goods furnished under this Master Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Master Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.
- 13. Indemnification/Limitation of Liability:**
Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.
- 14. Termination:**
City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.
- 15. Interference:**
Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

16. Venue, Choice of Law and Disputes:

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

17. Assignment/No Third Party Beneficiary:

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

18. Notice:

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

19. Compliance With Laws:

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

20. Insurance:

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Vendor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Vendor shall provide a copy of this Purchase Order to its insurance agent or broker. Vendor may not commence services or work relating to the Purchase Order prior to placement of coverage. Contractor certifies that the attached certificate of insurance attached to the Purchase Order documents, preferably an ACORD certificate, complies with all insurance requirements of this Purchase Order. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Purchase Order shall not act as a waiver of Vendor's breach of this Purchase Order or any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements. Vendor's insurer shall name as Additional Insured to its Commercial General Liability and Business Auto Liability policies the City and County of Denver, its elected and appointed officials, employees and volunteers. Vendor's insurer shall waive subrogation rights against the City. All sub-contractors and sub-consultants (including independent contractors, suppliers or other entities providing goods/services required by this Purchase Order) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain Commercial General Liability coverage with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Vendor shall maintain Business Auto Liability coverage with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-hired vehicles used in performing services under this Purchase Order. For Commercial General Liability coverage, the policy must provide the following: (i) That this Purchase Order is an Insured Contract under the policy; (ii) Defense costs in excess of policy limits (iii) A severability of interests, separation of insureds or cross liability provision; and (iv) A provision that coverage is non-contributory with other coverage or self-insurance provided by City. For claims-made coverage, the retroactive date must be on or before the first date when any goods or services were provided to City. Vendor must advise the City in the event any general aggregate or

other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

21. Severability:

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

22. Survival:

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

23. No Construction Against Drafting Party:

No provision of this Master Purchase Order shall be construed against the drafter.

24. Status of Vendor/Ownership of Work Product:

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

25. Records and Audits:

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

26. Remedies/Waiver:

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

27. No Discrimination in Employment:

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.

28. Use, Possession or Sale of Alcohol or Drugs:

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

29. Conflict of Interest:

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

30. No Employment of Illegal Aliens to Perform Work Under The Agreement:

a. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. The Contractor certifies that:

- (1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Contractor also agrees and represents that:

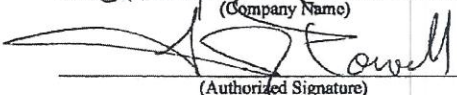
- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
- (4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or

subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

This Master Purchase Order is acknowledged and agreed to by:

Vendor Name: Gray Oil Co. Inc
(Company Name)
By: 
(Authorized Signature)
Print Name: Tina J. Powell
Title: President
Date: 12-21-11

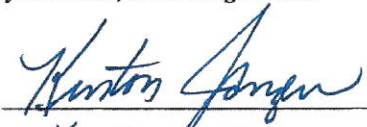
City & County of Denver, Purchasing Division
By: 
Print Name: Kenton Janzen
Title: Senior Buyer
Date: 12/21/11

EXHIBIT "A"

Vendor: Gray Oil
Title: Unleaded, Diesel and Biodiesel Fuel
Master Purchase Order No.: 0568A0312

It is recommended that you use your Master Purchase Order No. – 0568A0312, in all future correspondence, billing, invoicing or other communications.

Description of the goods, and services related thereto, being purchased and pricing:

THE OPIS AVERAGE PRICING REFERENCED BELOW WILL ONLY BE IN EFFECT WHEN THE CITY HAS LOCKED FUEL WITH YOUR COMPANY AND HAS USED THE ENTIRE ALLOTMENT FOR THAT GIVEN MONTH. THE OPIS PRICING SHALL REMAIN IN EFFECT TO THE END OF THAT MONTH ONLY AND LOCKED PRICING WILL RESUME ON THE 1ST OF THE FOLLOWING MONTH.

The OPIS average computed on the Thursday prior to Monday's publish date each week, shall be the basis for OPIS +/- pricing anytime that the City is not purchasing "locked" fuel.

In the event the "Oil Price Information Service" (OPIS) ceases publication or a viable listing of reference prices relating to Denver, Colorado, is no longer available through this publication, the parties to this agreement will mutually establish a successor index.

Supply

- A. The #2 Diesel product shall comply with performance levels classified by the most current ASTM D975 standards, and shall be red, ultra low sulfur #2 Diesel, with a minimum cetane number of 45 when tested to ASTM D613. The red dye cost must be included in the quoted price.
- B. Vendor must have supplies of #1 Diesel and cold winter additives from October through March and be able to deliver these products to our primary fuel locations in advance of extreme cold weather conditions and on an emergency basis
- C. The #1 Diesel product quoted and provided must meet or exceed the most current ASTM D975 standards and shall be red, ultra low sulfur #1 Diesel with a minimum cetane number of 50 when tested to ASTM D613. The red dye must be included in the price.
- D. All diesel fuel provided, including any biodiesel blend, must meet a cold filter plug point of < -30°F October through March.
- E. All regular Unleaded Fuel provided shall meet all applicable and current ASTM standards, be minimum 85 octane, and contain no MTBE.
- F. Vendor must supply premium unleaded fuel (91 Octane) year-round.
- G. Vendor must have year-round availability of E85. The E85 fuel provided for flexible-fuel automotive spark-ignition engines shall meet or exceed ASTM D5798. The E85 fuel blend shall be seasonally adjusted based on geographic location and anticipated temperatures to enhance starting and driving performance.
- H. The City requires that the vendor have a local in-state presence including the ability to source fuel locally (defined as within a 100 mile radius of central Denver).
- I. Vendor must be able to provide biocide upon request.

B100 Blend Stock Specifications

- A. Vendor's biodiesel product must meet or exceed D6751 specifications (national bio-diesel standards). Base stock will be made of virgin rapeseed, soy or other equivalent virgin bio-mass.
- B. Upon request, vendors will submit their protocols and quality assurance policy for B100 testing, storage and handling.

B5-20 Specifications

- A. Biodiesel blends provided must meet cold filter plug point of $< -30^{\circ}\text{F}$ for October through March.
- B. Upon request vendor must supply a current Certificate of Analysis showing results of winterized B5-20 including cloud point, pour point, cold filter plug point, moisture content and concentration of # 1 diesel present in the blend.

Delivery

- A. Orders for fuel placed by the City by 10:30 a.m. on any given day shall be delivered by the vendor same day.
- B. Upon delivery of fuel to any City fueling site, the vendor shall be required to 1) measure the tank to be filled by either "sticking" or reading Veeder root figure before and after filling tank and 2) record the readings onto EACH and EVERY invoice.
- C. Should the vendor be unable to unload the entire amount that was ordered, an additional drop charge of no more than \$30 will be allowed if the remaining fuel must be taken to another City location and off loaded. This charge will not apply if the fuel can be off loaded at a different tank at the same location.
- D. Should the City order less than full transport load to a single primary tank, the vendor may charge the City for delivery of a full load (i.e. If the delivery cost of a 7,500 gallon load is \$.02/gallon, the total cost for delivery of a less than full load will be \$150.00).
- E. When the City requests fuel deliveries to secondary fuel locations with tanks that hold 1,000 gallons of fuel or less (mainly golf courses and mountain parks), the vendor will not be allowed to charge any additional delivery fees or fuel surcharges. The delivery cost per gallon for these locations is listed below.
- F. All freight charges shall be locked for the duration of the contract and shall include all freight surcharges. No additional freight surcharges may be added.

Testing

- A. The Vendor supplying fuel on October 1st of each year will be required to check each of the City's diesel tanks for cold filter plugging, cloud point and water content. The vendor will begin testing on October 1 and test all diesel tanks a second time after the cold weather additives are in place and shall complete the 2nd round of testing by December 7. Tests must be performed by an approved independent agency with results provided to Fleet Management Personnel immediately. The City reserves the right to ask for additional testing, as needed.

LOCKING**Futures fuel purchases**

- A. All fuel provided on futures contracts must meet the same specifications above.
- B. City personnel will request locked pricing quotes from all of the vendors that were issued a master purchase order as a result of this Proposal. The City agrees to provide at least 24-hours notification, or on a previously-agreed upon set schedule. Pricing should be provided for the next month, 3 months, 6 months, 9 months and one year and should include all applicable costs (i.e. be "delivered" cost) and fees unless otherwise notified by the City.

Procedures for Locking

- A. The City initiates (by email or phone) a request for locking price (24 hour lead time) for unleaded and/or diesel from the Qualified Vendors.
- B. The email quotes will be due at a predetermined time. They will be supplied by all Qualified Vendors, evaluated and discussed with Fleet Management, DIA Fleet Maintenance, the Purchasing Department and senior officials in Public Works.
- C. When it is determined that the City wishes to lock, Fleet Management contacts the successful vendor on the phone and informs them that we intend to accept the offer and emails the "Locking Worksheet" defining monthly quantities. A separate worksheet will be submitted for Public Works (which shall include the quantity numbers for Golf) and Denver International Airport.
- D. The spreadsheet contains the fuel contract number, bid price, the length of time included in the purchase agreement, whether we are purchasing "downside protection," the fees that we recognize we have to pay that were previously agreed upon in the fuel bid contract, for environmental issues and delivery. On this spreadsheet the City must also specify the exact amount of fuel we are purchasing each month, listed by the month.
- E. The email with the above commitment will also contain a statement about notifying the City when the purchase has been executed and at what price it was executed, which must be the quoted price or lower (it can sometimes be less than the quoted amount if the market falls in the 24 hours it takes to put all the data together).
- F. Once the City has confirmation from the vendor that a request to "lock" was executed, the City has a contract that becomes effective for the period specified in the spreadsheet and the OPIS vendor will be replaced by the "locked" vendor for fuel deliveries until such time that the "lock" expires. Then the City will go back to purchasing fuel from the OPIS vendor.

Miscellaneous

- A. Vendor must be able to provide emergency fuel service.
- B. Any fuel product delivered that fails to meet ASTM or other standards listed above, or is determined to be defective, will be removed from the tank at the vendor's sole cost.
- C. Vendor agrees in principle that the City is a preferred customer and should be afforded all the privileges and services possible. As a preferred customer, the City should be given preferential supply treatment to ensure the continuation of city operations.
- D. The vendor shall be required to meet all local, state and federal regulations regarding the supply and delivery of all fuel products.
- E. The vendor shall abide by the City's ozone reduction initiative, which requires that June 1 through September 15 from 6:00 a.m. to 2:00 p.m. all reasonable efforts be made to control VOC's.
- F. Billing shall be by GROSS gallons, NOT NET gallons.

OPIS Pricing, Items 1-6, TO BE USED ONLY WHEN MONTHLY ALLOTMENT HAS BEEN RECEIVED

Item No.	Description	Discount/Markup in Cents
1	Discount/Markup from weekly average rack (Denver) for OPIS Unleaded (i.e. -.015/gallon)	-\$0.0380
2	Discount/Markup from weekly average rack (Denver) for OPIS Unleaded 91 OCTANE (i.e. -.015/gallon)	-\$0.0380
3	Discount/Markup from weekly average rack (Denver) for OPIS Diesel #2 (i.e. -.015/gallon)	-\$0.0380
4	Discount/Markup from weekly average rack (Denver) for OPIS Diesel #1 (i.e. -.015/gallon)	-\$0.0380
5	Discount/Markup from weekly average rack (Denver) for OPIS E-85 (i.e. -.015/gallon)	\$0.0000
6	Discount/Markup from weekly average rack (Denver) for OPIS B100 (i.e. -.015/gallon)	\$0.0000
7	Up-Charge for emergency delivery service with 4 hours of notice.	\$0.0000
Item No.	Description	Per Gallon Delivery in Cents
Delivery Charge Per Gallon to the following Primary Locations:		
8A	5440 Roslyn	\$0.0180
8B	1271 Bayaud	\$0.0180
8C	2000 W 3rd Ave	\$0.0180
8D	2013 S Osage	\$0.0180
8E	7501 E Jewell	\$0.0180
8F	4800 Himalaya, Fire Station #29	\$0.0180
8G	Denver International Airport	\$0.0210
Delivery Charge Per Gallon to the following Secondary Locations:		
Golf Course		

9A	City Park Maintenance, 2955 E 23rd Ave	\$0.12
9B	Harvard Gulch, 660 E Iliff	\$0.12
9C	JFK Pro Shop, 10500 E Hampden	\$0.12
9D	JFK Maintenance, 10500 E Hampden	\$0.12
9E	Overland Maintenance, 1801 S Huron	\$0.12
9F	Overland Maintenance, 1801 S Huron	\$0.12
9G	Wellshire Pro Shop, 3333 S Colorado Blvd	\$0.12
9H	Wellshire Maintenance, 3801 E Hampden	\$0.12
9K	Willis Case Maintenance, 5199 Tennyson St	\$0.12
Mountain Parks		
10A	Morrison, 300 Union Ave, Morrison CO 80465	\$0.12
10B	Genessee, 26771 Genessee Lane, Golden, CO 80401	\$0.12
10C	Daniels Park, 8615 N Daniels Park Rd, Sedila, CO 80135	\$0.12
	*Should additional locations be required, delivery charges shall be similar to any above location for like mileage.	
Item No.	Description	Charge Per Month
	Emergency Procedures that will need to remain in place for the first few months of the contract. The weighting of this item will be for 4 months.	
11A	A 9500 gallon tanker at Central Platte location for #1 fuel storage	\$0.00
11B	70,000 gallons of offsite storage including at least 3 different tanks capable of holding a minimum of 10,000 gallons so the #1 diesel, #2 diesel and unleaded can be stored	\$0.00
11C	Proper Training for operators (must be provided regarding the transfer of fuel from the on-site tanker to Fleets tanker)	\$0.00
11D	Proper personnel to load Fleets tanker when retrieving fuel from your supplied storage (11B)	\$0.00

12	Additional Testing of Tanks when requested. List per Tank.	\$0.00
	This charge will only apply to additional requests for testing by City Personnel, NOT specifically outlined in the required above section for "Testing" of this proposal.	

**This Master Purchase Order is only valid for payment amounts up to \$499,999.99 until City Council has approved it as required by 3.2.6(e).



AGENDA ITEM: 11
MEETING DATE: 1/20/2015
TO: City Council
FROM: Julia Holland, HR Director
PRESENTER: Julia Holland, HR Director

TITLE:

City Employee Clinic (Healthstat) Contract Renewal

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to ratify and approve the contract dated May 2, 2014 between the City and Healthstat, Inc. for operation of the City Employee Clinic.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

SUMMARY:

This is an administrative action to ratify and approve the contract with Healthstat for operation of the Employee Clinic and related services. The agreement may cover operations and services for up to five years, and the cost for the term of the contract in 2015, will be an amount not to exceed \$526,000. Healthstat will provide clinic services to eligible participants during 2015 as outlined in the contract.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The amount of \$526,000 is within the projected and approved 2015 Budget.

BACKGROUND:

The City has renewed the contract with Healthstat annually since 2011 without authorization from Council, as the annual amount had not previously exceeded \$500,000. As a result of the projected 2015 amount, this is the first year the contract requires authorization from Council. The 2015

contract is within the projected and approved 2015 Budget. The projected amount of \$526,000 includes clinic administration fees, medical supplies, prescriptions, laboratory expenses, Health Risk Assessments, and our annual flu serum/shots.

REVIEWED BY CITY MANAGER:

William A. Cahill

LIST OF ATTACHMENTS:

None.



AGENDA ITEM: 12
MEETING DATE: 1/20/2015
TO: City Council
FROM: Steve Adams, Director, Water & Power Department
PRESENTER: Larry Howard, Senior Civil Engineer

TITLE:

A Resolution Approving the Second Amendment to the Agreement for Home Supply Big Dam Flood Repair

RECOMMENDED CITY COUNCIL ACTION:

Approve the Resolution.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (specify in the motion)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

SUMMARY:

This is an administrative action. On October 7, 2014 Council authorized a First Amendment to the Agreement for Home Supply Big Dam Flood Repair, which modified the January 15, 2014 Agreement. The First Amendment added needed work identified during construction and mitigation measures to protect against future flood damages to the original scope and increased the City's maximum 50% contribution to \$800,000. Home Supply's application to FEMA for the mitigation measures restarted the approval process for the entire project, causing delay in the expected FEMA and State Office of Emergency Management repayment schedule. All Project Worksheets submitted by Home Supply for the Project have been approved by FEMA and are currently being processed by the State, and payment is expected. This action, if approved by Council, will not change the Project scope of work. It will increase the City's not-to-exceed amount from \$800,000 to \$1M to fund continuation and completion of the FEMA eligible work of repair and mitigation (referred to as Phase I and Phase IA in the First Amendment) on a 50:50 basis, pending receipt of FEMA reimbursement by Home Supply. Proceeds from FEMA funds on all shared portions of the repairs and mitigation will also benefit Home Supply and the City on a 50:50 basis.

BUDGET IMPACT:

- Positive
 Negative
-

Neutral or negligible

Funds are available in the 2014 budget to cover this cost.

BACKGROUND:

Upon approval of the Resolution, the agreements between the City and Home Supply pertaining to the Phase I, FEMA eligible work on the dam will include the following:

- **January 15, 2014 Agreement (“Phase I Agreement”):** The Original Agreement between the City and Home Supply for the Big Dam Project for “Phase I” repair work. A copy is attached. Capped City’s 50% contribution at \$400,000.
 - **January 2, 2015 Amendment to Phase I Agreement:** Changed the scope of the Phase I Agreement to add the following FEMA eligible costs: replacement of additional weakened stone blocks which were identified as work progressed; completion of work on the cap of the dam; additional river relocation work; additional engineering costs; and a 20’x 6’ gated spillway and appurtenant structures and controls to provide protection from future flood damages. Capped City’s 50% contribution at \$800,000.
 - **Second Amendment to Phase I Agreement:** Increases the City’s “not-to-exceed” amount for Phase I work from \$800,000 to \$1,000,000 to allow completion on a 50:50 basis. FEMA reimbursements will be shared by the City and Home Supply on a 50:50 basis when received.
-

REVIEWED BY CITY MANAGER:

William D. Cabell

LIST OF ATTACHMENTS:

1. Resolution and Second Amendment to the Agreement for Home Supply Big Dam Flood Repairs (**Attachment A**)
2. January 15, 2014 Agreement (“Phase I Agreement”) For Home Supply Big Dam Repair. (**Attachment B**) The following is a link to the Agreement with its exhibits: <http://www.cityofloveland.org/modules/showdocument.aspx?documentid=21955>
This is Item 23 of the October 7, 2014 City Council packet and begins on page 450.
3. First Amendment to the Agreement for Home Supply Big Dam Repair (**Attachment C**)

RESOLUTION #R-11-2015**A RESOLUTION APPROVING THE SECOND AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR**

WHEREAS, the Consolidated Home Supply Ditch and Reservoir Company (“Home Supply”) owns and operates a diversion structure on the Big Thompson River known as the “Big Dam”; and

WHEREAS, the Big Dam is used by Home Supply and the City, which diverts water from the Big Thompson River at the Big Dam pursuant to a December 19, 1895 Agreement (the “1895 Agreement”); and,

WHEREAS, the Big Dam was significantly damaged by the September, 2013 flood (“Flood”); and

WHEREAS, the City and Home Supply are parties to the Agreement for Home Supply Big Dam Flood Repair dated January 15, 2014 and the First Amendment to Agreement for Home Supply Big Dam Flood Repair (referred to collectively as the “Amended Agreement”), pursuant to which they agreed to complete certain repairs to the Big Dam necessitated by the Flood and defined therein as the “Project”; and

WHEREAS, pursuant to the Amended Agreement, the City agreed to reimburse Home Supply for 50% of all Eligible Costs of the Project up to a total not-to-exceed amount of \$800,000 (defined as the “Reimbursement Obligation”); and

WHEREAS, Home Supply has continued the work to complete the Project as set forth in the Amended Agreement and as the Project has progressed it has become clear that additional costs have been or will be incurred by Home Supply in completing the Project. Further, Home Supply has not yet received anticipated reimbursements from FEMA; and

WHEREAS, in recognition of the additional costs that have been or will be incurred by Home Supply to complete the Project in advance of reimbursement from FEMA, the City and Home Supply desire to amend the City’s Reimbursement Obligation under the Amended Agreement from \$800,000 to \$1,000,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Second Amendment to Agreement for Home Supply Big Dam Flood Repair attached hereto as Exhibit A and incorporated herein by reference (the “Second Amendment”), is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the Second Amendment in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Second Amendment on behalf of the City of Loveland.

Section 4. That this Resolution shall take effect as of the date and time of its adoption.

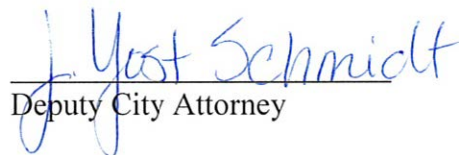
ADOPTED this 20th day of January, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A**SECOND AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR**

This **SECOND AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR** ("**Second Amendment**") is made and entered to as of _____, 2015, by and between the **CITY OF LOVELAND**, a Colorado home rule municipal corporation ("**City**") and **THE CONSOLIDATED HOME SUPPLY DITCH AND RESERVOIR COMPANY**, a Colorado mutual irrigation company ("**Home Supply**"). The City and Home Supply are sometimes referred to herein collectively as the "**Parties**" or individually as a "**Party**".

RECITALS

A. Home Supply owns and operates a diversion structure on the Big Thompson River known as the "**Big Dam**".

B. The Big Dam is used by Home Supply and the City, which diverts water from the Big Thompson River at the Big Dam pursuant to a December 19, 1895 Agreement (the "**1895 Agreement**").

C. The Big Dam was significantly damaged by the September, 2013 flood ("**Flood**").

D. The City and Home Supply are parties to the Agreement for Home Supply Big Dam Flood Repair dated January 15, 2014 and the First Amendment to Agreement for Home Supply Big Dam Flood Repair (referred to collectively as the "**Amended Agreement**"), pursuant to which they agreed to complete certain repairs to the Big Dam necessitated by the Flood and defined therein as the "**Project**". All capitalized terms used this this Second Amendment shall have the same meaning set forth in the Amended Agreement, except as set forth herein.

E. Pursuant to the Amended Agreement, the City agreed to reimburse Home Supply for 50% of all Eligible Costs of the Project up to a total not-to-exceed amount of \$800,000 (defined as the "**Reimbursement Obligation**").

G. Home Supply has continued the work to complete the Project as set forth in the Amended Agreement and as the Project has progressed it has become clear that additional costs have been or will be incurred by Home Supply in completing the Project. Further, Home Supply has not yet received anticipated reimbursements from FEMA.

H. In recognition of the additional costs that have been or will be incurred by Home Supply to complete the Project in advance of reimbursement from FEMA, the City

and Home Supply desire to amend the City's Reimbursement Obligation under the Amended Agreement from \$800,000 to \$1,000,000 as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated into this Second Amendment, the mutual promises contained in this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Amendment of City Reimbursement Obligation.** The City's Reimbursement Obligation under Section 4 of the Amended Agreement is hereby amended to provide that the City shall reimburse Home Supply for 50% of all Eligible Costs of the Project, including both the Phase 1 Work and the Phase 1 Additional Work, up to a total not-to-exceed amount of \$1,000,000.00 on the terms and conditions set forth therein.

2. **Effect of Modification.** Except as modified by this Second Amendment, the terms and conditions of the Amended Agreement shall remain in full force and effect according to the provisions thereof.

SIGNED by the Parties to be effective as of the date set forth above.

[signatures on following pages]

“CITY”

City of Loveland, Colorado

By: _____
Title: William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by William D. Cahill as City Manager of the City of Loveland, Colorado.

Witness my official seal.

My commission expires: _____ (SEAL)

Notary Public Signature

ATTACHMENT A

SECOND AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR

This **SECOND AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR** (“**Second Amendment**”) is made and entered to as of _____, 2015, by and between the **CITY OF LOVELAND**, a Colorado home rule municipal corporation (“**City**”) and **THE CONSOLIDATED HOME SUPPLY DITCH AND RESERVOIR COMPANY**, a Colorado mutual irrigation company (“**Home Supply**”). The City and Home Supply are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**”.

RECITALS

A. Home Supply owns and operates a diversion structure on the Big Thompson River known as the “**Big Dam**”.

B. The Big Dam is used by Home Supply and the City, which diverts water from the Big Thompson River at the Big Dam pursuant to a December 19, 1895 Agreement (the “**1895 Agreement**”).

C. The Big Dam was significantly damaged by the September, 2013 flood (“**Flood**”).

D. The City and Home Supply are parties to the Agreement for Home Supply Big Dam Flood Repair dated January 15, 2014 and the First Amendment to Agreement for Home Supply Big Dam Flood Repair (referred to collectively as the “**Amended Agreement**”), pursuant to which they agreed to complete certain repairs to the Big Dam necessitated by the Flood and defined therein as the “**Project**”. All capitalized terms used this this Second Amendment shall have the same meaning set forth in the Amended Agreement, except as set forth herein.

E. Pursuant to the Amended Agreement, the City agreed to reimburse Home Supply for 50% of all Eligible Costs of the Project up to a total not-to-exceed amount of \$800,000 (defined as the “**Reimbursement Obligation**”).

G. Home Supply has continued the work to complete the Project as set forth in the Amended Agreement and as the Project has progressed it has become clear that additional costs have been or will be incurred by Home Supply in completing the Project. Further, Home Supply has not yet received anticipated reimbursements from FEMA.

H. In recognition of the additional costs that have been or will be incurred by Home Supply to complete the Project in advance of reimbursement from FEMA, the City

and Home Supply desire to amend the City's Reimbursement Obligation under the Amended Agreement from \$800,000 to \$1,000,000 as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated into this Second Amendment, the mutual promises contained in this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Amendment of City Reimbursement Obligation.** The City's Reimbursement Obligation under Section 4 of the Amended Agreement is hereby amended to provide that the City shall reimburse Home Supply for 50% of all Eligible Costs of the Project, including both the Phase 1 Work and the Phase 1 Additional Work, up to a total not-to-exceed amount of \$1,000,000.00 on the terms and conditions set forth therein.

2. **Effect of Modification.** Except as modified by this Second Amendment, the terms and conditions of the Amended Agreement shall remain in full force and effect according to the provisions thereof.

SIGNED by the Parties to be effective as of the date set forth above.

[signatures on following pages]

“CITY”

City of Loveland, Colorado

By: _____
Title: William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by William D. Cahill as City Manager of the City of Loveland, Colorado.

Witness my official seal.

My commission expires: _____ (SEAL)

Notary Public Signature

ATTACHMENT B

AGREEMENT
For Home Supply Big Dam Flood Repair

This Agreement for Home Supply Big Dam Flood Repair ("Agreement") is made and entered into this 15th day of January, 2014, by and between the City of Loveland, a Colorado municipal corporation ("City"), and The Consolidated Home Supply Ditch And Reservoir Company, a Colorado mutual irrigation company ("Home Supply").

1. **Background.** The September 2013 flood ("Flood") significantly damaged the diversion structure owned and operated by Home Supply on the Big Thompson River adjacent to N. County Road 29 and the City's Chasteen's Grove Water Treatment Plant known as the Big Dam ("Big Dam"). The Big Dam is used by Home Supply and the City, which diverts water from the Big Thompson River at the Big Dam pursuant to a December 19, 1895 Agreement with Home Supply, a copy of which is attached hereto as Exhibit A and incorporated herein by reference ("1895 Agreement"). Home Supply and the City need to repair the Big Dam as soon as possible so that the parties' respective water diversions can be made on a consistent and reliable basis. The 1895 Agreement obligates the City to pay a portion of the costs required to repair the Big Dam (calculated by the parties to be 11.36%). Because operation of the Big Dam is critical to the City's municipal water supply, the City has agreed that it is in the City's best interest to increase its contribution toward the costs required to repair damage sustained by the Big Dam as a result of the Flood on the terms and conditions set forth herein.

2. **Project Scope.** This Agreement shall be limited to work required to repair damage sustained by the Big Dam as a result of the Flood ("Project"), which is generally described as "Phase 1" in the October 16, 2013 report from Deere & Ault Consultants, Inc. ("Deere & Ault Report"), a copy of which is attached hereto as Exhibit B and incorporated herein by reference. This Agreement does not and shall not be construed to include work required to address deferred operating and maintenance costs for the Big Dam, which are generally described as "Phase 2" in the Deere & Ault Report.

3. **Responsibilities of Home Supply.**

a. Home Supply shall accomplish the Project according to the requirements of the Federal Emergency Management Agency ("FEMA") in order to maximize potential reimbursement for the Project, and the requirements of the Colorado Water Conservation Board ("CWCB") to ensure compliance with the requirements of the loan received by Home Supply from the CWCB for the Project.

b. Home Supply shall require its contractor to carry general liability insurance in an amount sufficient to fully insure the Project, and to name the City as an additional insured under such policy.

c. Home Supply shall provide the City and its agents with unrestricted access to the Project site at all times for purposes of Project observation and inspection. Said inspection shall be for City purposes only and shall not be for the purpose of approving or accepting any work performed by Home Supply's contractor.

d. Home Supply shall provide the City and its agents with full and timely access to all Project contracts, designs, drawings, reports, invoices, and cost documentation.

c. Home Supply shall invoice the City for its Reimbursement Obligation, defined below, not more frequently than monthly. Each invoice shall be accompanied by documentation sufficient to support the requested payment as determined by the City. Home Supply's failure to provide sufficient supporting documentation upon 30 days' written request from the City shall be grounds for delayed payment or nonpayment of the unsupported payment request.

f. Home Supply shall provide the City and its agents with reasonable access to the Project site and Home Supply's adjacent property for the purpose of performing any work necessary to repair the City's intake located on the left (north) abutment of the Big Dam.

4. Responsibilities of City.

a. The City shall reimburse Home Supply for 50% of all Eligible Costs up to a total not-to-exceed amount of \$400,000 ("Reimbursement Obligation"). For the purposes of this Agreement, "Eligible Costs" shall mean those costs incurred by Home Supply to complete the Project, minus any grants received by Home Supply from FEMA and other grant sources. For the purpose of this paragraph, "grant" shall mean any funding the terms of which do not require repayment by Home Supply. The City's Reimbursement Obligation shall expire on December 31, 2015 unless extended by the parties in writing prior to said date.

b. Except as otherwise provided in this Agreement, the City shall pay Home Supply within 30 days of receipt of each invoice.

c. The City shall be responsible for the safety of its personnel and agents at the Project site and shall follow all applicable laws and regulations for construction site safety.

5. Full Satisfaction of City's Project Cost Contributions Under the 1895 Agreement. The City's promise to pay the Reimbursement Obligation on the terms and conditions set forth herein shall discharge and release the City from any obligation for financial contribution to the Project under the 1895 Agreement. In other words, the City shall not be required to pay Home Supply an additional 11.36% of Project costs above and beyond the Reimbursement Obligation.

6. Overpayments by City. If, after final accounting of all Project costs, the City determines that it paid Home Supply monies in excess of the City's Reimbursement Obligation, the City shall notify Home Supply of such overpayment in writing and request a refund. Home

Supply shall refund all such overpayments to the City within 30 days of receiving written notice from the City.

7. **Term.** Unless earlier terminated by either party as permitted herein, this Agreement shall be effective from the date set forth above through December 31, 2015, or until all refunds due to the City from Home Supply pursuant to paragraph 6 of this Agreement are received, whichever is later.

8. **Appropriation.** To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

9. **Time of the Essence.** Time is of the essence for this Agreement and for each and every term and condition herein.

10. **Default; Termination.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party fails to perform according to the terms of this Agreement, such party may be declared in default. If the defaulting party does not cure said breach within ten days of written notice thereof, the non-defaulting party may terminate this Agreement immediately upon written notice of termination to the other. In the event of such termination by the City, the City shall be liable to pay its share of Eligible Costs incurred by Home Supply up to the date of termination, but the City shall not be liable to pay any portion of Eligible Costs incurred by Home Supply beyond that date.

11. **Future Cooperation on Phase 2 Work.** Following successful completion of the Project, and conditioned upon the parties' full satisfaction of their respective obligations under this Agreement, representatives of the City and Home Supply shall meet to discuss potential contributions by the City above and beyond those required in the 1895 Agreement for deferred operating and maintenance costs for the Big Dam, which are generally described as "Phase 2" in the Deere & Ault Report; provided, however, that nothing in this Agreement is intended or shall be construed to commit the City to pay any costs for Phase 2 work above and beyond the amount set forth in the 1895 Agreement.

12. **Notices.** Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

Witness my official seal.
My commission expires: 8-8-2017

(SEAL)

[Signature]
Notary Public Signature

HEIDI J LEATHERWOOD
Notary Public
State of Colorado
NOTARY ID 20134047790
MY COMMISSION EXPIRES August 8, 2017

**The Consolidated Home Supply Ditch And
Reservoir Company**

By: [Signature]

Title: Minerva Lee, President

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 15th day of January, 2014
by Minerva Lee as President of The Consolidated Home Supply Ditch And Reservoir Company.

Witness my official seal.
My commission expires: July 30, 2016

(SEAL)

Rebecca D. Morris
Notary Public Signature

REBECCA D MORRIS
Notary Public
State of Colorado
Commission # 19864016647
My Commission Expires Jul 30, 2016

FIRST AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR

This **FIRST AMENDMENT TO AGREEMENT FOR HOME SUPPLY BIG DAM FLOOD REPAIR** ("**First Amendment**") is made and entered to effective *nunc pro tunc*, as of August 1, 2014, by and between the **CITY OF LOVELAND**, a Colorado home rule municipal corporation ("**City**") and **THE CONSOLIDATED HOME SUPPLY DITCH AND RESERVOIR COMPANY**, a Colorado mutual irrigation company ("**Home Supply**"). The City and Home Supply are sometimes referred to herein collectively as the "**Parties**" or individually as a "**Party**".

RECITALS

A. Home Supply owns and operates a diversion structure on the Big Thompson River known as the "**Big Dam**".

B. The Big Dam is used by Home Supply and the City, which diverts water from the Big Thompson River at the Big Dam pursuant to a December 19, 1895 Agreement (the "**1895 Agreement**").

C. The Big Dam was significantly damaged by the September, 2013 flood ("**Flood**").

D. The City and Home Supply are parties to the Agreement for Home Supply Big Dam Flood Repair dated January 15, 2014 (the "**Agreement**"), pursuant to which they agreed to complete certain repairs to the Big Dam necessitated by the Flood and defined therein as the "**Project**". All capitalized terms used in this First Amendment shall have the same meaning set forth in the Agreement, except as set forth herein.

E. The Project as defined in the Agreement includes the work required to repair damage sustained by the Big Dam as a result of the Flood, which is generally described as "Phase 1" in the Deere & Ault Report attached to the Agreement as Exhibit B (the "**Phase 1 Work**"), and specifically excluded work required to address deferred operating and maintenance costs for the Big Dam generally described as "Phase 2" in the Deere & Ault Report (the "**Phase 2 Work**"). The Phase 1 Work is eligible for funding from the Federal Emergency Agency ("**FEMA**").

F. Pursuant to the Agreement, the City agreed to reimburse Home Supply for 50% of all Eligible Costs of the Project up to a total not-to-exceed amount of \$400,000 (defined as the "**Reimbursement Obligation**").

G. Home Supply has undertaken the work to complete the Project as set forth in the Agreement and as the Project has progressed it has become clear that additional Flood related mitigation and repairs to the Big Dam are required and additional costs have been or will be incurred by Home Supply in completing the Project.

H. In recognition of the need for such additional Flood related mitigation and repair and the additional costs that have been or will be incurred by Home Supply to complete the Project, the City and Home Supply desire to amend the Agreement to expand the scope of the Project and the City's Reimbursement Obligation as set forth in this First Amendment.

I. In addition to this First Amendment to the Agreement, the Parties are simultaneously negotiating a separate agreement for the Phase 2 Work (the "Phase 2 Agreement") in order to complete critical operation and maintenance work on the Big Dam that is not related to the Flood and is not eligible for funding from FEMA.

NOW, THEREFORE, in consideration of the foregoing Recitals which are incorporated into this First Amendment, the mutual promises contained in this First Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Amendment of Project Scope.** The Project as defined in Section 2 of the Agreement is hereby amended to include, in addition to the Phase 1 Work defined in the Agreement, the additional Flood repair work set forth in the construction plans and technical specifications entitled "Consolidated Home Supply Big Dam Diversion Structure Repairs" dated November 27, 2014, prepared by Deere & Ault, and included herein by reference (the "**Plans and Specifications**") and referred to herein as the "**Phase 1 Additional Work**". By mutual consent of Home Supply and the City, these "Plans and Specifications" may be altered as special conditions are encountered. The Phase 1 Additional Work includes, but is not limited to the following:

- a. all gravity dam demolition, granite removal and river diversion work necessary to relocate the Home Supply diversion structure several feet to the right (south) of its original location, which became necessary when the right (south) buttress of the Big Dam was reconstructed; and
- b. eligible work on the Home Supply diversion system that was altered during reconstruction of the right (south) abutment anchor point of the Big Dam and necessary to reestablish the diversion capacity in the existing Home Supply flumed conveyance channel including the Home Supply main headgate; and
- c. design and construction of a river access road along the south side of the Home Supply Canal; and
- d. design and construction of a gated spillway, including a mechanical headgate (collectively the "**Gated Spillway**"), and flow diversion walls that will be located adjacent to the City's river diversion structure to provide mitigation against future flood damage; and
- e. design and construction of a maintenance access road, compressor building, control system, power supply to the compressor building, conduit control cables and conductors, and communication interface with the supervisory control and data acquisition ("SCADA") computer system for operation of the mechanical headgate installed as a part of the Gated Spillway; and

- f. replacement of additional weakened stone blocks that have been identified in the Phase 1 Work, completion of work on the cap of the Big Dam; and
- g. additional river relocation work and additional engineering costs associated with the foregoing.

In addition, the Phase 1 Additional Work may include the following work, the costs of which shall be borne independently by each Party and shall not be included in the Eligible Costs, 50% of which are to be borne by the City under Section 4 of the Agreement in calculating the City's Reimbursement Obligation:

- h. work on the Home Supply diversion structure and conveyance channel other than that described above; and
- i. work on the City diversion structure and conveyance channel other than that described above, including the cutoff wall on the left (north) abutment adjacent to the City's diversion structure and rehabilitation of the City's diversion gate.

The Phase 1 Additional Work shall be accomplished by Home Supply in accordance with the requirements of FEMA and the approved FEMA Project Worksheet for such Additional Work.

2. **Amendment of City Reimbursement Obligation.** The City's Reimbursement Obligation under Section 4 of the Agreement is hereby amended to provide that the City shall reimburse Home Supply for 50% of all Eligible Costs of the Project, including both the Phase 1 Work and the Phase 1 Additional Work, up to a total not-to-exceed amount of \$800,000.00. It is the intent of the Parties to share Project costs on a 50:50 basis, as defined in Article 1 of this First Amendment to Agreement. Staff intends to request that City Council authorize, on January 20, 2015, a further amendment to the Agreement and First Amendment to the Agreement seeking to increase the current Project cap of \$800,000 to \$1,000,000. The Parties anticipate that the costs of the Project, including the Phase 1 Work and the Phase 1 Additional Work, will be eligible for reimbursement by FEMA and it is the intent of the Parties share the unreimbursed cost of the Project on a 50:50 basis. However, if any cost of completing the Project, including the Phase 1 Work and the Phase 1 Additional Work, is completely or partially disallowed as a result of state or federal audit or review after completion of the Project, the Parties shall also share such a disallowance on a 50:50 basis. Either Party shall have the right to appeal and/or otherwise challenge any state or federal disallowance at its own cost and expense, and the other Party agrees to cooperate as reasonably necessary to facilitate such an appeal or challenge provided the other Party is not obligated to incur any expense in connection with such cooperation.

3. **Ownership of Repaired and Reconstructed Facilities.** The Parties hereby agree that the Big Dam and associated facilities repaired or installed as a part of the Project (including the Phase 1 Work and Phase 1 Additional Work) are owned as follows:

- a. Dam and abutments (arch & gravity) – Home Supply

- b. Gated Spillway – Home Supply
- c. Gated Spillway approach and outlet flow diversion walls and concrete access walkway (parallel to City’s inlet channel) – Home Supply
- d. Compressor building (including all facilities within, such as air compressors, receiver tank, gages, level elements, control systems (Programmable Logic Controller (“PLC”), local panel interface, enclosure), heating, ventilation, electrical and ancillary systems) and the air supply line between the spillway gate and compressor building – Home Supply
- e. Power and communication facilities external to the compressor building (including mini-power center and SCADA system) – City

All other facilities associated with the Big Dam and the related diversion structures shall remain under the existing and separate ownership of the Parties.

4. **Access and Easements.** In addition to any rights of access granted under the Agreement, the Parties agree to provide access and easement rights as follows:

- a. Home Supply hereby grants to the City and its agents a license for unrestricted access to the Project site at all times for the purposes of Project observation and inspection. Said inspection shall be for City purposes only and shall not be for the purpose of approving or accepting any work performed by Home Supply’s contractor.
- b. The City hereby grants to Home Supply and its agents a license for unrestricted access to the Project site at all times for the purposes of Project construction, observation and inspection.
- c. Subject to the approval of the Loveland City Council, the City shall grant an easement to Home supply for construction of and access to the compressor building to be constructed as a part of the Project on City property. The City shall draft and provide an easement for review and reasonable approval of Home Supply and after such review and approval, shall present the easement to the Loveland City Council for action.

5. **Operation and Maintenance Responsibilities of City.** The City shall be responsible for operation and maintenance of the Gated Spillway. The City shall perform all work necessary to operate and maintain the Gated Spillway, compressor building, air supply line between the gate and compressor building, the power and communications interface with the SCADA system, including without limitation: (i) performing inspections or replacement in accordance with the manual provided by the Gated Spillway manufacturer (Obermeyer Hydro, Inc.); (ii) compressor building maintenance and upkeep; (iii) air compressor maintenance; (iv) air dryer maintenance; (v) lighting maintenance; (vi) heater and exhaust fan maintenance; (vii) airline inspection and maintenance; (viii) stilling well maintenance; (ix) level transmitter maintenance; (x) electrical troubleshooting and maintenance; (xi) electric transformer (mini power center)

maintenance; (xii) PLC troubleshooting and maintenance; and (xiii) control and communication components troubleshooting and maintenance.

6. Additional Provisions.

- a. Following successful completion of the Project, including the Phase 1 Work and the Phase 1 Additional Work, and the 50% contribution to the final cost of the Project by each party irrespective of any specified capped amount, and conditioned upon the Parties' full satisfaction of their respective obligations under the Agreement, as amended by this First Amendment, and under the Phase 2 Agreement, representatives of the City and Home Supply shall meet to discuss operational procedures and potential contributions by the City above and beyond those required in the 1895 Agreement for deferred operating and maintenance costs for the Big Dam.
- b. The City and Home Supply will work cooperatively during an emergency to reestablish operation of the Big Dam and the Gated Spillway. As owner of the Big Dam, Home Supply will cooperate with appropriate federal, state and local agencies to secure necessary permits, funding, and work access to the site.
- c. In addition to any insurance required under the Agreement, Home Supply shall maintain a policy of builders' risk insurance at all times during construction of the Project and completion of any work under the Phase 2 Agreement and shall name the City as an additional insured under such policy. Home Supply shall provide the City with a certificate of insurance, which certificate shall provide that the insurance shall not be cancelled or reduced in amount except on not less than 30 days' prior written notice to the City. The cost of the premium for the policy will be shared equally by Home Supply and the City, as a part of the cost of the Project.
- d. The Parties agree that the future discussion of their respective obligations under the 1895 Agreement for ongoing operating and maintenance cost for the Big Dam after completion of the Project and the work under the Phase 2 Agreement, as contemplated by Section 6.a above, shall include discussion of a release by Home Supply of all claims against the City for injury or damage to Home Supply resulting from or arising out of the City's operation, maintenance, and use of the Gated Spillway.
- e. Except as modified by this First Amendment, the terms and conditions of the Agreement shall remain in full force and effect according to the provisions thereof.

SIGNED by the Parties to be effective as of the date set forth above.


CITY OF LOVELAND

ECONOMIC DEVELOPMENT OFFICE

 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 13
MEETING DATE: 1/20/2015
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2015 City of Loveland Budget to Reappropriate Funding Approved in 2014 for the Purchase of Property and other Costs Associated with Downtown Land Purchases for the South Catalyst Project

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

This is an administrative action. The ordinance reappropriates funding of \$3,218,877.30 approved in 2014 for the acquisition of Downtown property in support of the South Catalyst redevelopment project. The proposed project, a partnership with the Michaels Development Company and Larimer County, is expected to result in a vertically dense mixed-use project that would include office, residential and retail. The total investment is expected to generate between \$50 to \$70 million. Ten properties were purchased in 2014 with an additional property under contract scheduled to close in February, 2015. This action does not increase the Council's original appropriations of funds; it only continues funding into early Fiscal Year 2015 to allow purchases of properties. On January 6, 2015 City Council approved the first reading of the supplemental appropriation by a vote of six to three.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The funding for the appropriation of \$3,218,877.30 is from Unreserved Fund Balance in the General Fund. The appropriation of this fund balance reduces the flexibility to fund other projects.

BACKGROUND:

Staff has engaged commercial real estate brokers to assemble property in downtown in Downtown Loveland. Council approved an initial supplemental appropriation of \$250,000 for earnest money and other costs associated with downtown land purchases in April, 2014. In July of 2014, \$6.25 million was appropriated for the purchase of property for the South Catalyst Project.

The ordinance appropriates funding approved but not expended in 2014. The action does not increase the funding for the project; it simply continues the funding into the 2015 Fiscal Year.

Ten properties were successfully closed in 2014 and the property at 320 N Cleveland, owned by Banner, is under contract with a scheduled closed date in February, 2015. The remaining properties are in negotiation.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING January 6, 2015

SECOND READING January 20,
2015

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2015 CITY OF LOVELAND BUDGET TO REAPPROPRIATE FUNDING APPROVED IN 2014 FOR THE PURCHASE OF DOWNTOWN PROPERTY AND OTHER COSTS ASSOCIATED WITH THE SOUTH CATALYST PROJECT

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2015; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2015, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of \$3,218,877 from Council Reserves in the General Fund are available for appropriation. Revenues in the total amount of \$3,218,877 are hereby appropriated for the purchase of property and other costs associated with the South Catalyst Project. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget		
General Fund 100		
Revenues		
Fund Balance		3,218,877
Total Revenue		3,218,877
Appropriations		
100-18-180-1500-49010	Land	3,218,877
Total Appropriations		3,218,877

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this ____ day of January, 2015.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney