



COUNCIL AGENDA ITEM ERRATA SHEET
MEETING DATE: May 3, 2016

TO: City Council
FROM: Finance
DATE: 5/3/2016
AGENDA ITEM: 3J

Attached please find an amended memo for Agenda Item 3J, authorizing the issuance by the City of Boulder, Colorado, of its Water and Sewer Revenue Bonds, Series 2016. We apologize for any inconvenience from this late submittal. The following changes are provided:

- 1) The actual Par Amount of the Water and Sewer Competitive Bond Sale on 5/3/2016 is now included on the Agenda Memo page 1 in red.
- 2) Details of bids placed and a bond maturity schedule with coupon rates are now included on pages 2 and 3 in red.
- 3) The Ordinance on page 1 now shows the actual par amount of the bond issue.
- 4) The Ordinance on page 17 now shows the bond maturity schedule with coupon rates.



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: May 3, 2016

AGENDA TITLE:

Introduction, first reading, consideration of a motion to publish by title only, and adopt as an emergency measure Ordinance No. 8117 authorizing the issuance by the City of Boulder, Colorado, of its Water and Sewer Revenue Bonds, Series 2016, in the aggregate principal amount of **\$34,145,000** for the purpose of providing funds to water and sewer improvements by the Utility and pay the costs of issuance of the Series 2016 Bonds; prescribing the form of said Series 2016 Bonds; providing for the sale of said Series 2016 Bonds; providing for the payment and redemption of said Series 2016 Bonds from and out of the revenues derived directly or indirectly by the City from the Water and Sewer Fee billed to customers of the City's water and sewer systems; providing other details and approving other documents in connection with said Series 2016 Bonds; and declaring an emergency and providing the effective date hereof.

PRESENTERS:

Jane S. Brautigam, City Manager
Maureen Rait, Executive Director of Public Works
Jeffrey Arthur, Director of Public Works for Utilities
Tom Carr, City Attorney
Kathy Haddock, Senior Assistant City Attorney
Bob Eichen, Chief Financial Officer
Cheryl Pattelli, Director of Finance
Ron Gilbert, Assistant Controller
Ken Baird, Financial Manager, Utilities

EXECUTIVE SUMMARY:

On April 19, 2016, City Council approved Resolution No. 1183 authorizing the City Manager to call for a public sale of City of Boulder, Colorado (acting through its Water and Sewer Utility Enterprise) Water and Sewer Revenue Bonds, Series 2016. The sale of the bonds was held today, May 3, 2016 and was done by competitive sale.

The bond proceeds will be used to finance water and sewer improvements by the Utility and pay the costs of issuance of the Series 2016 Bonds. The bond sale ordinance must be adopted as an emergency measure because the bid for the bonds is only valid for 24 hours.

Change in principal amount from original Agenda Memo – **(\$1,355,000)**

Interest rate bids by maturity –

Maturity (December 1)	Principal Amount	Interest Rate (Coupon)
2016	\$690,000	2.00%
2017	1,445,000	2.00%
2018	1,475,000	2.00%
2019	1,500,000	2.00%
2020	1,535,000	2.00%
2021	1,565,000	2.00%
2022	1,595,000	2.00%
2023	1,625,000	2.00%
2024	1,660,000	2.00%
2025	1,690,000	2.00%
2026	1,725,000	2.25%
2027	1,765,000	2.25%
2028	1,805,000	2.50%
2029	1,850,000	2.50%
2030	1,895,000	2.75%
2031	1,950,000	2.75%
2032	2,000,000	3.00%
2033	2,060,000	3.00%
2034	2,125,000	3.125%
2035	2,190,000	3.125%

Winning Bidder: Bank of America Merrill Lynch

Bid amounts and total interest cost (TIC): 2.266569

Bidder Name	TIC
Bank of America Merrill Lynch	2.266569
Citigroup Global Markets Inc.	2.320285
Wells Fargo Bank, National Association	2.389007
Janney Montgomery Scott LLC	2.399653
Morgan Stanley & C, LLC	2.426041
J.P. Morgan Securities LLC	2.432289
Hilltop Securities Inc.	2.435281
Raymond James & Associates	2.436360
KeyBanc Capital Markets	2.466629
Stifel Nicolaus & Company, Inc.	2.478656

STAFF RECOMMENDATION:

Staff requests council consideration of this matter and action in the form of the following motion:

A motion to publish by title only, and adopt as an emergency measure Ordinance No. 8117 authorizing the issuance by the City of Boulder, Colorado, of its Water and Sewer Revenue Bonds, Series 2016, in the aggregate principal amount of \$34,145,000 for the purpose of providing funds to water and sewer improvements by the Utility and pay the costs of issuance of the Series 2016 Bonds; prescribing the form of said Series 2016 Bonds; providing for the sale of said Series 2016 Bonds; providing for the payment and redemption of said Series 2016 Bonds from and out of the revenues derived directly or indirectly by the City from the Water and Sewer Fee billed to customers of the City's water and sewer systems; providing other details and approving other documents in connection with said Series 2016 Bonds.

COUNCIL SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- **Economic:** Maintaining the structural integrity of the wastewater collection system is one of the critical components of the utility's asset management goals. The cured-in-place pipe (CIPP) lining rehabilitation program is a very cost effective way to extend the infrastructure's useful life compared to full replacement. The wastewater treatment facility (WWTF) upgrades using bond proceeds represent a long-term economically viable solution to meet Colorado Department of Public Health and Environment (CDPHE) effluent regulations.
- **Environmental:** Maintaining the wastewater collection system is critical to meeting the City's environmental goals by minimizing sanitary sewer overflows. The WWTF upgrades will allow the facility to meet more stringent CDPHE nitrogen effluent discharge regulations.
- **Social:** Achieving quality and reliable wastewater conveyance and treatment is necessary to the health, safety, and well being of the community. Wastewater conveyance and treatment is a critical Public Works goal and priority

OTHER IMPACTS:

- Staff time: Administration of the revised debt service on this bond issue is part of normal staff time that is included in the appropriate department budgets.:
- Fiscal impact: The issuance of the bonds will address major capital needs of the utility. The rates required to finance the annual debt service payments are included in the rate increases that were approved by City Council and implemented in January of 2016.

ADDITIONAL BOND INFORMATION

- The City applied to Moody's and Standard & Poor's for ratings on these bonds. They are two of the major rating services in the United States. On April 19th, 2016, the City was notified the 2016 Water and Sewer Revenue Bonds were given ratings of Aa1 from Moody's and AAA from Standard and Poor's. These are strong ratings for a city the size of Boulder. Credit ratings are made after analyzing the credit worthiness of the issuer and the quality of the bonds being issued. The ratings are then used by potential buyers of the bonds as one of the determinants in whether they will purchase the bonds or not. The highest investment grade rating given is AAA and the lowest is BBB. The higher the

ratings received from the rating agencies the lower the interest rate paid by the issuer of the bonds.

ATTACHMENT A: Ordinance

ORDINANCE NO. 8117

AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF BOULDER, COLORADO (ACTING THROUGH ITS WATER UTILITY ENTERPRISE AND ITS WASTEWATER UTILITY ENTERPRISE), OF ITS WATER AND SEWER REVENUE BONDS, SERIES 2016, IN THE PRINCIPAL AMOUNT OF \$34,145,000, FOR THE PURPOSE OF PROVIDING FUNDS (A) TO CONSTRUCT, ACQUIRE, IMPROVE AND EQUIP CERTAIN TREATMENT AND TRANSMISSION FACILITIES IN THE CITY'S WATER SYSTEM, (B) TO ESTABLISH A RESERVE FUND, AND (C) TO PAY NECESSARY, INCIDENTAL AND APPURTENANT EXPENSES IN CONNECTION THEREWITH, INCLUDING THE COSTS OF ISSUANCE OF THE 2016 BONDS; PROVIDING THE FORM, TERMS AND CONDITIONS OF THE 2016 BONDS, THE MANNER AND TERMS OF THEIR ISSUANCE, THE MANNER OF THEIR EXECUTION, THE METHOD OF PAYING THEM AND THE SECURITY THEREFOR; PROVIDING FOR THE COLLECTION AND DISPOSITION OF GROSS INCOME DERIVED FROM THE OPERATION OF THE MUNICIPAL SANITARY SEWER SYSTEM AND THE MUNICIPAL WATER SYSTEM; PROVIDING FOR THE PAYMENT OF THE 2016 BONDS FROM THE NET INCOME OF THE WATER SYSTEM AND SANITARY SEWER SYSTEM; PROVIDING OTHER DETAILS CONCERNING THE 2016 BONDS, THE WATER SYSTEM, THE SANITARY SEWER SYSTEM, AND FUNDS APPERTAINING THERETO INCLUDING, BUT NOT LIMITED TO, COVENANTS AND AGREEMENTS IN CONNECTION THEREWITH; PROVIDING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY AND PROVIDING THE EFFECTIVE DATE HEREOF.

All capitalized terms used herein shall have the meaning set forth in Section 1.02 of this Instrument.

WHEREAS, the City of Boulder (the "City"), in the County of Boulder and the State of Colorado (the "State"), is a municipal corporation duly organized and existing as a home rule city under Article XX of the Constitution of the State and the Charter of the City (the "Charter"); and

WHEREAS, the City now owns, operates and maintains:

(a) a municipal water system (as hereinafter defined, the "Water System"); and

(b) a municipal sanitary sewer system (as hereinafter defined, the "Sewer System") (which Water System and Sewer System are herein jointly designated as the "Facilities"); and

WHEREAS, Ordinance No. 5601, introduced, read, passed and adopted on the 9th day of November 1993 (the "Enterprise Ordinance"), added new sections 11-1-55 to -61 to the Boulder

Revised Code, 1981 (the “City Code”) providing for the establishment of the City’s water system as a “water activity enterprise” within the meaning of Part 1 of Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and naming the City’s water system the “Water Utility Enterprise”; and

WHEREAS, the Enterprise Ordinance also added new sections 11-2-36 to -42 to the City Code, providing for the establishment of the City’s sanitary sewer system as a “water activity enterprise” within the meaning of Part 1 of Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and naming the City’s sanitary sewer system the “Wastewater Utility Enterprise”; and

WHEREAS, pursuant to the Charter and the City Code, the City Council of the City (the “Council”) is the governing body of the Water Utility Enterprise and the Wastewater Utility Enterprise and the Council need not announce or acknowledge that actions taken by the Council are taken by the governing body of the Water Utility Enterprise and/or the Wastewater Utility Enterprise; and

WHEREAS, pursuant to the Charter and the City Code, the Water Utility Enterprise and the Wastewater Utility Enterprise may issue revenue bonds payable from revenues derived from the operation of such enterprise without voter approval so long as such enterprise qualifies as an “Enterprise” within the meaning of TABOR (as hereinafter defined) in the City’s fiscal year of the issuance of such revenue bonds; and

WHEREAS, Article X, Section 20 of the State Constitution (“TABOR”) requires that bonded debt (other than certain refunding bonds) not be issued without prior voter approval unless the issuer is an “Enterprise” as defined in TABOR; and

WHEREAS, the Water Utility Enterprise and the Wastewater Utility Enterprise are “Enterprises” within the meaning of TABOR; and

WHEREAS, the current outstanding bonds payable from, and the payment of which is secured by a pledge of revenues derived from the operation of the Facilities, i.e., both the Sewer System and Water System, or any part thereof, are the bonds designated as (a) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2005B (the “2005B Bonds”) issued in the original principal amount of \$7,900,000 and currently outstanding in the aggregate principal amount of \$830,000 payable as to both principal and interest solely out of the Net Income derived from the operation of the Sewer System and the Water System and issued in accordance with Ordinance No. 7421 of the City; (b) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2007 (the “2007 Bonds”) issued in the original principal amount of \$25,935,000 and currently outstanding in the aggregate principal amount of \$8,180,000, payable to both principal and interest solely out of the Net Income derived from operation of the Sewer System and Water System and issued in accordance with Ordinance No. 7524 of the City; (c) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2010 (the “2010 Bonds”) issued in the original principal amount of \$9,980,000 and currently outstanding in the

aggregate principal amount of \$7,960,000, payable to both principal and interest solely out of the Net Income derived from operation of the Sewer System and Water System and issued in accordance with Ordinance No. 7754 of the City; (d) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2011 (the “2011 Bonds”) issued in the original principal amount of \$18,335,000 and currently outstanding in the aggregate principal amount of \$10,910,000, payable to both principal and interest solely out of the Net Income derived from operation of the Sewer System and Water System and issued in accordance with Ordinance No. 7781 of the City; (e) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2012 (the “2012 Bonds”) issued in the original principal amount of \$24,325,000 and currently outstanding in the aggregate principal amount of \$24,325,000, payable to both principal and interest solely out of the Net Income derived from operation of the Sewer System and Water System and issued in accordance with Ordinance No. 7875 of the City; and (f) the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise) Water and Sewer Revenue Bonds, Series 2015 (the “2015 Bonds”) issued in the original principal amount of \$10,075,000 and currently outstanding in the aggregate principal amount of \$10,075,000, payable to both principal and interest solely out of the Net Income derived from operation of the Sewer System and Water System and issued in accordance with Ordinance No. 8074 of the City (the 2005B Bonds, the 2007 Bonds, the 2010 Bonds, the 2011 Bonds, the 2012 Bonds and the 2015 Bonds shall be collectively referred to herein as the “Outstanding Parity Bonds”); and

WHEREAS, the Council has determined, and does hereby declare its intent to issue its Water and Sewer Revenue Bonds, Series 2016 in the principal amount of \$34,145,000 (the “2016 Bonds”) pursuant to the Charter and the Supplemental Public Securities Act (being Part 2, Articles 57, Title 11 of the Revised Statutes of the State of Colorado) as now in effect and as it may from time to time be amended (the “Supplemental Public Securities Act”), for the purpose of providing funds to construct, acquire, improve and equip certain treatment and transmission facilities in the City’s water system, establishing a reserve fund and paying all necessary, incidental and appurtenant expenses in connection therewith, including the costs of issuance of the 2016 Bonds; and

WHEREAS, except as hereinabove provided with respect to the remaining Outstanding Parity Bonds, the City has not pledged, nor in any way hypothecated, revenues derived and to be derived from the operation of the Facilities to the payment of any bonds or for any other purpose (excluding proceedings authorizing the issuance of any bonds which have heretofore been paid in full, or provision for the payment thereof in full has been made), with the result that the resulting Net Income may now be pledged lawfully and irrevocably for payment of the 2016 Bonds herein authorized on a parity with the Outstanding Parity Bonds as provided herein; and

WHEREAS, Ordinance No. 7421, Ordinance No. 7524, Ordinance No. 7754, Ordinance No. 7781, Ordinance No. 7875 and Ordinance No. 8074 (collectively, the “Prior Ordinances”) introduced, read, passed and adopted on the 3rd day of May, 2005, the 8th day of November, 2005, the 5th day of June, 2007, the 7th day of September, 2010, the 18th day of January, 2011, the 16th day of October, 2012, and the 1st day of September, 2015, respectively, include certain

financial tests that must be met prior to the issuance of any additional bonds payable from the Net Income; and

WHEREAS, the 2016 Bonds are being issued in compliance with the Prior Ordinances authorizing the Outstanding Parity Bonds; and

WHEREAS, the proceeds of the 2016 Bonds shall bear interest payable semiannually on the first days of June and December in each year, commencing December 1, 2016; and the 2016 Bonds shall mature on the first day of December in the years designated by the Council during the term of the 2016 Bonds; and

WHEREAS, it is advisable and in the best interests of the City to make appropriate provisions herein for the future issuance of additional bonds or other securities payable from revenues to be derived from the Facilities, which additional bonds or other securities, if and when authorized in accordance with law, will, subject to designated conditions, occupy a position of parity and enjoy an equality of lien on the resulting Net Income from the operation and use of the Facilities with the Outstanding Parity Bonds and the 2016 Bonds herein authorized, and further to prescribe the restrictions, covenants and limitations which shall govern the issuance of any additional bonds or any other securities payable from such Net Income; and

WHEREAS, the gross income derived from the Facilities is in excess of requirements for their operation and maintenance; and pursuant to the laws of the State and the Charter, such excess income may lawfully be pledged to secure the payment of debt service on the 2016 Bonds; and

WHEREAS, the 2016 Bonds shall be secured by an irrevocable and first and prior (but not exclusive) lien upon the Net Income and upon moneys deposited from time to time in the Bond Fund and the Reserve Fund for the 2016 Bonds; and

WHEREAS, after advertising the sale of the 2016 Bonds, the Council hereby finds, in accordance with Section 98 of the Charter, that the highest responsible bidder for the 2016 Bonds is the Original Purchaser, whose bid is in all cases to the best advantage of the City, and the City hereby determines to sell the 2016 Bonds to the Original Purchaser; and

WHEREAS, it is now necessary by ordinance to authorize the issuance, sale and delivery of the 2016 Bonds and to provide details of and the security for the 2016 Bonds as hereinafter described.

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

ARTICLE I

SHORT TITLE, DEFINITIONS, INTERPRETATION, RATIFICATION, AUTHENTICATION, PUBLICATION AND EFFECTIVE DATE

Section 1.01. Short Title. This ordinance may be designated by the short title “Series 2016 Bond ordinance” (the “Instrument”).

Section 1.02. Meanings and Construction.

(a) **Definitions.** The terms in this Section defined for all purposes of this Instrument and of any instrument amendatory hereof or supplemental hereto, and of any other instrument or any other document appertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

“*Bond Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2016 Interest and Bond Retirement Fund” created in Section 4.01(a) hereof and required to be accumulated and maintained in Section 5.16 hereof.

“*Charter*” means the charter of the City.

“*Chief Financial Officer*” means the Chief Financial Officer of the City.

“*City*” means the City of Boulder, Colorado, and its successors.

“*Clerk*” means the City Clerk of the City.

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

“*Commitment*” means that certain offer dated April 14, 2016 to issue the 2016 Reserve Policy designated as the Commitment, issued by the 2016 Reserve Policy Provider.

“*Council*” means the City Council of the City.

“*Director of Finance*” means the Director of Finance of the City.

“*DTC*” shall mean The Depository Trust Company, New York, New York, or its successors or assigns and any other securities depository for the 2016 Bonds.

“*Event of Default*” means any of the events stated in Section 10.03 hereof.

“*Facilities*” means, collectively, the Sewer System and the Water System of the City.

“*Federal Securities*” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct obligations of, or the principal and interest of which securities are unconditionally guaranteed by, the United States of America or evidences of such indebtedness which are noncallable at the option of the issuer thereof.

“*Financial Advisor*” means Piper Jaffray & Co.

“*Fiscal Year*” for the purposes of this Instrument means the Fiscal Year as provided by State law.

“*Gross Income*” means all income and revenues derived directly or indirectly by the City from the operation and use of the Sewer System, and the Water System, as may

be designated, or any part thereof, whether resulting from improvements, extensions, enlargements, repairs or betterments thereto, or otherwise, including interest earnings on moneys in any fund or account created by this Instrument and includes all revenues earned by the City therefrom, including without limiting the generality of the foregoing, all rentals, fees, rates and other charges for the use thereof, or for any service rendered by the City in the operation thereof, but excluding any moneys received as grants, appropriations or gifts from the United States of America, the State, or other sources, the use of which is limited by the grantor or donor to the construction of capital improvements therefor, except to the extent any such moneys shall be received as payments for the use of the Facilities, or any part thereof.

“*Hereby*,” “*herein*,” “*hereinabove*,” “*hereinafter*,” “*hereinbefore*,” “*hereof*,” “*hereto*,” “*hereunder*,” and any similar term refer to this Instrument and not solely to the particular portion thereof in which such work is used; “*heretofore*” means before the adoption of this Instrument; and “*hereafter*” means after the adoption of this Instrument.

“*Independent Accountant*” means any certified public accountant, or any firm of such certified public accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Council, in the name of the City, as determined by the Council:

(i) who is, in fact, independent and not under the domination of the City;

(ii) who does not have any substantial interest, direct or indirect, with the City; and

(iii) 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.

“*Instrument*” means this ordinance, designated in Section 1.01 hereof by the short title “Series 2016 Bond ordinance;” and the terms “instrument of the City,” “instrument of the Council,” “amendatory instrument,” “supplemental instrument,” or any phrase of similar import means any ordinance adopted by the Council on behalf of the City.

“*Insured Bank*” means a bank which is a member of the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation.

“*Issuance Expense Fund*” means the “City of Boulder, Colorado Water and Sewer Revenue Bonds, Series 2016 Issuance Expense Fund” created in Section 4.01(d) hereof.

“*Manager*” means the City Manager or Acting City Manager of the City.

“*Mayor*” means the Mayor of the City.

“*Minimum Bond Reserve*” means an amount equal to not less than the average annual debt service on the 2016 Bonds and all other Parity Bonds, less amounts on

deposit in any reserve fund in connection with Parity Bonds heretofore or hereafter issued.

“*Net Income*” means the Gross Income derived from the operation and use of the Sewer System and the Water System as may be designated, after the deduction of the Operation and Maintenance Expenses other than those Operation and Maintenance Expenses set forth in clause (a) of the definition of Operation and Maintenance Expenses set forth in this Instrument.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the City, paid or accrued, for operating, maintaining and repairing the Water System and the Sewer System as may be designated; and the term may include at the City’s option (except as limited by law), without limiting the generality of the foregoing, (a) engineering, auditing, reporting, legal and other overhead expenses of the City directly related to the administration, operation and maintenance thereof; (b) insurance and fidelity bond premiums; (c) the reasonable charges of the Paying Agent and any other depository bank appertaining thereto; (d) payments to pension, retirement, health and hospitalization funds; (e) any taxes, assessments or other charges which may be lawfully imposed on the City or its income or operations of any properties under its control and appertaining thereto; (f) ordinary and current rentals of equipment or other property; (g) refunds of any revenues lawfully due to others; (h) expenses in connection with the issuance of bonds or other securities evidencing any loan to the City and payable from Gross Income; (i) the expenses and compensation of any trustee or other fiduciary; (j) contractual services and professional services required by this Instrument; (k) salaries, labor and the cost of materials and supplies used for current operation; and (l) all other third party administrative, general and commercial expenses, but:

(i) excluding any allowance for depreciation or any amounts for capital replacements;

(ii) excluding the costs of improvements, extensions, enlargements and betterments (or any combination thereof) that qualify as capital items in accordance with generally accepted accounting principles, or any reserves therefor;

(iii) excluding any reserves for operation, maintenance or repair of the Facilities;

(iv) excluding any allowance for the redemption of any bond or other security evidencing a loan, or the payment of any interest thereon, or any reserve therefor; and

(v) excluding liabilities incurred by the City as the result of its negligence in the operation of the Facilities or other ground of legal liability not based on contract, or any reserve therefor.

“*Ordinance No. 7421*” means Ordinance No. 7421, introduced, passed and adopted by the Council on the 3rd day of May, 2005.

“*Ordinance No. 7524*” means Ordinance No. 7524, introduced, passed and adopted by the Council on the 5th day of June, 2007.

“*Ordinance No. 7754*” means Ordinance No. 7754, introduced, passed and adopted by the Council on the 7th day of September, 2010.

“*Ordinance No. 7781*” means Ordinance No. 7781, introduced, passed and adopted by the Council on the 18th day of January, 2011.

“*Ordinance No. 7875*” means Ordinance No. 7875, introduced, passed and adopted by the Council on the 16th day of October, 2012.

“*Ordinance No. 8074*” means Ordinance No. 8074, introduced, passed and adopted by the Council on the 1st day of September, 2015.

“*Original Purchaser*” means the original purchaser of the 2016 Bonds as designated in Section 9.06 hereof.

“*Outstanding*” when used with reference to bonds as of any particular date means all bonds payable from the Net Income of the Facilities in any manner theretofore and thereupon being executed and delivered:

(i) except any bond canceled by the City, by the Paying Agent, or otherwise on the City’s behalf, at or before said date;

(ii) except any bond for the payment or the redemption of which moneys at least equal to the principal amount of, any prior redemption premium due in connection with, and the interest on the bond to the date of maturity or the prior redemption date, shall have theretofore been deposited with a commercial bank in escrow or in trust for that purpose, as provided in Section 9.01 hereof; and

(iii) except any bond in lieu of or in substitution for which another bond shall have been executed and delivered pursuant to Section 3.08, Section 3.09 or Section 11.08 hereof.

“*Parity Bonds*” means bonds or other obligations payable from Net Income on a parity with the 2016 Bonds herein authorized to be issued.

“*Paying Agent*” means U.S. Bank National Association, or its successors, acting hereunder as, among other things, paying agent, registrar and authenticating agent.

“*Permitted Investments*” means any investment permitted by the laws of the State and the City’s investment policies.

“*Person*” means a corporation, firm, other body corporate, partnership, association or individual, and also includes an executor, administrator, trustee, receiver or other representative appointed according to law.

“*Project*” means the construction, improvement, acquisition and equipping of certain treatment and capacity improvements to the City’s water treatment and transmission facilities and other capital improvements with respect to the Facilities.

“*Project Fund*” means the “City of Boulder, Colorado Water and Sewer Revenue Bonds, Series 2016 Project Fund” created in Section 4.01(c) hereof.

“*Rebate Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2016 Rebate Fund” created in Section 5.18 hereof.

“*Rebate Income Account*” means the Rebate Income Account created in Section 5.18 hereof.

“*Rebate Principal Account*” means the Rebate Principal Account created in Section 5.18 hereof.

“*Record Date*” shall mean the 15th day of the month prior to each interest payment date with respect to the 2016 Bonds.

“*Registered Owner*” or “*holder*” shall mean the Person or Persons in whose name or names a bond shall be registered on the registration books of the City maintained by the Paying Agent.

“*Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2016 Reserve Fund” created in Section 4.01 hereof.

“*Sewer Income Fund*” means the “City of Boulder Sewer Income Fund,” created and designated as the “City of Boulder Gross Income Sewer Fund” in Section 9, Ordinance No. 2000, and directed to be continued and redesignated in Section 5.02 hereof.

“*Sewer System*” means the City’s municipally-owned sanitary sewer system, consisting of all properties, real, personal, mixed, or otherwise, now owned or hereafter acquired by the City, through purchase, construction, or otherwise, and used in connection with the sanitary sewer system of the City, and in any way appertaining thereto, whether situated within or without the corporate boundaries of the City, or both within and without the corporate boundaries of the City.

“*Sewer System Operation and Maintenance Fund*” means the “City of Boulder Sewer System Operation and Maintenance Fund” created by Ordinance No. 2577, and directed to be continued in Ordinance No. 7421, Ordinance No. 7524, Ordinance No. 7754, Ordinance No. 7781, Ordinance No. 7875, Ordinance No. 8074 and in Section 5.03 hereof.

“*State*” means the State of Colorado.

“*Subordinate Bonds*” means bonds payable from Net Income subordinate and junior to the lien of the 2016 Bonds herein authorized to be issued.

“*Supplemental Public Securities Act*” shall mean Part 2, Article 57, Title 11 of the Revised Statutes of the State of Colorado, as amended.

“*Tax Letter of Instructions*” means the Tax Letter of Instructions, dated the date of delivery of the 2016 Bonds, delivered by Kutak Rock LLP to the City, as the same may be superseded or amended as provided in Section 5.18 hereof.

“*2005B Bonds*” means the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2005B,” authorized by Ordinance No. 7421.

“*2005B Bond Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Refunding Bonds, Series 2005B Interest and Bond Retirement Fund,” created in Ordinance No. 7421.

“*2005B Minimum Bond Reserve*” means the “Minimum Bond Reserve,” as defined in Ordinance No. 7421.

“*2005B Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Refunding Bonds, Series 2005B Reserve Fund,” created in Ordinance No. 7421.

“*2007 Bonds*” means the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2007, authorized by Ordinance No. 7524.”

“*2007 Bond Fund*” means the “City of Boulder, Colorado Water and Sewer Revenue Bonds Series 2007 Interest and Bond Retirement Fund,” created in Ordinance No. 7524.

“*2007 Minimum Bond Reserve*” means the “Minimum Bond Reserve,” as defined in Ordinance No. 7524.

“*2007 Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Refunding Bonds, Series 2007 Reserve Fund,” created in Ordinance No. 7524.

“*2007 Reserve Policy*” means the Municipal Bond Debt Service Reserve Insurance Policy issued by Financial Security Assurance Inc. and deposited in or credited to the 2007 Reserve Fund pursuant to Ordinance No. 7524.

“*2010 Bonds*” means the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2010,” authorized by Ordinance No. 7754.

“*2010 Bond Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2010 Interest and Bond Retirement Fund,” created in Ordinance No. 7754.

“*2010 Minimum Bond Reserve*” means the “Minimum Bond Reserve,” as defined in Ordinance No. 7754.

“*2010 Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2010 Reserve Fund,” created in Ordinance No. 7754.

“*2011 Bonds*” means the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2011,” authorized by Ordinance No. 7781.

“*2011 Bond Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2011 Interest and Bond Retirement Fund,” created in Ordinance No. 7781.

“*2011 Minimum Bond Reserve*” means the “Minimum Bond Reserve,” as defined in Ordinance No. 7781.

“*2011 Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2011 Reserve Fund,” created in Ordinance No. 7781.

“*2012 Bonds*” means those bonds designated as the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2012.”

“*2012 Bond Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Refunding Bonds, Series 2012 Interest and Bond Retirement Fund,” created in Ordinance No. 7875.

“*2012 Minimum Bond Reserve*” means the “Minimum Bond Reserve,” as defined in Ordinance No. 7875.

“*2012 Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Refunding Bonds, Series 2012 Reserve Fund,” created in Ordinance No. 7875.

“*2012 Reserve Policy Agreement*” means the Reserve Policy Insurance Agreement, dated as of November 1, 2012, by and between the City and the 2012 Reserve Policy Provider with respect to the 2012 Bonds and the 2012 Reserve Policy.

“*2012 Reserve Policy Provider*” means Assured Guaranty Municipal Corp., and its successors and assigns.

“*2012 Reserve Policy*” means the municipal bond debt service reserve insurance policy issued by the 2012 Reserve Policy Provider guaranteeing certain payments from the Reserve Fund with respect to the 2012 Bonds.

“*2015 Bonds*” means those bonds designated as the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2015.”

“*2015 Bond Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2015 Interest and Bond Retirement Fund,” created in Ordinance No. 8074.

“*2015 Minimum Bond Reserve*” means the “Minimum Bond Reserve,” as defined in Ordinance No. 8074.

“*2015 Reserve Fund*” means the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2015 Reserve Fund,” created in Ordinance No. 8074.

“*2015 Reserve Policy Agreement*” means the Reserve Policy Insurance Agreement, dated as of October 1, 2015, by and between the City and the 2015 Reserve Policy Provider with respect to the 2015 Bonds and the 2015 Reserve Policy.

“*2015 Reserve Policy Provider*” means Assured Guaranty Municipal Corp., and its successors and assigns.

“*2015 Reserve Policy*” means the municipal bond debt service reserve insurance policy issued by the 2015 Reserve Policy Provider guaranteeing certain payments from the Reserve Fund with respect to the 2015 Bonds.

“*2016 Bonds*” means those bonds issued hereunder and designated as the “City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2016.”

“*2016 Reserve Policy Agreement*” means the Reserve Policy Insurance Agreement, dated as of June 7, 2016, by and between the City and the 2016 Reserve Policy Provider with respect to the 2016 Bonds and the 2016 Reserve Policy.

“*2016 Reserve Policy Provider*” means Assured Guaranty Municipal Corp., and its successors and assigns.

“*2016 Reserve Policy*” means the municipal bond debt service reserve insurance policy issued by the 2016 Reserve Policy Provider guaranteeing certain payments from the Reserve Fund with respect to the 2016 Bonds, which shall be credited to the 2016 Reserve Fund.

“*Water Income Fund*” means the “City of Boulder Water Income Fund,” created and designated as the “City of Boulder Gross Income Water Fund” in Section 9, Ordinance No. 2000, and directed to be continued and redesignated in Section 5.02 hereof.

“*Water System*” means the City’s municipally-owned water system, consisting of all properties, real personal, mixed or otherwise, now owned or hereafter acquired by the City, through purchase, construction, or otherwise, and used in connection with the water system of the City, and in any way appertaining thereto, whether situated within or without the City limits, or both within and without the City limits.

“*Water System Operation and Maintenance Fund*” means the “City of Boulder Water System Operation and Maintenance Fund” created in Section 5.03 of Ordinance No. 5491 and directed to be continued in Ordinance No. 7421, Ordinance No. 7524, Ordinance No. 7754, Ordinance No.7781, Ordinance No.7875, Ordinance No. 8074 and Section 5.03 hereof.

(b) **Construction.** This Instrument, except where the context by clear implication herein otherwise requires, shall be construed as follows:

(i) Definitions include both singular and plural.

(ii) Pronouns include both singular and plural and cover all genders.

(iii) Any percentage of 2016 Bonds is to be figured on the unpaid principal amount thereof then Outstanding.

(iv) Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter, or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Instrument so numbered or otherwise so designated.

(v) The titles applied to articles, sections, subsections, paragraphs and subparagraphs of this Instrument are inserted only as a matter of convenience and ease in reference and in no way define, limit or describe the scope or intent of any provisions of this Instrument.

Section 1.03. Successors. Whenever herein the City or the Council is named or is referred to, such provision shall be deemed to include any successors of the City or the Council, respectively, whether so expressed or not. All of the covenants, stipulations, obligations and agreements by, or on behalf of, and other provisions for the benefit of the City or the Council contained herein, shall bind and inure to the benefit of any such successors and shall bind and inure to the benefit of any officer, board, district, commission, authority, agent or instrumentality to whom or to which there shall be transferred by, or in accordance with law, any right, power or duty of the City or the Council or of their respective successors, if any, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

Section 1.04. Parties Interested Herein. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, other than the City, the Council and the holders of the 2016 Bonds any right, remedy or claim under or by reason hereof or any covenant, condition or stipulation hereof. 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 City, the Council and any holder of any 2016 Bonds.

Section 1.05. Ratification. All action heretofore taken (not inconsistent with the provisions of this Instrument) by the Council, the officers of the City, the Financial Advisor and otherwise by the City directed toward the sale and delivery of the City’s 2016 Bonds for that purpose, shall be, and the same hereby is, ratified, approved and confirmed, including, without

limiting the generality of the foregoing, the public sale of the 2016 Bonds and giving notice thereof.

Section 1.06. Instrument Irrepealable. After any of the 2016 Bonds are issued, this Instrument shall constitute an irrevocable contract between the City and the holder or holders of the 2016 Bonds; and this Instrument (subject to the provisions of Article XI hereof), if any 2016 Bonds be in fact issued, shall be and shall remain irrepealable until the 2016 Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided.

Section 1.07. Severability. If any section, subsection, paragraph, clause or other provision of this Instrument shall for any reason be held to be 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 Instrument.

Section 1.08. Repealer. All bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, or other instrument, or part thereof, heretofore repealed.

Section 1.09. Recordation and Publication. This instrument, immediately on its final passage, shall be recorded in the City's Ordinance Record kept for that purpose, authenticated by the Mayor and the Clerk, and shall be published by title only in *The Daily Camera*, a daily newspaper printed, published and of general circulation in the City, in accordance with the provisions of the Charter of the City.

Section 1.10. Emergency and Effective Date. Due to fluctuations in municipal bond prices and interest rates, and due to currently favorable interest rates, and due to the need to finally act upon and accept the bid of the highest responsible bidder (in accordance with the Charter) for the 2016 Bonds in an expeditious manner (said bids being submitted for immediate acceptance), it is hereby declared that, in the opinion of the Council, an emergency exists, this Instrument is necessary for the preservation of the public peace, health and property of the City and its inhabitants and shall be in full force and effect upon its passage.

ARTICLE II

COUNCIL'S DETERMINATIONS, AUTHORITY FOR AND AUTHORIZATION OF PROJECT AND OBLIGATION OF CITY

Section 2.01. Authority for this Instrument. This Instrument is adopted by virtue of the City's powers as a city organized and operating pursuant to Articles X and XX of the State Constitution, the Charter, the Enterprise Ordinance and the Supplemental Public Securities Act (being Part 2, Article 57, Title 11 of the Revised Statutes of the State of Colorado) as now in effect and as it may from time to time be amended (the "Supplemental Public Securities Act"); and the City has ascertained and hereby determines that each and every matter and thing as to which provision is made herein is necessary in order to carry out and to effectuate the purposes of the City in accordance with the Charter.

Section 2.02. Necessity of Project and 2016 Bonds. It is necessary and for the best interests of the City and the inhabitants thereof that the City effect the Project and defray the cost thereof by issuing revenue bonds therefor; and the Council hereby so determines and declares.

Section 2.03. Authorization of Project. The Council, on behalf of the City, does hereby determine to improve, better and extend the Facilities as hereinabove delineated; and the Project is hereby so authorized.

Section 2.04. Estimated Cost of Project. The Cost of the Project is estimated not to exceed \$35,000,000, excluding any such cost funded or to be funded by any source other than the proceeds of the principal amount of the 2016 Bonds and excluding amounts to be paid as costs of issuance or to be used to fund the Reserve Fund.

Section 2.05. Instrument to Constitute Contract. In consideration of the purchase and the acceptance of the 2016 Bonds by those who shall hold the same from time to time, the provisions hereof shall be deemed to be and shall constitute contracts between the City and the holders from time to time of the 2016 Bonds; and the covenants and agreements herein set forth to be performed on behalf of the City shall be for the equal benefit, protection and security of the holders of any and all of the Outstanding 2016 Bonds, 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 the 2016 Bonds over any other thereof, except as otherwise expressly provided in or pursuant to this Instrument.

Section 2.06. Special Obligations. All of the 2016 Bonds, together with the interest accruing thereon, shall be payable and collectible solely out of the Net Income to be derived from the operation and use of the Facilities, the Net Income of which is so pledged; the holder or holders thereof may not look to any general or other fund for the payment of principal of and interest on such obligations except the herein-designated special funds pledged therefor; the 2016 Bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional, Charter or statutory provision or limitation; and the 2016 Bonds shall not be considered or held to be general obligations of the City but shall constitute its special obligations. None of the covenants, agreements, representations and warranties contained herein or in the 2016 Bonds issued hereunder, in the absence of any breach thereof, shall ever impose or shall be construed as imposing any liability, obligation or charge against the City or its general credit, payable out of its general fund or out of any funds derived from taxation.

ARTICLE III

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF THE 2016 BONDS

Section 3.01. Authorization of the 2016 Bonds. The “City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2016,” in the principal amount of \$34,145,000, payable both as to principal and interest solely out of the Net Income derived from the operation and use of the Facilities, are hereby authorized to be issued, pursuant to the City’s powers as a home rule city;

and the City pledges irrevocably, but not necessarily exclusively, such Net Income to the payment of the 2016 Bonds and the interest thereon.

Section 3.02. Bond Details.

(a) The 2016 Bonds shall be issued as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. The 2016 Bonds shall be initially registered in the name of Cede & Co., as nominee of DTC, as registered owner of the 2016 Bonds, and immobilized in the custody of DTC. A single certificate for each maturity date of the 2016 Bonds shall be issued and delivered to DTC for the total principal amount due on each maturity date of the 2016 Bonds. Beneficial owners of 2016 Bonds shall not receive physical delivery of 2016 Bond certificates. All subsequent transfers of ownership interests, after immobilization of the original 2016 Bond certificates as provided above, shall be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring 2016 Bonds shall receive, hold or deliver any 2016 Bond certificates as long as DTC or any successor depository holds the immobilized 2016 Bond certificates, except as hereinafter provided. Payments to DTC made hereunder shall be made in accordance with the Blanket Issuer Letter of Representations from the City to DTC (the "Representations Letter"). Certificated 2016 Bonds may be issued directly to beneficial owners of 2016 Bonds, other than DTC, or its nominee, but only in the event that (i) DTC determines not to continue to act as securities depository for the 2016 Bonds (which determination shall become effective upon 60 days' written notice to the City); (ii) the City has advised DTC of its determination (which determination is conclusive as to DTC and the beneficial owners of the 2016 Bonds) that DTC is incapable of discharging its duties; or (iii) the City has determined (which determination is conclusive as to DTC and the beneficial owners of the 2016 Bonds) that the interests of the beneficial owners of the 2016 Bonds might be adversely affected if the book-entry system of transfer is continued. Upon occurrence of any of the foregoing events, the City shall use its best efforts to attempt to locate another securities depository. If the City fails to locate another qualified securities depository to replace DTC, the City shall authenticate and deliver 2016 Bonds in certificate form. In the event the City makes the determination noted in (ii) or (iii) above (the City undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the City to make such determination), and has also made provisions to notify the beneficial owners of the 2016 Bonds by mailing an appropriate notice to DTC, it shall issue 2016 Bonds in certificate form to any DTC participant making such a request.

The 2016 Bonds shall be dated the date of issuance (June 7, 2016), and shall bear interest from their date; provided, however, that if interest on the 2016 Bonds shall be in default, 2016 Bonds issued in exchange for 2016 Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the 2016 Bonds surrendered, or if no interest has been paid, then from June 7, 2016. Interest shall be payable on the 2016 Bonds on June 1 and December 1 of each year, commencing December 1, 2016.

(b) The 2016 Bonds shall be consecutively numbered, shall mature on the first day of December in the principal amounts and years, and shall bear interest at the rates per annum, as shown in the following schedule:

SERIES 2016 BONDS

Maturity (December 1)	Principal Amount	Interest Rate
2016	\$ 690,000	2.000%
2017	1,445,000	2.000
2018	1,475,000	2.000
2019	1,500,000	2.000
2020	1,535,000	2.000
2021	1,565,000	2.000
2022	1,595,000	2.000
2023	1,625,000	2.000
2024	1,660,000	2.000
2025	1,690,000	2.000
2026	1,725,000	2.250
2027	1,765,000	2.250
2028	1,805,000	2.500
2029	1,850,000	2.500
2030	1,895,000	2.750
2031	1,950,000	2.750
2032	2,000,000	3.000
2033	2,060,000	3.000
2034	2,125,000	3.125
2035	2,190,000	3.125

(c) If, upon presentation at maturity, payment of any 2016 Bond is not made as herein provided, interest shall continue thereon at the interest rate designated in the 2016 Bond until the principal thereof is paid in full.

(d) Principal of and premium, if any, on the 2016 Bonds shall be payable in lawful money of the United States of America at the principal office of U.S. Bank National Association, at its operations center in St. Paul, Minnesota, or of its successor or assign as paying agent (the "Paying Agent"). Interest on the 2016 Bonds is payable by check or draft of the Paying Agent mailed on the interest payment date to such person as is the registered owner thereof on the Record Date.

Section 3.03. Paying Agent. The Paying Agent is hereby appointed as bond registrar for the City for purposes of the 2016 Bonds. The Paying Agent shall maintain on behalf of the City books for the purpose of registration and transfer of the 2016 Bonds, and such books shall specify the person entitled to the 2016 Bonds and the rights evidenced thereby, and all transfers of the 2016 Bonds and the rights evidenced thereby. The 2016 Bonds may be transferred or exchanged without cost, except for any tax or governmental charge required to be paid with

respect to such transfer or exchange the principal office of the Paying Agent in Denver, Colorado. The 2016 Bonds may be exchanged for a like aggregate principal amount of 2016 Bonds of other authorized denominations of the same maturity and interest rate. Upon surrender for transfer of any 2016 Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or the Registered Owner's attorney duly authorized in writing, the City shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee or transferees a new 2016 Bond or 2016 Bonds of the same maturity and interest rate for a like aggregate principal amount. The Person in whose name any 2016 Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes.

Section 3.04. Redemption.

(a) The 2016 Bonds maturing on and after December 1, 2025 shall be callable for redemption at the option of the City, in whole or in part, and if in part in such order of maturities as the City shall determine and by lot within a maturity on December 1, 2024, and on any date thereafter, at a redemption price equal to the par amount thereof plus accrued interest to the redemption date.

(b) Notice of any redemption will be given by the Paying Agent in the name of the City, by sending a copy of such notice by certified or registered first class, postage prepaid mail, at least 30 days prior to the redemption date, to the Registered Owners of each of the 2016 Bonds being redeemed. Such notice shall specify the number or numbers of the 2016 Bonds so to be redeemed and the redemption date. If any of the 2016 Bonds shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in the Bond Fund, funds sufficient to pay the redemption price of such 2016 Bonds at the redemption date, then said 2016 Bonds shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Any 2016 Bonds redeemed prior to their maturity by call for prior redemption or otherwise shall not be reissued and shall be cancelled the same as 2016 Bonds paid at or after maturity.

Section 3.05. Execution of the 2016 Bonds. The 2016 Bonds shall be executed in the name and on behalf of the City with the manual or facsimile signature of the Mayor, shall bear a manual or facsimile of the seal of the City and shall be attested by the manual or facsimile signature of the Clerk. Should any officer whose manual or facsimile signature appears on the 2016 Bonds cease to be such officer before delivery of the 2016 Bonds, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes. The Mayor and the Clerk are hereby authorized and directed to prepare and to execute the 2016 Bonds in accordance with the requirements of this Instrument. When the 2016 Bonds have been duly executed and sold, the officers of the City are authorized to, and shall, deliver the 2016 Bonds to the Paying Agent for authentication. No 2016 Bond shall be secured by this Instrument or entitled to the benefit hereof, or shall be valid or obligatory for any purpose, unless the certificate of authentication of the Paying Agent, in substantially the form set forth in this Instrument, has been duly executed by the Paying Agent. Such certificate of the Paying Agent upon any 2016 Bond shall be conclusive evidence and the only competent evidence that such 2016 Bond has been authenticated and delivered hereunder. The Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the

Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all of the 2016 Bonds issued hereunder.

Section 3.06. Delivery of 2016 Bonds. Upon the authentication of the 2016 Bonds, the Paying Agent shall deliver the same to the Original Purchaser or its designees as directed by the City as hereinafter provided. Prior to the authentication and delivery by the Paying Agent of the 2016 Bonds there shall be filed with the Paying Agent the following:

- (a) a certified copy of this Instrument; and
- (b) a request and authorization to the Paying Agent on behalf of the City and signed by its Mayor to authenticate and deliver the 2016 Bonds to the Original Purchaser upon payment to the City of a sum specified in such request and authorization plus accrued interest thereon to the date of delivery. The proceeds of such payment shall be paid over to the City and deposited as provided in this Instrument.

Section 3.07. Replacement of 2016 Bonds. If any Outstanding 2016 Bond shall become lost, apparently destroyed or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed or taken 2016 Bond upon the owner furnishing, to the satisfaction of the Paying Agent: (a) proof of ownership (which shall be shown by the registration books of the Paying Agent), (b) proof of loss or destruction, and (c) payment of the cost of preparing and issuing the new security, in which case the Paying Agent shall then authenticate the 2016 Bonds required for replacement.

Section 3.08. Other Replacement. Nothing contained in the provisions of Section 3.07 hereof shall be construed as prohibiting the City from replacing, upon such terms and conditions as the Chief Financial Officer may determine, any Outstanding 2016 Bond which shall have become lost or completely destroyed, in which case, the Paying Agent shall then authenticate the 2016 Bonds required for replacement.

Section 3.09. Bond Form. Subject to the provisions of this Instrument, each 2016 Bond shall be in substantially the following form, 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 Instrument, or be consistent with this Instrument and necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto:

[Form of 2016 Bond]

EXCEPT AS OTHERWISE PROVIDED IN THE HEREINAFTER DEFINED ORDINANCE, THIS GLOBAL BOOK-ENTRY 2016 BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

UNITED STATES OF AMERICA

**CITY OF BOULDER, COLORADO
(ACTING THROUGH ITS WATER UTILITY ENTERPRISE
AND ITS WASTEWATER UTILITY ENTERPRISE)
WATER AND SEWER REVENUE BONDS
SERIES 2016**

R- _____ \$ _____

Interest Rate:	Maturity Date:	Original Issue Date:	CUSIP:
_____ %	December 1, _____	June 7, 2016	_____

REGISTERED OWNER: **CEDE & CO.**

PRINCIPAL SUM: ** _____ DOLLARS**

The City of Boulder, in the County of Boulder and State of Colorado (the "City"), for value received, hereby promises to pay to the order of the registered owner above or registered assigns, solely from the special funds as hereinafter set forth, on the maturity date stated above, the principal sum stated above, in lawful money of the United States of America, with interest thereon from June 7, 2016, at the interest rate per annum stated above, payable on December 1, 2016, and semiannually thereafter on the first day of June and the first day of December of each year, the principal of and premium, if any, on this bond being payable at the office of U.S. Bank National Association, at its operations center in St. Paul, Minnesota, or at the office of its successor, as Paying Agent (the "Paying Agent"), and the interest hereon to be paid to such person as is the registered owner hereof as of the Record Date by check or draft of the Paying Agent mailed on the interest payment date to said registered owner. The Record Date is the 15th day of the month preceding any interest payment date.

This bond is one of an issue of bonds of the City designated "Water and Sewer Revenue Bonds, Series 2016" issued in the principal amount of \$34,145,000 (the "2016 Bonds"). The 2016 Bonds are being issued by the City for the purpose of providing funds to (a) construct,

acquire, improve and equip certain treatment and transmission facilities in the City's water system, (b) fund a bond reserve fund; and (c) pay the cost of issuing the 2016 Bonds, pursuant to and in full conformity with the Constitution and laws of the State of Colorado, the charter of the City of Boulder, Colorado (the "Charter"), an ordinance (the "Ordinance") duly passed and adopted by the City prior to the issuance hereof and the Supplemental Public Securities Act.

The 2016 Bonds maturing on and after December 1, 2025 shall be callable for redemption at the option of the City, in whole or in part, and if in part in such order of maturities as the City shall determine and by lot within a maturity on December 1, 2024, and on any date thereafter, at a redemption price equal to the par amount thereof plus accrued interest to the redemption date.

Redemption shall be made upon not less than 30 days prior notice by sending a copy of such notice by certified or registered first class, postage prepaid mail, at least 30 days prior to the redemption date specified in such notice, to the registered owners of each of the 2016 Bonds being redeemed. Such notice shall specify the number or numbers of the 2016 Bonds so to be redeemed and the redemption date. If this bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent funds sufficient to pay the redemption price of this bond at the redemption date, then this bond shall become due and payable at such redemption date, and interest hereon shall cease to accrue after the redemption date.

This bond is transferable by the registered owner hereof in person or by the registered owner's attorney duly authorized, in writing, at the principal office of the Paying Agent in Denver, Colorado, but only in the manner, subject to the limitations and upon payment of the charges provided in the Ordinance, and upon surrender and cancellation of this bond. Upon such transfer, a new registered 2016 Bond or 2016 Bonds of the same maturity and interest rate and of authorized denomination or denominations (\$5,000 and integral multiples thereof) for the same aggregate principal amount will be issued to the transferee in exchange therefor. The City and the Paying Agent may deem and treat the registered owner hereof as the absolute owner hereof (whether or not this bond shall be overdue) for the purpose of receiving payment of, or on account of, principal hereof and premium, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The 2016 Bonds do not constitute a debt or an indebtedness of the City within the meaning of any constitutional, charter or statutory provision or limitation, shall not be considered or held to be general obligations of the City, and are payable and collectible solely out of the net income derived from the operation and use of the City's municipal water system (the "Water System") and the net income derived from the operation of the City's municipal sewer system (the "Sewer System") (herein collectively designated as the "Facilities," and the net income derived therefrom as the "Net Income"), which Net Income is so pledged; and the holder hereof may not look to any general or other fund for the payment of the principal of and the interest on this bond except the special funds pledged therefor. Payment of the 2016 Bonds and the interest thereon shall be made solely from and as security for such payment there are irrevocably and exclusively pledged, pursuant to the Ordinance, two special accounts identified as the "City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2016 Interest and Bond Retirement Fund" (the "Bond Fund") and as the "City of Boulder, Colorado, Water and Sewer Revenue

Bonds, Series 2016 Reserve Fund” (the “Reserve Fund”). The City covenants to pay into the 2016 Bond Fund from the Net Income remaining from the Water System, after provision only for all necessary and reasonable expenses of the operation and maintenance of the Water System, sums sufficient to pay when due the principal of and the interest on the 2016 Bonds and to pay the same from the Net Income of the Sewer System to the extent the Net Income from the Water System is insufficient therefor.

The 2016 Bonds are equitably and ratably secured by a lien on the Net Income of the Facilities, and the 2016 Bonds constitute an irrevocable and first lien (but not necessarily an exclusive first lien) upon said Net Income on a parity with the lien thereon of the outstanding City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2005B; City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2007; City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2010; City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2011; City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Refunding Bonds, Series 2012, and City of Boulder, Colorado (Acting through its Water Utility Enterprise and Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2015. Subject to expressed conditions in the Ordinance, additional bonds and other obligations, may be issued and made payable from the Net Income of the Facilities on a subordinate and junior basis to the 2016 Bonds. Subject to additional expressed conditions in the Ordinance, additional bonds and other obligations may be issued and made payable from the Net Income of the Facilities on a parity with the 2016 Bonds.

The City covenants and agrees with the holder of this 2016 Bond and with each and every person who may become the holder hereof that it will keep and will perform all of the covenants of the Ordinance, including without limitation its covenant against the sale or mortgage of the Facilities unless provision shall be made for the payment of the principal of and the interest on the 2016 Bonds, and its covenant that it will fix, maintain and collect charges for services rendered and use of the Facilities sufficient to produce Gross Income or earnings annually to pay the annual operation and maintenance expenses and 125% of both the principal of and the interest on the bonds (including, without limitation, the 2016 Bonds) and any other obligations payable annually from the Net Income of the Facilities (excluding the reserves therefor).

Reference is made to the Ordinance and any and all modifications and amendments thereof, and to the Charter of the City, as from time to time amended, for an additional description of the nature and extent of the security for the 2016 Bonds, the accounts, funds or income pledged, the nature and extent and manner of enforcement of the pledge, the rights and remedies of the holders of the 2016 Bonds with respect thereto, the terms and conditions upon which the 2016 Bonds are issued, and a statement of rights, duties, immunities and obligations of the City, and other rights and remedies of the holders of the 2016 Bonds.

To the extent and in the respects permitted by the Ordinance, the provisions of the Ordinance or any instrument amendatory thereof or supplemental thereto may be modified or amended by action of the City taken in the manner and subject to the conditions and exceptions

prescribed in the Ordinance. The pledge of Net Income and other obligations of the City under the Ordinance may be discharged, at or prior to the respective maturities or redemption of the 2016 Bonds, upon the making of provision for the payment thereof on the terms and conditions set forth in the Ordinance.

It is hereby certified that all conditions, acts and things required by the constitution and laws of the State of Colorado, and the Charter and ordinances of the City, to exist, to happen and to be performed, precedent to and in the issuance of this bond, exist, have happened and have been performed, and that the City of Boulder, Colorado (Acting through its Water Utility Enterprise and its Wastewater Utility Enterprise), Water and Sewer Revenue Bonds, Series 2016, do not exceed any limitations prescribed by said constitution or laws of the State of Colorado, or the Charter or ordinances of the City.

The 2016 Bonds are issued pursuant to the Supplemental Public Securities Act, constituting Part 2, Article 57, Title 11 of Colorado Revised States, as amended. This recital shall conclusively impart full compliance with all of the provisions of the Ordinance and shall be conclusive evidence of the validity and regularity of the issuance of the 2016 Bonds after their delivery for value and that all of the 2016 Bonds issued are incontestable for any cause whatsoever after their delivery for value.

This bond shall not be entitled to any benefit under the Ordinance, or become valid or obligatory for any purpose, until the Paying Agent shall have signed the certificate of authentication hereon.

IN WITNESS WHEREOF, the City of Boulder, Colorado, has caused this bond to be signed with the facsimile signature of its Mayor, sealed with a facsimile of the impression of its seal, and attested with the facsimile signature of its Clerk.

[CITY SEAL]

CITY OF BOULDER, COLORADO

By _____
Mayor

Attest:

By _____
Clerk

Date of Authentication: June 7, 2016

This is one of the Water and Sewer Revenue Bonds, Series 2016, described in the within-mentioned Ordinance.

U.S. BANK NATIONAL ASSOCIATION,
as Paying Agent

By _____
Authorized Signatory

FOR VALUE RECEIVED, _____, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. ____) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

[End of Form of 2016 Bond]

Section 3.10. Authentication Upon Exchange or Replacement of the 2016 Bonds. The Paying Agent shall authenticate any 2016 Bonds exchanged or replaced under Section 3.03, 3.08 and 3.09 hereof upon the written direction of the Chief Financial Officer or Director of Finance; such 2016 Bonds exchanged or reissued shall not be valid until so authenticated.

ARTICLE IV

USE OF 2016 BOND PROCEEDS AND RESERVE POLICY

Section 4.01. Disposition of 2016 Bond Proceeds. The proceeds of the 2016 Bonds upon the receipt thereof, shall be deposited promptly by the Chief Financial Officer in an Insured Bank designated by the Council (except as otherwise provided hereafter) and shall be accounted for in the following manner and priority and are hereby pledged therefor:

(a) ***Bond Fund.*** There shall be credited to a separate account hereby created and to be known as the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2016 Interest and Bond Retirement Fund,” all moneys received, if any, as accrued interest on the 2016 Bonds from their sale by the City from the date of the 2016 Bonds to the date or respective dates of their delivery to the Original Purchaser, to be applied to the payment of interest on the 2016 Bonds as the same becomes due after their delivery, in accordance with Section 5.18 hereof.

(b) ***Reserve Fund.*** There initially will be credited to a separate account hereof created and to be known as the “City of Boulder, Colorado, Water and Sewer Revenue Bonds, Series 2016 Reserve Fund,” funded by the 2016 Reserve Policy in an amount equal to the Minimum Bond Reserve. The amount of 2016 Bond proceeds used for the 2016 Reserve Policy premium shall be equal to \$81,350.83.

(c) ***Project Fund.*** An amount equal to \$35,000,000.00 of the proceeds derived from the sale of the 2016 Bonds, except as herein otherwise expressly provided, shall be credited to a separate account hereby created and to be known as the “City of Boulder, Colorado Water and Sewer Revenue Bonds, Series 2016 Project Fund.”

(d) ***Issuance Expense Fund.*** \$151,929.24 of proceeds of the 2016 Bonds shall be credited to a separate account hereby created and to be known as the “City of Boulder Water and Sewer Revenue Bonds, Series 2016 Issuance Expense Fund” and shall be used to pay costs of issuance in connection with the 2016 Bonds. Upon the determination of the City that all costs of issuance of the 2016 Bonds have been paid or are determinable, any balance remaining in this account shall be transferred to the Bond Fund.

Section 4.02. Use of Project Fund. The moneys in the Project Fund, except as herein otherwise expressly provided, shall be used and paid out solely for the purpose of paying costs of the Project including, without limitation, interest during construction of the Project, engineering, inspection, fiscal and legal expenses, costs of financial, professional and other estimates and advice, contingencies, any reimbursements due to the federal government, or any agency, instrumentality or corporation thereof, of any moneys theretofore expended for or in connection with the Project, and all such other incidental expenses as may be necessary or incidental to the

financing and construction of the Project, or any part thereof, the issuance of the 2016 Bonds and the placing of the Project in operation.

Section 4.03. Application of Project Fund. Moneys, except as herein otherwise expressly provided, shall be withdrawn from the Project Fund for the purposes designated in Section 4.02 hereof upon written direction of the Manager or her designee. Moneys shall be disbursed only upon receipt of bills or invoices indicating that the required sum is then due and owing for materials supplied or work satisfactorily completed in substantial accordance with the plans and specifications for the work involved. Any interest earnings on moneys deposited to the Project Fund shall be retained in the Project Fund until the Project shall have been completed and then shall be transferred as provided in Section 4.05 below.

Section 4.04. Prevention of Bond Default. The Chief Financial Officer shall use any 2016 Bond proceeds credited to the Project Fund, without further order or warrant, to pay the interest on and the principal of the 2016 Bonds as the same become due whenever and to the extent moneys in the Bond Fund or otherwise available therefor are insufficient for that purpose, unless such 2016 Bond proceeds shall be needed to defray obligations accrued and to accrue under any contracts then existing and appertaining to the Project. The Chief Financial Officer shall promptly notify the Council of any such use. Any moneys so used shall be restored to the Project Fund, as permitted by Section 5.25 hereof, from the Net Income of the Facilities thereafter received and not needed to meet the requirements provided in Sections 5.03 through 5.23 hereof.

Section 4.05. Completion of Project. When the Project shall have been completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses, shall have been paid, or for which full provision shall have been made, the Chief Financial Officer shall cause to be transferred to the Reserve Fund, all surplus moneys remaining in the Project Fund, if any, to the extent the amount on deposit in the Reserve Fund is less than the Minimum Bond Reserve, and any remaining surplus moneys shall be transferred to the Bond Fund, except for moneys to be retained to pay any unpaid accrued costs or contingent obligations. Nothing herein contained shall be construed as preventing the Chief Financial Officer from causing to be transferred from the Project Fund to the Reserve Fund, to the extent of any deficiency, at any time prior to the termination of the Project Fund any moneys which will not be necessary for the Project.

Section 4.06. Original Purchaser Not Responsible. The validity of the 2016 Bonds shall not be dependent on, nor be affected by, the validity or regularity of any proceedings relating to the acquisition, construction, reconstruction or replacement of the Project, or any part thereof, or to the completion of the Project. The Original Purchaser of the 2016 Bonds, any associate thereof, and any subsequent holder of any 2016 Bond shall in no manner be responsible for the application or disposal by the City or by any of its officers, agents and employees of the moneys derived from the sale of the 2016 Bonds or any other moneys herein designated.

Section 4.07. Lien on Bond Proceeds. Until the proceeds of the 2016 Bonds are applied as hereinabove provided and used to defray costs of the Project from time to time, the 2016 Bonds shall be secured by a lien on such proceeds which are pledged for the benefit of the holders of the 2016 Bonds from time to time as provided in Section 5.01.

Section 4.08. 2016 Reserve Policy. In connection with the issuance of the 2016 Reserve Policy by the 2016 Reserve Policy Provider, the City hereby authorizes the execution and delivery of the 2016 Reserve Policy Agreement. The Chief Financial Officer or Director of Finance of the City is also hereby authorized and directed to take all actions necessary to cause the 2016 Reserve Policy Provider to issue the 2016 Reserve Policy in accordance with the Commitment, including without limitation, payment of the premium(s) due in connection therewith and entering into any authorizing agreement, including the 2016 Reserve Policy Agreement. The execution of the Commitment by the Chief Financial Officer, Director of Finance or other authorized officer of the City is hereby ratified and approved.

ARTICLE V

ADMINISTRATION OF AND ACCOUNTING FOR PLEDGED REVENUES

Section 5.01. Pledge Securing 2016 Bonds. Subject only to the right of the City to cause amounts to be withdrawn therefrom and paid on account of Operation and Maintenance Expenses of the Facilities, the Net Income and all moneys and securities paid, or to be paid to, or held, or to be held, in any account under Article V of this Instrument or under Section 4.01 hereof are hereby pledged to secure the payment of the principal of and the interest on the 2016 Bonds; and this pledge of the resulting Net Income shall be valid and binding from and after the date of the first delivery of any 2016 Bonds, and the moneys, as received by the City and hereby pledged, shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the City, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof.

Section 5.02. Income Deposits. So long as any of the 2016 Bonds shall be Outstanding, either as to principal or interest, or both, the entire Gross Income of the Facilities shall be set aside and credited, as follows:

(a) ***Sewer Income Fund.*** For the purposes of this Instrument, a separate account shall continue to be set aside, maintained and known as the “City of Boulder Sewer Income Fund” (the “Sewer Income Fund”). So long as any of the 2016 Bonds shall be Outstanding, either as to principal or interest, all Gross Income derived from the operation of the Sewer System shall continue to be credited to the Sewer Income Fund.

(b) ***Water Income Fund.*** For the purposes of this Instrument, a separate account shall continue to be set aside, maintained and known as the “City of Boulder Water Income Fund” (the “Water Income Fund”). So long as any of the 2016 Bonds shall be Outstanding, either as to principal or interest, all Gross Income derived from the operation of the Water System shall continue to be credited to the Water Income Fund.

Section 5.03. Administration of Income Funds. So long as any of the 2016 Bonds hereby authorized shall be Outstanding, either as to principal or interest, or both, as provided

herein in Sections 5.03 through 5.18 hereof, the following payments shall be made from the Sewer Income Fund and the Water Income Fund:

(a) ***Sewer O. & M. Expenses.*** First, as a first charge thereon, there shall be set aside from the Sewer Income Fund in an account heretofore created by Ordinance No. 2577 and reauthorized by Ordinance No. 7421, Ordinance No. 7524, Ordinance No. 7754, Ordinance No. 7781, Ordinance No. 7875, Ordinance No. 8074 and this Instrument and known as the “City of Boulder Sewer System Operation and Maintenance Fund” (the “Sewer System Operation and Maintenance Fund”), moneys sufficient to pay Operation and Maintenance Expenses of the Sewer System as they become due and payable, and thereupon they shall be promptly paid. Any surplus remaining at the end of the Fiscal Year and not needed for Operation and Maintenance Expenses shall be transferred to the Sewer Income Fund and be used for the purposes thereof, as herein provided.

(b) ***Water O. & M. Expenses.*** Concurrently, as a first charge thereon, there shall be set aside from the Water Income Fund in an account heretofore created and reauthorized by Ordinance No. 7421, Ordinance No. 7524, Ordinance No. 7754, Ordinance 7781, Ordinance No. 7875, Ordinance No. 8074 and this Instrument, known as the “City of Boulder Water System Operation and Maintenance Fund” (the “Water System Operation and Maintenance Fund”), moneys sufficient to pay Operation and Maintenance Expenses of the Water System, as they become due and payable, and thereupon they shall be promptly paid. Any surplus remaining at the end of the Fiscal Year and not needed for Operation and Maintenance Expenses shall be transferred to the Water Income Fund and be used for the purposes thereof, as herein provided.

Section 5.04. 2005B Bond Fund Payments. Second, and concurrently with the payments required by Sections 5.06, 5.08, 5.10, 5.12, 5.14 and 5.16 hereof, from any moneys remaining in the Water Income Fund, there shall be credited to the 2005B Bond Fund the following:

(a) ***Interest Payments.*** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2005B Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2005B Bonds then Outstanding.

(b) ***Principal Payments.*** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2005B Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2005B Bonds.

The moneys credited to the 2005B Bond Fund shall be used to pay the principal of and interest on the 2005B Bonds as the same become due.

Section 5.05. 2005B Reserve Fund Payments. Third, and concurrently with the payments required by Sections 5.07, 5.09, 5.11, 5.13, 5.15 and 5.17 hereof, from any moneys remaining in the Water Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the 2005B Reserve Fund by Section 4.01 of Ordinance No. 7421, there shall be credited to the 2005B Reserve Fund any moneys necessary to make up any deficiency in the 2005B Reserve Fund, to the extent moneys on deposit in the 2005B Reserve Fund are less than the 2005B Minimum Bond Reserve. No payment need be made into the 2005B Reserve Fund so long as the moneys therein are at least equal to the 2005B Minimum Bond Reserve. The moneys in the 2005B Reserve Fund shall be maintained as a continuing reserve to be used, except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2005B Bonds resulting from the failure to deposit into the 2005B Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the 2005B Reserve Fund arises due to a transfer from the 2005B Reserve Fund to the 2005B Bond Fund, then such deficiency shall be made up from the Sewer Income Fund as soon as any moneys become available therein. Any moneys at any time in the 2005B Reserve Fund in excess of the 2005B Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the 2005B Reserve Fund, may be withdrawn therefrom and transferred to the 2005B Bond Fund.

Section 5.06. 2007 Bond Fund Payments. Fourth, and concurrently with the payments required by Sections 5.04, 5.08, 5.10, 5.12, 5.14 and 5.16 hereof, from any moneys remaining in the Water Income Fund, there shall be credited to the 2007 Bond Fund the following:

(a) ***Interest Payments.*** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2007 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2007 Bonds then Outstanding.

(b) ***Principal Payments.*** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2007 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2007 Bonds.

The moneys credited to the 2007 Bond Fund shall be used to pay the principal of and interest on the 2007 Bonds as the same become due.

Section 5.07. 2007 Reserve Fund Payments. Fifth, and concurrently with the payments required by Sections 5.05, 5.09, 5.11, 5.13, 5.15 and 5.17, from any moneys remaining in the Water Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the 2007 Reserve Fund by Section 4.01 of Ordinance No. 7524, there shall be credited to the 2007 Reserve Fund any moneys necessary to make up any deficiency in the 2007 Reserve Fund, to the extent moneys on deposit in the 2007 Reserve Fund are less than the 2007 Minimum Bond Reserve. No payment need be made into the 2007 Reserve Fund so long as the moneys therein are at least equal to the 2007 Minimum Bond Reserve. The moneys

in the 2007 Reserve Fund shall be maintained as a continuing reserve to be used (including draws on the 2007 Reserve Policy), except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2007 Bonds resulting from the failure to deposit into the 2007 Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the 2007 Reserve Fund arises due to a transfer from the 2007 Reserve Fund to the 2007 Bond Fund (or a draw on the 2007 Reserve Policy), then such deficiency shall be made up from the Sewer Income Fund as soon as any moneys become available therein. Any moneys at any time in the 2007 Reserve Fund in excess of the 2007 Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the 2007 Reserve Fund, may be withdrawn therefrom and transferred to the 2007 Bond Fund.

Section 5.08. 2010 Bond Fund Payments. Sixth, and concurrently with the payments required by Sections 5.04, 5.06, 5.10, 5.12, 5.14 and 5.16 hereof, from any moneys remaining in the Water Income Fund, there shall be credited to the 2010 Bond Fund the following:

(a) ***Interest Payments.*** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2010 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2010 Bonds then Outstanding.

(b) ***Principal Payments.*** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2010 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2010 Bonds.

The moneys credited to the 2010 Bond Fund shall be used to pay the principal of and interest on the 2010 Bonds as the same become due.

Section 5.09. 2010 Reserve Fund Payments. Seventh, and concurrently with the payments required by Sections 5.05, 5.07, 5.11, 5.13, 5.15 and 5.17 hereof, from any moneys remaining in the Water Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the 2010 Reserve Fund by Section 4.01 of Ordinance No. 7754, there shall be credited to the 2010 Reserve Fund any moneys necessary to make up any deficiency in the 2010 Reserve Fund, to the extent moneys on deposit in the 2010 Reserve Fund are less than the 2010 Minimum Bond Reserve. No payment need be made into the 2010 Reserve Fund so long as the moneys therein are at least equal to the 2010 Minimum Bond Reserve. The moneys in the 2010 Reserve Fund shall be maintained as a continuing reserve to be used, except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2010 Bonds resulting from the failure to deposit into the 2010 Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the 2010 Reserve Fund arises due to a transfer from the 2010 Reserve Fund to the 2010 Bond Fund, then such deficiency shall be made up from the Sewer Income Fund as soon as any moneys become available therein. Any moneys at any time in the 2010 Reserve Fund in

excess of the 2010 Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the 2010 Reserve Fund, may be withdrawn therefrom and transferred to the 2010 Bond Fund.

Section 5.10. 2011 Bond Fund Payments. Eighth, and concurrently with the payments required by Sections 5.04, 5.06, 5.08, 5.12, 5.14 and 5.16 hereof, from any moneys remaining in the Water Income Fund, there shall be credited to the 2011 Bond Fund the following:

(a) **Interest Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2011 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2011 Bonds then Outstanding.

(b) **Principal Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2011 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2011 Bonds.

The moneys credited to the 2011 Bond Fund shall be used to pay the principal of and interest on the 2011 Bonds as the same become due.

Section 5.11. 2011 Reserve Fund Payments. Ninth, and concurrently with the payments required by Sections 5.05, 5.07, 5.09, 5.13, 5.15 and 5.17 hereof, from any moneys remaining in the Water Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the 2011 Reserve Fund by Section 4.01 of Ordinance No. 7781, there shall be credited to the 2011 Reserve Fund any moneys necessary to make up any deficiency in the 2011 Reserve Fund, to the extent moneys on deposit in the 2011 Reserve Fund are less than the 2011 Minimum Bond Reserve. No payment need be made into the 2011 Reserve Fund so long as the moneys therein are at least equal to the 2011 Minimum Bond Reserve. The moneys in the 2011 Reserve Fund shall be maintained as a continuing reserve to be used, except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2011 Bonds resulting from the failure to deposit into the 2011 Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the 2011 Reserve Fund arises due to a transfer from the 2011 Reserve Fund to the 2011 Bond Fund, then such deficiency shall be made up from the Sewer Income Fund as soon as any moneys become available therein. Any moneys at any time in the 2011 Reserve Fund in excess of the 2011 Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the 2011 Reserve Fund, may be withdrawn therefrom and transferred to the 2011 Bond Fund.

Section 5.12. 2012 Bond Fund Payments. Tenth, and concurrently with the payments required by Sections 5.04, 5.06, 5.08, 5.10, 5.14 and 5.16 hereof, from any moneys remaining in the Sewer Income Fund, there shall be credited to the 2012 Bond Fund the following:

(a) **Interest Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2012 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2012 Bonds then Outstanding.

(b) **Principal Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2012 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2012 Bonds.

The moneys credited to the 2012 Bond Fund shall be used to pay the principal of and interest on the 2012 Bonds as the same become due.

Section 5.13. 2012 Reserve Fund Payments. Eleventh, and concurrently with the payments required by Sections 5.05, 5.07, 5.09, 5.11, 5.15 and 5.17 hereof, from any moneys remaining in the Sewer Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the 2012 Reserve Fund by Section 4.01 of Ordinance No. 7875, there shall be credited to the 2012 Reserve Fund any moneys necessary to make up any deficiency in the 2012 Reserve Fund, to the extent moneys on deposit in the 2012 Reserve Fund are less than the 2012 Minimum Bond Reserve or to repay the 2012 Reserve Policy Provider for a drawing on the 2012 Reserve Policy. No payment need be made into the 2012 Reserve Fund so long as the moneys therein are at least equal to the 2012 Minimum Bond Reserve and no draw has been made on the 2012 Reserve Policy credited to the 2012 Reserve Fund. The moneys in the 2012 Reserve Fund shall be maintained as a continuing reserve to be used (including draws on the 2012 Reserve Policy), except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2012 Bonds resulting from the failure to deposit into the 2012 Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the 2012 Reserve Fund arises due to a transfer from the 2012 Reserve Fund to the 2012 Bond Fund (or a draw on the 2012 Reserve Policy), then such deficiency shall be made up from the Water Income Fund as soon as any moneys become available therein. Any moneys at any time in the 2012 Reserve Fund in excess of the 2012 Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the 2012 Reserve Fund, may be withdrawn therefrom and transferred to the 2012 Bond Fund.

Section 5.14. 2015 Bond Fund Payments. Twelfth, and concurrently with the payments required by Sections 5.04, 5.06, 5.08, 5.10, 5.12 and 5.16 hereof, from any moneys remaining in the Sewer Income Fund, there shall be credited to the 2015 Bond Fund the following:

(a) **Interest Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2015 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2015 Bonds then Outstanding.

(b) **Principal Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2015 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2015 Bonds.

The moneys credited to the 2015 Bond Fund shall be used to pay the principal of and interest on the 2015 Bonds as the same become due.

Section 5.15. 2015 Reserve Fund Payments. Thirteenth, and concurrently with the payments required by Sections 5.05, 5.07, 5.09, 5.11, 5.13 and 5.17 hereof, from any moneys remaining in the Sewer Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the 2015 Reserve Fund by Section 4.01 of Ordinance No. 8074, there shall be credited to the 2015 Reserve Fund any moneys necessary to make up any deficiency in the 2015 Reserve Fund, to the extent moneys on deposit in the 2015 Reserve Fund are less than the 2015 Minimum Bond Reserve or to repay the 2015 Reserve Policy Provider for a drawing on the 2015 Reserve Policy. No payment need be made into the 2015 Reserve Fund so long as the moneys therein are at least equal to the 2015 Minimum Bond Reserve and no draw has been made on the 2015 Reserve Policy credited to the 2015 Reserve Fund. The moneys in the 2015 Reserve Fund shall be maintained as a continuing reserve to be used (including draws on the 2015 Reserve Policy), except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2015 Bonds resulting from the failure to deposit into the 2015 Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the 2015 Reserve Fund arises due to a transfer from the 2015 Reserve Fund to the 2015 Bond Fund (or a draw on the 2015 Reserve Policy), then such deficiency shall be made up from the Water Income Fund as soon as any moneys become available therein. Any moneys at any time in the 2015 Reserve Fund in excess of the 2015 Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the 2015 Reserve Fund, may be withdrawn therefrom and transferred to the 2015 Bond Fund.

Section 5.16. Bond Fund Payments. Fourteenth, and concurrently with the payments required by Sections 5.04, 5.06, 5.08, 5.10, 5.12 and 5.14 hereof, from any moneys remaining in the Water Income Fund, there shall be credited to the Bond Fund, created in Section 4.01 hereof, the following:

(a) **Interest Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2016 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of interest on the 2016 Bonds then Outstanding.

(b) **Principal Payments.** Monthly, commencing on the first day of the month immediately succeeding the delivery of any of the 2016 Bonds, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor, from whatever source, to pay the next maturing installment of principal of the Outstanding 2016 Bonds.

The moneys credited to the Bond Fund shall be used to pay the principal of and interest on the 2016 Bonds as the same become due.

Section 5.17. Reserve Fund Payments. Fifteenth and concurrently with the payments required by Sections 5.05, 5.07, 5.09, 5.11, 5.13 and 5.15 hereof, from any moneys remaining in the Water Income Fund, except as provided in Sections 5.19 and 5.20, and in addition to the moneys required to be deposited in the Reserve Fund by Section 4.01 hereof, there shall be credited to the Reserve Fund any moneys necessary to make up any deficiency in the Reserve Fund, to the extent moneys on deposit in or credited to the Reserve Fund are less than the Minimum Bond Reserve or to repay the 2016 Reserve Policy Provider for a drawing on the 2016 Reserve Policy. No payment need be made into the Reserve Fund so long as the moneys therein or credited thereto are at least equal to the Minimum Bond Reserve and no draw has been made on the 2016 Reserve Policy credited to the Reserve Fund. The moneys in the Reserve Fund shall be maintained as a continuing reserve to be used (including draws on the 2016 Reserve Policy), except as hereinafter provided in Section 5.19 and in Section 5.20 hereof, only to prevent deficiencies in the payment of the principal of and the interest on the 2016 Bonds resulting from the failure to deposit into the Bond Fund sufficient funds to pay said principal and interest as the same accrue. Except as otherwise provided herein, if a deficiency in the Reserve Fund arises due to a transfer from the Reserve Fund to the Bond Fund (or a draw on the 2016 Reserve Policy), then such deficiency shall be made up from the Sewer Income Fund as soon as any moneys become available therein. Any moneys at any time in the Reserve Fund in excess of the Minimum Bond Reserve, including investment earnings derived from amounts on deposit in the Reserve Fund, may be withdrawn therefrom and transferred to the Bond Fund.

Section 5.18. Rebate Fund.

(a) The City hereby establishes the “City of Boulder, Colorado Water and Sewer Revenue Bonds, Series 2016 Rebate Fund” (the “Rebate Fund”), which shall be expended in accordance with the provisions hereof and the Tax Letter of Instructions, and there is further established within said Rebate Fund the Rebate Principal Account and the Rebate Income Account. The City shall make deposits to and disbursements from the Rebate Fund in accordance with the Tax Letter of Instructions, shall invest the Rebate Fund pursuant to said Tax Letter of Instructions, and shall deposit income from said investments immediately upon receipt thereof in the Rebate Income Account, all as set forth in the Tax Letter of Instructions. The deposits required to be made to the Rebate Fund shall be made from any Net Income of the Facilities, including amounts on deposit in any fund or account created by this Instrument. The City shall make the calculations, deposits, disbursements and investments as may be required by the immediately preceding sentence or, to the extent it deems necessary in order to ensure the tax-exempt status of interest on the 2016 Bonds, shall employ at its expense a person or firm with recognized expertise in the area of rebate calculation, to make such calculations. The Tax Letter of Instructions may be superseded or amended by a new Tax Letter of Instructions drafted by, and accompanied by an opinion of, nationally recognized bond counsel addressed to the City to the effect that the use of said new Tax Letter of Instructions will not cause the interest on the 2016 Bonds to become includible in Gross Income for the purposes of federal income taxation.

(b) The City shall annually make the rebate deposit described in the Tax Letter of Instructions. Records of the determinations required by this Section 5.18 and the Tax Letter of Instructions shall be retained by the City until six years after the final retirement of the 2016 Bonds.

(c) Not later than 30 days after the end of the fifth anniversary of the date of issuance of the 2016 Bonds and every five years thereafter, the City shall pay to the United States of America 90% of the amount required to be on deposit in the Rebate Principal Account as of such payment date and 100% of the amount on deposit in the Rebate Income Account as of such payment date. Not later than 60 days after the final retirement of the 2016 Bonds, the City shall pay to the United States of America 100% of the balance remaining in the Rebate Principal Account and the Rebate Income Account. Each payment required to be paid to the United States of America pursuant to this Section 5.18 shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201. Each payment shall be accompanied by a copy of the Internal Revenue Form 8038-G originally filed with respect to the 2016 Bonds and a statement summarizing the determination of the amount to be paid to the United States of America.

Section 5.19. Termination of Deposits. No payment need be made into the Bond Fund, the Reserve Fund, or both, if the amount in the Bond Fund and the amount in the Reserve Fund total a sum at least equal to the entire amount of the Outstanding 2016 Bonds, both as to principal and interest to their respective maturities, or to any prior redemption date on which the City shall have exercised or shall have obligated itself to redeem prior to their respective maturities the 2016 Bonds then Outstanding and thereafter maturing, and both accrued and not accrued, in which case, moneys in said two accounts in an amount, except for any interest or other gain to accrue from any investment of moneys in Permitted Investments from time to time of any such deposit to the time or respective times the proceeds of any such investment shall be needed for such payment, at least equal to such principal and interest requirements, shall be used together with any such gain from investments solely to pay such as the same become due; and any moneys in excess thereof in said two accounts and any other moneys derived from the operation of the Facilities may be used in any lawful manner determined by the Council.

Section 5.20. Defraying Delinquencies. If, in any month, the City shall for any reason fail to pay into the Bond Fund the full amount above stipulated from the Water Income Fund, then an amount shall be paid into the Bond Fund in such month from the Reserve Fund (or from a draw on the 2016 Reserve Policy), in accordance with Section 5.17 hereof, equal to the difference between that paid from the Water Income Fund and the full amount so stipulated. The money so used shall be replaced in the Reserve Fund (or used to reimburse a draw on the 2016 Reserve Policy) from the first income thereafter received from the operation of the Facilities not required to be otherwise applied by Sections 5.03 through 5.18 hereof, but excluding any payments required for any Subordinate Bonds. In the event that other bonds are Outstanding, any lien to secure the payment of which on the Net Income is on a parity with the lien thereon of the 2016 Bonds, and the proceedings authorizing the issuance of those bonds require the replacement of moneys in a reserve fund therefor, then the moneys replaced in the Reserve Fund for the 2016 Bonds (or used to reimburse a draw on the 2016 Reserve Policy) and in each such other reserve fund shall be replaced on a pro rata basis as moneys become available therefor. If, in any month, the City shall for any reason fail to pay into the Reserve Fund (or reimburse a

draw on the 2016 Reserve Policy) the full amount above stipulated, if any, from the Net Income, the difference between the amount paid and the amount so stipulated shall in a like manner be paid therein from the first Net Income thereafter received and not required to be applied otherwise by Sections 5.03 through 5.17 and 5.18 hereof, but excluding any payments required for any Subordinate Bonds. The moneys in the Bond Fund and in the Reserve Fund shall be used solely and only for the purpose of paying the principal of and the interest on the 2016 Bonds; provided, however, that any moneys at any time in excess of the Minimum Bond Reserve in the Reserve Fund may be withdrawn therefrom and used as herein provided for the payment of the 2016 Bonds as they become due or on any prior redemption date; and provided, further, that any moneys in the Bond Fund and in the Reserve Fund in excess of accrued and unaccrued principal and interest requirements to the respective maturities or designated prior redemption date of the Outstanding 2016 Bonds may be used as hereinabove provided in Section 5.19 hereof.

Section 5.21. Payment of Additional Bonds. Sixteenth, but either concurrently with, in the case of additional Parity Bonds, or subsequent to, in the case of additional Subordinate Bonds, the payments required by Sections 5.03 through 5.18 hereof, as provided in Section 7.03 through Section 7.16 hereof, any moneys remaining in the Water Income Fund and in the Sewer Income Fund, after making the payments hereinabove provided, may be used by the City for the payment of interest on and the principal of additional bonds hereafter authorized to be issued and payable from the Net Income of the Facilities, including reasonable reserves therefor, as the same accrue; provided, however, that the lien of such additional bonds on the Net Income of the Facilities and the pledge thereof for the payment of such additional bonds shall be on a parity with, in the case of additional Parity Bonds, or subordinate to, in the case of additional Subordinate Bonds, the lien and pledge of the bonds herein authorized, as hereinafter provided.

Section 5.22. Facilities Income Pledge. Anything herein to the contrary notwithstanding, if moneys in the Water Income Fund or the Sewer Income Fund are at any time insufficient to pay the amounts required to be paid therefrom, after permitted transfers from the Reserve Fund, then moneys in either such fund shall be used to pay all items payable therefrom pursuant to this Article V.

Section 5.23. Use of Remaining Revenues. After making the payments hereinabove required to be made by Sections 5.03 through 5.18 hereof, any remaining income derived from the operation of the Water System in the Water Income Fund, and any remaining income derived from the operation of the Sewer System in the Sewer Income Fund, shall be used for any one of any combination of purposes, as follows:

(a) ***Payment of Obligations.*** For the payment of the interest on and principal of general obligation bonds, debt and other obligations, if any, incurred in the acquisition, construction, improvement and equipping of the Facilities;

(b) ***Purchase of Obligations.*** For the purchase in the open market of the 2016 Bonds or any other Outstanding bonds or other obligations incurred for any such purpose or purposes and payable from the Net Income of the Facilities, at the best price obtainable, not, however, in excess of the call price therefor then applicable, or if none be then applicable, not in excess of a reasonable price therefor;

(c) **Prior Redemption.** For the prior redemption of the 2016 Bonds or any other Outstanding bonds or other obligations payable from the Net Income of the Facilities, in accordance with the provisions of the 2016 Bonds or other obligations and any instrument authorizing their issuance, including but not necessarily limited to this Instrument, but not in excess of a price at which such 2016 Bonds or other obligations can be purchased in the open market;

(d) **Improvement.** For the repair, enlargement, extension, betterment and improvement of the Facilities;

(e) **O. & M. Expenses.** For defraying any Operation and Maintenance Expenses for which provision has not otherwise been made (i) of the Sewer System with surplus water Gross Income or (ii) of the Water System with surplus sewer Gross Income; and

(f) **Any Other Purpose.** For any lawful purpose or purposes authorized by the Constitution and laws of the State and the resolutions, ordinances and Charter of the City, as the same may be amended from time to time.

ARTICLE VI

GENERAL ADMINISTRATION

Section 6.01. Administration of Accounts. The special accounts designated in Articles IV and V hereof shall be administered as provided in this Article VI.

Section 6.02. Places and Times of Deposits. Each of the special accounts hereinabove designated in Article IV and Article V hereof shall be separately accounted for in the records of the City, which special accounts shall be in one bank account or more in an Insured Bank or Insured Banks as determined and designated by the Council (except as otherwise expressly stated herein). Each such 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 account not later than the date therefor herein designated, except that when any such date shall be a Sunday or a legal holiday, then such payment shall be made on or before the next preceding secular day. Notwithstanding any other provision herein to the contrary, moneys shall be deposited with the Paying Agent prior to each interest payment date herein designated sufficient to pay the interest, and principal and any prior redemption premiums then becoming due on the 2016 Bonds.

Section 6.03. Investment of Moneys. Any moneys in any account designated in Articles IV and V hereof, and not needed for immediate use, may be invested or reinvested by the Chief Financial Officer in securities or obligations which are lawful investments for such funds of the City and which constitute Permitted Investments. The Permitted Investments so purchased as an investment or reinvestment of moneys in any such account shall be deemed at all times to be part of the account, and (unless otherwise expressly provided herein) any interest accruing thereon and any other gain realized therefrom shall be credited to the account, and any

loss resulting from such investment shall be charged to the account; provided, however, that any yield from investments of moneys in the Reserve Fund in excess of the Minimum Bond Reserve may be credited to the Sewer Income Fund or Water Income Fund on a pro rata basis based on each fund's share of the Reserve Fund. In computing the amount in any such account for any purpose hereunder, except as herein otherwise expressly provided, such obligation shall be valued at the lower of the cost or market value thereof, exclusive of any accrued interest or any other gain. The expenses of purchase, safekeeping, sale and all other expenses incident to any investment or reinvestment of moneys pursuant to this Section 6.03 shall be accounted for as Operation and Maintenance Expenses. The Chief Financial Officer shall present for redemption or sale on the prevailing market at the best price obtainable any Permitted Investments so purchased as an investment of moneys in the account whenever it shall be necessary so to do to provide moneys to meet any withdrawal, payment or transfer from such account. The Chief Financial Officer shall not be liable or responsible for any loss resulting from any such investment made in accordance with this Instrument.

Section 6.04. Character of Funds. The moneys in any account herein authorized shall consist either of lawful money of the United States of America or Permitted Investments, or both such money and such securities. Moneys deposited in a demand or time deposit account in, or evidenced by, a certificate of deposit of an Insured Bank pursuant to Section 6.02 hereof, appropriately secured according to the laws of the State, shall be deemed lawful money of the United States of America.

Section 6.05. Accelerated Payments. Nothing contained in Article V hereof shall be construed to prevent the accumulation in any account herein designated of any monetary requirements at a faster rate than the rate or minimum rate, as the case may be, provided in Article V; provided, however, that no payment shall be so accelerated if such acceleration shall cause the Council to default in the payment of any obligation of the City appertaining to the Facilities. Nothing herein contained shall be construed to require in any Fiscal Year, the accumulation in any account for the payment of the principal of, the interest on, and any prior redemption premiums due in connection with any series of bonds payable from Net Income and herein or hereafter authorized, in excess of any principal, the interest, and any prior redemption premiums due on the first day of June in that Fiscal Year and on the next succeeding first day of December, but excluding any reserves required to be accumulated and maintained therefor.

Section 6.06. Payment of Bonds Requirements. The moneys credited to any account designated in Article V hereof for the payment of the principal of, the interest on, and any prior redemption premiums due in connection with any series of bonds or other securities herein or hereafter authorized shall be used, without requisition, voucher or other direction or further authority than is contained herein, to pay promptly the principal of, the interest on, and any prior redemption premiums due in connection with the bonds payable therefrom as the same become due, as herein provided, except to the extent any other moneys are available therefor, including without limitation moneys accounted for in the Bond Fund.

ARTICLE VII

SECURITIES LIENS AND ADDITIONAL BONDS

Section 7.01. First Lien Bonds. The 2016 Bonds authorized herein, subject to the payment of all necessary and reasonable Operation and Maintenance Expenses of the Facilities, constitute an irrevocable and first lien (but not necessarily an exclusive first lien) upon the resulting Net Income derived from the operation and use of the Facilities on a parity with the lien thereon of the Outstanding Parity Bonds.

Section 7.02. Equality of 2016 Bonds. The 2016 Bonds authorized to be issued hereunder and from time to time Outstanding are equitably and ratably secured by a lien on Net Income and shall not be entitled to any priority one over the other in the application of the Net Income regardless of the time or times of the issuance of the 2016 Bonds, it being the intention of the Council that there shall be no priority among the 2016 Bonds regardless of the fact that they may be actually issued and delivered at different times.

Section 7.03. Issuance of Parity Bonds. Nothing in this Instrument contained shall be construed in such a manner as to prevent the issuance by the City of additional bonds payable from Net Income and constituting a lien thereupon on a parity with, but not prior nor superior to, the lien of the 2016 Bonds, nor to prevent the issuance of bonds refunding all or a part of the 2016 Bonds; provided, however, that before any such additional Parity Bonds are authorized or actually issued (excluding any parity refunding bonds other than any bonds refunding Subordinate Bonds as permitted in Section 7.11 hereof):

(a) ***Absence of Default.*** The City shall not have defaulted in making any payments required by Article V hereof during the 24 calendar months immediately preceding the issuance of such additional bonds, or if none of the 2016 Bonds have been issued and Outstanding for a period of at least 24 calendar months, for the longest period any of the 2016 Bonds have been issued and Outstanding.

(b) ***Facilities Earnings Test.*** The annual Gross Income derived from the operation of the Facilities for the Fiscal Year immediately preceding the date of the issuance of such additional Parity Bonds shall have been sufficient to pay the annual Operation and Maintenance Expenses of the Facilities for said Fiscal Year, and, in addition, sufficient to pay an amount representing 125% of the combined maximum annual principal and interest requirements of the Outstanding Parity Bonds of the City payable from and constituting a lien upon Net Income of the Facilities and the bonds proposed to be issued, except as hereinafter otherwise expressly provided.

(c) ***Reduction of Annual Requirements.*** The respective annual principal and interest requirements (including as a principal requirement the amount of any prior redemption premiums due on any prior redemption date as of which any Outstanding bonds have been called or have been ordered to be called for prior redemption) shall be reduced to the extent such requirements are scheduled to be paid each of the respective Fiscal Years with moneys held in trust or in escrow for that purpose by any Insured Bank

located within or without the State and exercising trust powers, including the known minimum yield from any investment in Federal Securities.

(d) **Consideration of Additional Expenses.** In determining whether or not additional Parity Bonds may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in Operation and Maintenance Expenses of the Facilities, that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the additional bonds.

(e) **Reserve Fund.** There shall be established a reserve fund in an amount equal to at least the average annual debt service on such additional Parity Bonds.

(f) **Reserve Policy Costs.** In addition to the requirements set forth in subsection (b) above, the annual Gross Income derived from the operation of the Facilities for the Fiscal Year immediately preceding the date of the issuance of such additional Parity Bonds shall have been sufficient to pay 100% of the Policy Costs then due and owing on the Reserve Policy and any reserve policy on any Outstanding Parity Bonds.

Section 7.04. Certification of Gross Income. A written certification by the Chief Financial Officer, Director of Finance or an Independent Accountant that said annual Gross Income, when adjusted as hereinabove provided in subsections (c) and (d) of Section 7.03 hereof, is sufficient to pay said amounts, as provided in subsection (c) of Section 7.03 hereof, shall be conclusively presumed to be accurate in determining the right of the City to authorize, issue, sell and deliver additional bonds on a parity with the 2016 Bonds.

Section 7.05. Subordinate Bonds Permitted. Nothing herein contained shall be construed so as to prevent the City from issuing additional bonds payable from Net Income and having a lien thereon subordinate, inferior and junior to the lien of the 2016 Bonds authorized to be issued by this Instrument.

Section 7.06. Superior Bonds Prohibited. Nothing herein contained shall be construed so as to permit the City to issue additional bonds payable from Net Income and having a lien thereon prior and superior to the 2016 Bonds.

Section 7.07. Use of Proceeds. The proceeds of any additional bonds (other than refunding securities) payable from revenues of the Facilities shall be used only for improving, enlarging or extending the Sewer System or the Water System or both systems (or any combination thereof), as the Council may from time to time determine.

Section 7.08. Payment Dates of Additional Bonds. Any additional Parity Bonds or Subordinate Bonds (including any refunding bonds) issued in compliance with the terms hereof shall bear interest payable semiannually on the first days of June and December in each year, except that the first interest payment date may be for interest accruing for any period not in excess in the aggregate of one year; and such additional bonds shall mature on the first day of December in the years designated by the Council during the term of the additional bonds.

Section 7.09. Refunding Bonds. The provisions of Sections 7.03 and 7.04 hereof are subject to the exceptions provided in Sections 7.10 through 7.13 hereof for the issuance of refunding bonds.

Section 7.10. Issuance of Refunding Bonds. If at any time after the 2016 Bonds, or any part thereof, shall have been issued and remain Outstanding, the Council shall find it desirable to refund any Outstanding 2016 Bonds payable from and constituting a lien upon Net Income, said 2016 Bonds or any part thereof, may be refunded.

Section 7.11. Issuance of Parity Refunding Bonds. No refunding bonds payable from Net Income shall be issued on a parity with the 2016 Bonds herein authorized unless:

(a) **Parity Lien.** The lien on Net Income of the Outstanding bonds so refunded is on a parity with the lien thereon of the 2016 Bonds herein authorized; or

(b) **Default and Earnings Tests.** The refunding bonds are issued in compliance with Section 7.03 hereof (including subsections (a) through (f) thereof).

Section 7.12. Partial Refundings. The refunding bonds so issued shall enjoy complete equality of lien with the portion of any bonds of the same issue which is not refunded, if any there be; and the holder or holders of such refunding bonds shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of the unrefunded bonds of the same issue partially refunded by the refunding bonds.

Section 7.13. Limitations Upon Refundings. Any refunding bonds payable from Net Income shall be issued with such details as the Council may provide, subject to the provisions of Section 7.08 hereof, and subject to the inclusion of any such rights and privileges designated in Section 7.12 hereof, but without any impairment of any contractual obligation imposed upon the City by any proceedings authorizing the issuance of any unrefunded portion of such Outstanding bonds of any one or more issues (including but not necessarily limited to the 2016 Bonds herein authorized). If only a part of the Outstanding bonds of any issue or issues payable from Net Income is refunded, then such bonds may not be refunded without the consent of the holders or holders of the unrefunded portion of such bonds:

(a) **Requirements Not Increased.** Unless the refunding bonds do not increase any aggregate annual principal and interest requirements evidenced by such refunding bonds and by the Outstanding bonds not refunded on and prior to the last maturity date of such unrefunded bonds, and the lien of any refunding bonds on the Net Income is not raised to a higher priority than the lien thereon of the bonds thereby refunded; or

(b) **Subordinate Lien.** Unless the lien on Net Income for the payment of the refunding bonds is subordinate to each such lien for the payment of any bonds not refunded.

Section 7.14. Supplemental Instrument.

(a) Additional bonds payable from Net Income shall be issued only after authorization thereof by a supplemental instrument of the Council stating the purpose or

purposes of the issuance of such additional bonds, directing the application of the proceeds thereof to such purpose or purposes, directing the execution thereof, and fixing and determining the date, principal amount, maturities, designation and numbers thereof, the maximum rate or the rate or rates of interest to be borne thereby, any prior redemption privileges of the City with respect thereto and other provisions thereof in accordance with this Instrument.

(b) All additional bonds shall bear such date, shall bear such numbers and series designation, letters or symbols prefixed to their numbers distinguishing them from each other security, shall be payable at such place or places, may be subject to redemption prior to maturity on such terms and conditions, and shall bear interest at such rate or at such different or varying rates per annum, as may be fixed by instrument of the Council.

ARTICLE VIII

MISCELLANEOUS PROTECTIVE COVENANTS

Section 8.01. General. The City hereby particularly covenants and agrees with the holders of the 2016 Bonds and makes provisions which shall be a part of its contract with such holders to the effect and with the purpose set forth in the following provisions and sections of this Article VIII hereof.

Section 8.02. Performance of Duties. The City, acting by and through the Council or otherwise, will faithfully and punctually perform or cause to be performed all duties with respect to the Net Income and the Facilities required by the Constitution and laws of the State and the various instruments and Charter of the City, including but not limited to, the making and collection of reasonable and sufficient rates and charges for services rendered or furnished by, or the use of, the Facilities, as herein provided, and the proper segregation of the Net Income and its application to the respective accounts or funds provided from time to time therefor.

Section 8.03. Further Assurances. At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver 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 Net Income, and other funds and accounts hereby pledged or assigned, or intended so to be, or which 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 Instrument. The City, acting by and through the Council, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Net Income of the Facilities and other funds and accounts pledged hereunder and all the rights of every holder of any 2016 Bond hereunder against all claims and demands of all persons whomsoever.

Section 8.04. Conditions Precedent. Upon the date of issuance of any 2016 Bonds, all conditions, acts and things required by the Constitution or statutes of the State or this Instrument to exist, to have happened, and to have been performed precedent to, or in the issuance of, the 2016 Bonds shall exist, have happened, and have been performed; and the 2016 Bonds, together

with all other obligations of the City, shall be within every debt and other limitation prescribed by the State Constitution, statutes, or Charter of the City.

Section 8.05. Efficient Operation and Maintenance. The City shall at all times operate the Facilities properly and in a sound and economical manner; and the City shall maintain, preserve and keep the same properly or cause the same to be so 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 Facilities may be properly and advantageously conducted, all as the City shall reasonably determine.

Section 8.06. Rules, Regulations and Other Details. The City, acting by and through the Council, shall establish and enforce reasonable rules and regulations governing the operation, use and services of the Facilities. All compensation, salaries, fees and wages paid by it in connection with the maintenance, repair and operation of the Facilities shall be reasonable and no more than would be paid by other corporations, municipalities or public bodies for similar services. The City shall comply with all valid acts, rules, regulation, orders and directions of any legislative, executive, administrative or judicial body applicable to the Facilities or to the City.

Section 8.07. Payment of Governmental Charges. The City shall pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon, or in respect of, the facilities, or upon any part thereof, or upon any portion of the Net Income, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the Facilities; and the City shall not create or suffer to be created any lien or charge upon the Facilities, or any part thereof, or upon the Net Income, except the pledge and lien created by this Instrument for the payment of the principal of, any prior redemption premium due in connection with, and the interest on the 2016 Bonds, and except as herein otherwise permitted. The City shall pay or cause to be discharged or will 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 Facilities, or any part thereof, or the Net Income; provided, however, that nothing in this Section contained shall require the City to pay or to cause to be discharged or to make provision for any such lien or charge, so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

Section 8.08. Prejudicial Action Prohibited. No contract will be entered into nor any other action taken by the City which the rights of any holder of any 2016 Bond might be impaired or diminished.

Section 8.09. Protection of Security. The City, the officers, agents and employees of the City, and the Council shall not take any action in such manner or to such extent as might prejudice the security for the payment of the 2016 Bonds and the interest thereon according to the terms thereof.

Section 8.10. Accumulation of Interest Claims. In order to prevent any claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of

the time for the payment of any claim for interest on any of the 2016 Bonds; and the City will not, directly or indirectly, be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any such claims. In case the time for the payment of any interest shall be extended, such installment or installments of interest after such extension or arrangement shall not be entitled, in case of default hereunder, to the benefit or the security of this Instrument, except upon the prior payment in full of the principal of all 2016 Bonds then Outstanding and of all matured interest on such 2016 Bonds the payment of which has not been extended.

Section 8.11. Prompt Payment of 2016 Bonds. The City will promptly pay the principal of and the interest on every 2016 Bond issued hereunder and secured hereby at the place, on the dates, and in the manner specified herein and in the 2016 Bonds according to the true intent and meaning hereof.

Section 8.12. Use of Reserve Funds. The Bond Fund and the Reserve Fund shall be used solely and only and the moneys credited to said account (including the 2016 Reserve Policy) are hereby pledged for the purpose of paying the interest on and the principal of the 2016 Bonds, except for those moneys in the Bond Fund and in the Reserve Fund that are in excess of the interest on and the principal of the 2016 Bonds, both accrued and not accrued, to their respective maturities (subject to the provisions of Section 9.01 hereof), and except for those moneys in the Reserve Fund in excess of the Minimum Bond Reserve, as hereinabove provided.

Section 8.13. Additional Bonds. The City shall not hereafter issue any bonds payable from Net Income and having a lien on a parity with the 2016 Bonds herein authorized so long as any 2016 Bonds herein authorized are Outstanding, unless such additional bonds (other than bonds issued pursuant to Section 7.10 through 7.13 hereof and refunding bonds on a parity with the 2016 Bonds) on a parity with the bonds herein authorized are issued in such manner as provided in Sections 7.03, 7.04, 7.07, 7.08, 7.11 and 7.12 hereof. Any other bonds hereafter authorized to be issued and payable from Net Income shall not hereafter be issued, unless such additional bonds are also issued in conformance with the provisions of Articles V and VIII hereof.

Section 8.14. Other Liens. Other than as provided by this Instrument, there are no liens or encumbrances of any nature whatsoever on or against the Facilities, or any part thereof, or on or against Net Income derived or to be derived.

Section 8.15. Corporate Existence. The City will maintain its corporate identity and existence so long as any of the 2016 Bonds herein authorized remain Outstanding, unless another body corporate and politic by operation of law succeeds to the duties, privileges, powers, liabilities, immunities and rights of the City and is obligated by law to operate and maintain the Facilities as herein provided without adversely affecting to any substantial degree the privileges and rights of any holder of any Outstanding 2016 Bond at any time.

Section 8.16. Disposal of Facilities Prohibited. Except for the use of the Facilities or services thereby rendered in the normal course of business, neither all nor a substantial part of the Facilities shall be sold, leased, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until all the 2016 Bonds have been paid in full, both principal and interest, or unless provision has been made therefor, or until the 2016 Bonds have otherwise been redeemed,

including but not necessarily limited to the termination of the pledge herein authorized; and the City shall not dispose of its title to the Facilities or to any useful part thereof, including any property necessary to the operation and use of the Facilities and the lands and interest in lands comprising the sites of the Facilities, except as provided in Section 8.17 hereof.

Section 8.17. Disposal of Unnecessary Property. The City may sell, exchange, lease or otherwise dispose of at any time and from time to time any property constituting a part of the Facilities and not useful in the construction, reconstruction, or operation thereof, or which shall cease to be necessary for the efficient operation of the Facilities, or which shall have been replaced by other property of at least equal value. Any proceeds of any such sale, exchange, lease or other disposition received and not used to replace such property so sold or so exchanged or otherwise so disposed of, and appertaining to the Sewer System or the Water System, shall be deposited by the City as Gross Income in the Sewer Income Fund or the Water Income Fund, respectively, to which the transaction appertains.

Section 8.18. Competing Facilities. As long as any of the 2016 Bonds hereby authorized are outstanding, the City shall not grant any franchise or license to any competing facilities, nor shall it permit during said period (except as it may legally be required so to do) any Person to sell water, water services, sanitary sewer services or any rights to use water facilities or sanitary sewer facilities to any consumer, public or private, within the City.

Section 8.19. Competent Management. The City shall employ experienced and competent management personnel for the Facilities who shall have full control over the Facilities and shall operate the Facilities for the City, subject to the reasonable control by and direction of the Council and the Manager.

Section 8.20. Employment of Management Engineers. In the event of default on the part of the City in paying principal of or interest on the 2016 Bonds promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of 60 days, or if the Net Income of the Facilities in any Fiscal Year should fail to equal at least the amount of the principal of and the interest on the Outstanding 2016 Bonds and other bonds (including all reserves therefor specified in the authorizing proceedings, including but not limited to this Instrument) payable from the Net Income 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 Facilities so long as such default continues or so long as the Net Income is less than the amount hereinabove designated. (The right of any holder or holders of the 2016 Bonds to require the appointment of such management engineers shall not be exclusive, and in the event of default as herein outlined, such holder or holders shall have the right to proceed in law or in equity to require the performance of the covenants herein contained or otherwise to proceed in any action which to them shall seem appropriate, as herein elsewhere provided.)

Section 8.21. Reserved.

Section 8.22. Budgets. The Council and officials of the City shall annually and at such other times as may be provided by law prepare and adopt a budget appertaining to the Facilities.

Section 8.23. Reasonable Charges. While the 2016 Bonds or any of them remain Outstanding and unpaid, the rates, fees, and other charges for the use of and all services rendered by the Facilities to the City and to its inhabitants and to all other consumers within or without the boundaries of the City shall be reasonable and just, taking into account and consideration the costs and value of the Facilities, the Operation and Maintenance Expenses thereof, the proper and necessary allowances for the depreciation thereof, and the amounts necessary for the retirement of all 2016 Bonds and other bonds and obligations payable from Net Income, the accruing interest thereon, and reserves therefor.

Section 8.24. Adequacy and Applicability of Charges. There shall be charged against all purchasers of service and all users of the Facilities, such rates, fees and other charges as shall be adequate to meet the requirements of this and the preceding sections hereof. Such rates and amounts from the Facilities shall be sufficient to produce Gross Income or earnings annually to pay the annual Operation and Maintenance Expenses, 125% of both the principal of and the interest on the 2016 Bonds and any other bonds payable annually from Gross Income (excluding the reserves therefor), all of which income, including any income received from the City, shall be subject to distribution to the payment of Operation and Maintenance Expenses of the Facilities and to the payment of principal of and interest on all bonds payable from any Net Income, including reasonable reserves therefor. No free service or facilities shall be furnished by the Facilities, except to the City in its discretion.

Section 8.25. Levy of Charges. The City will forthwith and, in any event, prior to the delivery of any of the 2016 Bonds herein authorized, fix, establish and levy the fees, rates and other charges which are required by Section 8.24 of this Instrument, if such action be necessary therefor. No reduction in any initial or existing rate schedule for the Facilities may be made:

(a) ***Proper Application.*** Unless the City has fully complied with the provisions of Article V of this Instrument for at least the full Fiscal Year immediately preceding such reduction of the initial rate schedule;

(b) ***Sufficient Revenues.*** Unless the audit required by the Independent Accountant by Section 8.30 of this Instrument for the full Fiscal Year immediately preceding such reduction discloses that the estimated revenues resulting from the proposed rate schedule, after its proposed reduction, for the Facilities will be sufficient to pay an amount at least equal to the Operation and Maintenance Expenses of the Facilities for the said period and, in addition, 125% of both the principal of and interest on 2016 Bonds and any other securities payable annually from any Net Income from the Facilities including reasonable reserves therefor.

Section 8.26. Collection of Charges. The City shall cause all rates, fees and other charges appertaining to the Facilities to be collected as soon as reasonable, shall prescribe and enforce rules and regulations for the payment thereof and for the connection with and the disconnection from properties of the Facilities, and shall provide methods of collection and penalties including, but not limited to, denial of municipal water service for nonpayment of such rates, fees and service charges, to the end that Net Income of the Facilities shall be adequate to meet the requirements hereof.

Section 8.27. Procedure for Collecting Charges. All bills for water, water facilities, electric current appertaining thereto, and sanitary sewer service or facilities furnished or served by or through the Facilities shall be rendered to customers on a regularly established and orderly basis when needed. The fees, rates and other charges due shall be collected in a lawful manner, including without limitation discontinuance of service by the City.

Section 8.28. Records. So long as any of the 2016 Bonds remain Outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Facilities. Such books shall include (but not necessarily be limited to) monthly records showing:

- (a) **Numbers.** The number of customers by classes;
- (b) **Receipts.** The revenues received from charges by classes of customers; and
- (c) **Expenses.** A detailed statement of the expenses of the Facilities.

All requisitions, requests, certificates, opinions and other documents received by any Person on behalf of the City in connection with the Facilities under the provisions of this Instrument shall be retained in such Person's possession or in the City's official records.

Section 8.29. Rights Concerning Records and Facilities. Any holder of any of the 2016 Bonds or any duly authorized agent or agents of such holder shall have the right, at all reasonable times, to inspect all records, accounts and data relating thereto, concerning the Facilities or the Net Income, or both, to make copies of such records, accounts and data, and to inspect the Facilities and all properties comprising the Facilities.

Section 8.30. Audits Required. The City shall, following the close of each Fiscal Year, order an audit for the Fiscal Year of such books and accounts to be made forthwith by an Independent Accountant.

Section 8.31. Contents of Audits. Each such audit, in addition to whatever matters may be thought proper by the accountant to be included therein, shall include the following:

- (a) **Statement.** A statement in detail of the income and expenditures of each system constituting the Facilities for the audit period, including but not necessarily limited to a statement of Gross Income, of Net Income, and of the amount of any capital expenditures appertaining to each system for the audit period, as well as a statement of the profit or loss for the audit period; and
- (b) **Insurance List.** The audit shall have attached to it an unaudited list of the insurance policies in force at the end of the Fiscal Year, setting out as to each policy the amount of the policy, the risks covered, and the expiration date of the policy.

Section 8.32. Distribution of Audits and Reports. The City agrees to furnish by first-class mail, postage prepaid, forthwith, and in any event by July 31 of each year, a copy of each of such audits and reports to the holder of any of the 2016 Bonds at the holder's request and without request to:

- (a) **Original Purchaser.** The Original Purchaser, or any known successor thereof;
- (b) **Paying Agent.** The Paying Agent, or any known successor thereof; and
- (c) **Others.** Any other Person designated in any instrument or other proceedings appertaining to any Outstanding bonds payable from Net Income other than the 2016 Bonds;

after each such audit and report has been prepared; and any such holder shall have the right to discuss with the Independent Accountant or with the person making the audit and report the contents thereof and to ask for such additional information as such holder may reasonably require.

Section 8.33. Insurance and Reconstruction. The City shall, at all times, maintain fire and extended coverage insurance, worker's compensation insurance, public liability insurance, and all such other insurance as is customarily maintained with respect to facilities of like character against loss of, or damage to, the Facilities and against public and other liability to the extent reasonably necessary to protect the interests of the City and of each holder of a 2016 Bond, except as herein otherwise provided. The City shall be deemed to have obtained sufficient insurance coverage under this section if it chooses to self-insure the Facilities. If any useful part of the Facilities shall be damaged or destroyed, the City shall, as expeditiously as may be possible, commence and diligently prosecute the repair or replacement of the damaged or destroyed property so as to restore the same to use unless such property is deemed obsolete or unnecessary by the City. The proceeds of any such property insurance appertaining thereto shall be payable to the City and shall be deposited in the Sewer Income Fund or the Water Income Fund, respectively, as Gross Income, depending upon which fund or funds the insurance proceeds appertain. In the event that the costs of such repair and replacement of the damaged or destroyed property exceed the proceeds of such property insurance available for payment of the same, in the case of property pertaining to the Sewer System moneys in the Sewer Income Fund and in case of property pertaining to the Water System moneys in the Water Income Fund, shall be used to the extent necessary for such purposes, as permitted by Sections 5.22 and 5.23 hereof.

Section 8.34. Fire and Extended Coverage Insurance. Except for the time when the contractors, or any of them, engaged in constructing, furnishing and equipping any of the Facilities shall be responsible pursuant to the provisions of their respective contracts for loss or damage, the City shall procure and maintain, or continue to maintain, fire and extended coverage insurance of the Facilities, all in amounts at least sufficient to provide for not less than full recovery whenever the loss from perils insured against does not exceed 80% of the full insurable value, so long as any of the 2016 Bonds are Outstanding, except as otherwise provided in Section 8.33.

Section 8.35. Other Insurance. Upon receipt of any proceeds from the sale of the 2016 Bonds, the City will be obligated, except as otherwise provided in Section 8.33 with respect to self-insurance, to maintain in connection with the Facilities, other insurance to the extent considered reasonable and necessary as determined by comparison with other comparable facilities.

Section 8.36. Reliability and Payment. Insurance required by Sections 8.33, 8.34 and 8.35 hereof shall be carried with a reliable insurance company or companies authorized to do business in the State; and the premiums on such insurance, or an allocable and pro rata share thereof, shall be paid as Operation and Maintenance Expenses.

Section 8.37. Proof of Loss. Upon the occurrence of any loss or damages covered by any of the insurance policies specified above in Sections 8.33, 8.34 and 8.35 hereof from one or more causes to which reference is made therein, the City will cause to be made due proof of loss and will cause to be done all things necessary to cause the insuring companies to make payment in accordance with the terms of such policy or policies.

Section 8.38. Additional Tax Covenants.

(a) The City covenants that it shall not use or permit the use of any proceeds of the 2016 Bonds or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause any of the 2016 Bonds to be an “arbitrage bond” within the meaning of Section 148 of the Code, or would otherwise cause the interest on the 2016 Bonds to be includible in Gross Income for federal income tax purposes. The City covenants that it shall at all times do and perform all acts and things permitted by law and which are necessary in order to assure that interest paid by the City on the 2016 Bonds shall, for purposes of federal income taxation, not be includible in Gross Income under the Code or any other valid provision of law.

(b) In particular, but without limitation, the City further represents, warrants and covenants to comply with the following restrictions of the Code, unless it receives an opinion of nationally recognized bond counsel stating that such compliance is not necessary:

(i) Gross proceeds of the 2016 Bonds shall not be used in a manner which will cause the 2016 Bonds to be considered “private activity bonds” within the meaning of the Code.

(ii) The 2016 Bonds are not and shall not become directly or indirectly “federally guaranteed.”

(iii) The City shall timely file Internal Revenue Form 8038-G which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

(iv) The City shall comply with the Tax Letter of Instructions delivered to it on the date of issue of the 2016 Bonds with respect to the application and investment of 2016 Bond proceeds, subject to Section 5.18 hereof.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Defeasance. When all principal, interest and any prior redemption premiums due in connection with the 2016 Bonds have been duly paid, the pledge and lien and all obligations hereunder shall thereby be discharged and the 2016 Bonds shall no longer be deemed to be Outstanding within the meaning of this Instrument. There shall be deemed to be such due payment when the City has placed in escrow or in trust with a commercial bank located within or without the State and exercising trust powers an amount sufficient (including the known minimum yield from Federal Securities in which such amount, wholly or in part, may be initially invested) to meet all requirements of principal, interest and any prior redemption premiums due as the same become due to the final maturities of the 2016 Bonds or upon any prior redemption date as of which the City shall have exercised or shall have obligated itself to exercise its prior redemption option by a call of the 2016 Bonds for payment then. The Federal Securities shall become due prior to the respective times on which the proceeds thereof shall be needed in accordance with a schedule established and agreed upon between the City and such bank at the time of the creation of the escrow or trust, or the Federal Securities shall be subject to redemption at the option of the holders thereof to assure such availability as so needed to meet such schedule.

Section 9.02. Delegated Powers. The officers of the City be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Instrument including, without limitation, the execution of the 2016 Bonds, the tenure and identity of the officials of the Council and of the City, the delivery of the 2016 Bonds, the receipt of the bond purchase price and, if it be in accordance with fact, the absence of litigation, pending or threatened, affecting the validity thereof.

Section 9.03. Statute of Limitations. No action or suit based upon any 2016 Bond or other obligation of the City shall be commenced after it is barred by any statute of limitations appertaining thereto. Any trust or fiduciary relationship between the City and the holder of any 2016 Bond or other obligee regarding any such obligation shall be conclusively presumed to have been repudiated on the maturity date or other due date thereof unless the 2016 Bond is presented for payment or demand for payment of any such obligation is otherwise made before the expiration of the applicable limitation period. Any moneys from whatever source derived remaining in any fund or account reserved, pledged or otherwise held for the payment of any such obligation, action or suit for the collection of which is barred shall revert to the Sewer Income Fund unless the Council shall otherwise provide by Instrument of the City. Nothing herein contained shall be so construed as to prevent the payment of any such obligation after any action or suit for its collection has been barred if the Council deems it in the best interests of the public so to do and orders such payment to be made.

Section 9.04. Evidence of Bondholders. Any request, consent or other instrument which this Instrument may require or may permit to be signed and to be executed by the holder of any 2016 Bonds may be in one or more instruments of similar tenor and shall be signed or shall be executed by each such holder in person or by his attorney appointed in writing as shown

on the registration books of the Paying Agent although the Paying Agent may nevertheless, in its discretion, require further or other proof as it deems advisable.

Section 9.05. Warranty Upon Issuance of 2016 Bonds. Any 2016 Bonds authorized as herein provided, when duly executed and delivered for the purpose provided for in this Instrument, shall constitute a warranty by and on behalf of the City for the benefit of each and every future holder of any of the 2016 Bonds that the 2016 Bonds have been issued for a valuable consideration in full conformity with law.

Section 9.06. Sale of 2016 Bonds. The 2016 Bonds, when executed as provided by law, shall be delivered to Bank of America Merrill Lynch, the bid received to the best advantage of the City (the “Original Purchaser”), whose bid is hereby accepted. The 2016 Bonds, when executed as provided by law, shall be delivered to the Original Purchaser, upon receipt of \$35,233,280.07 (equal to the par amount of \$34,145,000.00, plus a net original issue premium of \$1,156,574.95 minus an underwriting discount paid to the Original Purchaser of \$68,294.88). The arbitrage yield on the 2016 Bonds shall be 2.0222% per annum, as computed by the City’s financial advisor in accordance with the resolution authorizing the public sale of the 2016 Bonds. Such sale of the 2016 Bonds is hereby found to be to the best advantage of the City after advertising and receipt of bids for the 2016 Bonds in accordance with the Charter. The issuance of the 2016 Bonds by the City shall constitute a warranty by and contract of and on behalf of the City, for the benefit of each and every registered owner of the 2016 Bonds, that the 2016 Bonds have been issued for valuable consideration in full conformity with law.

ARTICLE X

PRIVILEGES, RIGHTS AND REMEDIES

Section 10.01. Bondholder’s Remedies. Each holder of any 2016 Bond issued hereunder shall be entitled to all of the privileges, rights and remedies permitted at law or in equity or by statute, except no real or personal property appertaining to the Facilities or otherwise has been conveyed to secure the payment of the 2016 Bonds by deed of trust or mortgage to a trustee for the benefit and the security of the holder or holders from time to time of the 2016 Bonds, or by any other encumbrance or other pledge of property, subject to the provisions herein concerning the pledge of and the covenants and the other contractual provisions concerning the Net Income of the Facilities.

Section 10.02. Right to Enforce Payment. Nothing in this article contained shall affect or impair the right of any holder of any 2016 Bond issued hereunder to enforce the payment of the principal of and the interest on such 2016 Bond or the obligation of the City to pay the principal of and the interest on each 2016 Bond issued hereunder to the holder thereof at the time and the place expressed in the 2016 Bond.

Section 10.03. Events of Default. Each of the following events is hereby declared an “event of default,” that is to say:

- (a) ***Nonpayment of Principal and Premium.*** Payment of the principal of any of the 2016 Bonds or any prior redemption premium due in connection therewith or both

shall not be made when the same shall become 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 2016 Bonds shall not be made when the same becomes due and payable or within 30 days thereafter.

(c) ***Incapable to Perform.*** The City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

(d) ***Nonperformance of Duties.*** The City shall have failed to carry out and to perform (or in good faith to begin the performance of) all acts and things lawfully required to be carried out or to be performed by it under any contract relating to Gross Income or to the Facilities or otherwise and such failure shall continue for 60 days after receipt of notice from either the Original Purchaser of the 2016 Bonds or from the holders of 10% in principal amount of the 2016 Bonds authorized by this Instrument and then outstanding.

(e) ***Failure to Reconstruct.*** The City shall discontinue or shall unreasonably delay or shall fail to carry out with reasonable dispatch the reconstruction of any part of the Facilities which shall be destroyed or damaged and shall not be promptly repaired or replaced unless such failure to repair is due to obsolescence.

(f) ***Appointment of Receiver.*** An order or decree shall be entered by a court of competent jurisdiction with the consent or acquiescence of the City appointing a receiver or receivers for the Facilities or for the Net Income of the Facilities or both or if an order or decree having been entered without the consent or acquiescence of the City shall not be vacated or discharged or stayed on appeal within 60 days after entry.

(g) ***Default of Any Provision.*** The City shall make default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the 2016 Bonds or in this Instrument on its part to be performed, and such default shall continue for 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by either the Original Purchaser of the 2016 Bonds or by the holders of 10% in principal amount of the 2016 Bonds then Outstanding.

Section 10.04. Remedies for Defaults. Upon the happening and continuance of any of the events of default as provided in Section 10.03 hereof, then and in every case the holder or holders of not less than 10% in principal amount of the 2016 Bonds then Outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City and its agents, officers and employees to protect and to enforce the rights of any holder of the 2016 Bonds under this Instrument by mandamus or by other suit, action or special proceedings in equity or at 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 holder or holders 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 any holder of any 2016 Bond, or to require the City to act

as if it were the trustees of an express 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 all holders of the 2016 Bonds then Outstanding.

Section 10.05. Receiver's Rights and Privileges. Any receiver appointed in any proceedings to protect the rights of such holders hereunder, the consent to any such appointment being hereby expressly granted by the City, may enter and may take possession of the Facilities, operate and maintain the same, prescribe rates and charges and collect, receive and apply all Net Income arising after the appointment of such receiver in the same manner as the City itself might do.

Section 10.06. Rights and Privileges Cumulative. The failure of any holder of any Outstanding 2016 Bond to proceed in any manner herein provided shall not relieve the City, its Council 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 holder (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 holder shall not be deemed a waiver of any other right or privilege thereof.

Section 10.07. Duties Upon Defaults. Upon the happening of any of the events of default as provided in Section 10.03 hereof, the City, in addition, will do and perform all proper acts on behalf of and for the holders of the 2016 Bonds to protect and to preserve the security created for the payment of their 2016 Bonds and to insure the payment of the principal of and the interest on the 2016 Bonds promptly as the same become due. During any period of default, so long as any of the 2016 Bonds herein authorized either as to principal or as to interest are outstanding, all Net Income shall be paid into the Bond Fund or, in the event of bonds issued and Outstanding during said period of time on a parity with the 2016 Bonds herein authorized, shall be paid into bond funds for all Parity Bonds on an equitable and prorated basis and used for the purposes therein provided. In the event that the City fails or refuses to proceed as in this Section provided, the holder or holders of not less than 10% in principal amount of the 2016 Bonds then Outstanding, after demand in writing, may proceed to protect and to enforce the rights of the holders of the 2016 Bonds as hereinabove provided; and, to that end, any such holders of Outstanding 2016 Bonds shall be subrogated to all rights of the City under any agreement, lease or other contract involving the Facilities entered into prior to the effective date of this Instrument or thereafter while any of the 2016 Bonds herein authorized are Outstanding.

Section 10.08. Duties in Bankruptcy Proceedings. In the event that any user of the Facilities proceeds under any laws of the United States relating to bankruptcy, including any action under any law providing for corporate reorganization, it shall be the duty of the City, and its appropriate officers are hereby authorized and directed, to take all necessary steps for the benefit of the holders of the 2016 Bonds in said proceedings, including the filing of any claims for unpaid fees, rates and other charges or otherwise arising from the breach of any of the covenants, terms or conditions of any contract involving the Facilities.

ARTICLE XI

AMENDMENT OF INSTRUMENT

Section 11.01. Limitations Upon Amendments. This Instrument may be amended or supplemented by instruments adopted by the Council in accordance with the laws of the State, without receipt by the City of any additional consideration, but with the written consent of the holders of more than 50% of the 2016 Bonds authorized by this Instrument and Outstanding at the time of the adoption of such amendatory or supplemental instrument (not including in any case any 2016 Bonds which may then be held or owned for the account of the City but including such refunding any of the 2016 Bonds herein authorized if such refunding securities are not owned by the City).

Notwithstanding the foregoing, so long as the 2005B Bonds, the 2007 Bonds, the 2010 Bonds, the 2011 Bonds, the 2012 Bonds, the 2015 Bonds and the 2016 Bonds remain outstanding, this Instrument may be amended or supplemented by instruments adopted by the Council in accordance with the constitution and laws of the State without receipt by the City of any additional consideration and without receipt by the City of any additional consideration and without notice to and consent from the holders of any of the 2016 Bonds, for the purposes of (i) curing any ambiguity or defective or inconsistent provision contained in this Instrument as the City may deem necessary and desirable and not inconsistent with the provisions of this Instrument and which shall not materially adversely affect the interests of the owners of the 2016 Bonds or any other Parity Bonds, (ii) subjecting additional properties to the lien of this Instrument or (iii) amend Section 11.12 hereof.

The foregoing paragraphs are subject to the condition, however, that no such instrument shall have the effect of permitting:

- (a) **Changing Payment.** A change in the maturity or in the terms of redemption of the principal of any Outstanding 2016 Bond or any installment of interest thereon; or
- (b) **Reducing Return.** A reduction in the principal amount of any 2016 Bond, the rate of interest thereon or any prior redemption premium payable in connection, therewith without the consent of the holder of the 2016 Bond; or
- (c) **Prior Lien.** The creation of a lien upon or a pledge of revenues ranking prior to the lien or to the pledge created by this Instrument; or
- (d) **Modifying Any Bond.** A reduction of the principal amount, percentages or otherwise affecting the description of 2016 Bonds the consent of the holders of which is required for any such modification or amendment; or
- (e) **Priorities Between Bonds.** The establishment of priorities as between 2016 Bonds issued and Outstanding under the provisions of this Instrument; or
- (f) **Partial Modification.** The modification of or otherwise affecting the rights of the holders of less than all of the 2016 Bonds then Outstanding.

Section 11.02. Notice of Amendment. Whenever the Council shall propose to amend or modify this Instrument under the provisions of this article, unless otherwise not required it shall cause notice of the proposed amendment to be provided in the same manner specified in Section 3.05 hereof. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory instrument is on file in the office of the Clerk for public inspection.

Section 11.03. Time for Amendment. Whenever at any time within one year from the date of the publication or mailing of said notice there shall be filed in the office of the Clerk an instrument or instruments executed by the holders of more than 50% in aggregate amount of the 2016 Bonds then Outstanding as in this article defined, which instrument or instruments shall refer to the proposed amendatory instrument described in said notice and shall specifically consent to and approve the adoption thereof, thereupon, but not otherwise (except as provided in Section 11.01 whereby consent is not required), the Council may adopt such amendatory instrument and such instrument shall become effective.

Section 11.04. Binding Consent to Amendment. If the holders of more than 50% in aggregate principal amount of the 2016 Bonds Outstanding, as in this article defined, at the time of the adoption of such amendatory instrument, or if the predecessors in title of such holders, shall have consented to and approved the adoption thereof as herein provided, no holder of any bond, whether or not such holder shall have consented to or shall have revoked any consent as in this article provided, shall have any right or interest to object to the adoption of such amendatory instrument or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the City from taking any action pursuant to the provisions thereof.

Section 11.05. Time Consent Binding. Any consent given by the holder of a 2016 Bond pursuant to the provisions of this article shall be irrevocable for a period of six months from the date of the publication or mailing of the notice above provided for and shall be conclusive and binding upon all future holders of the same 2016 Bond during said period. Such consent may be revoked at any time after six months from the date of the publication or mailing of such notice, by the holder who gave such consent or by a successor in title by filing notice of such revocation with the Clerk, but such revocation shall not be effective if the holders of 50% in aggregate principal amount of the 2016 Bonds Outstanding, as in this article defined, have, prior to the attempted revocation, consented to and approved the amendatory instrument referred to in such revocation.

Section 11.06. Unanimous Consent. Notwithstanding anything contained in the foregoing provisions of this article, the terms and the provisions of this Instrument or of any instrument amendatory thereof or supplemental thereto and the rights and the obligations of the City and of the holders of the 2016 Bonds thereunder may be modified or amended in any respect upon the adoption by the City and upon the filing with the Clerk of an instrument to that effect and with the consent of the holders of all the then Outstanding 2016 Bonds, such consent to be given as provided in Section 9.04 hereof; and no notice to holders of 2016 Bonds shall be required as provided in Section 11.02 hereof, nor shall the time of consent be limited except as may be provided in such consent.

Section 11.07. Exclusion of City's Bonds. 2016 Bonds owned or held by, or for the account of, the City shall not be deemed Outstanding and shall be excluded for the purpose of consent or of other action or of any calculation of Outstanding 2016 Bonds provided for in this article, and the City shall not be entitled with respect to such 2016 Bonds to give any consent or to take any other action provided for in this article. At the time of any consent or of other action taken under this article, the City shall furnish the Clerk and the Paying Agent a certificate of the Chief Financial Officer upon which the City may rely describing all 2016 Bonds so to be excluded.

Section 11.08. Notation on 2016 Bonds. 2016 Bonds authenticated and delivered after the effective date of any action taken, as in this article provided, may bear a notation by endorsement or otherwise in form approved by the Council as to such action; and if any such 2016 Bond so authenticated and delivered shall bear such notation, then upon demand of the holder of any 2016 Bond Outstanding at such effective date and upon presentation of his 2016 Bond for the purpose at the principal office of the Paying Agent, suitable notation shall be made on such 2016 Bond by the Clerk and the Paying Agent as to any such action. If the Council shall so determine, new 2016 Bonds so modified as in the opinion of the Council to conform to such action shall be prepared, authenticated and delivered and upon demand of the holder of any 2016 Bond then Outstanding shall be exchanged without cost to such holder for 2016 Bonds then Outstanding upon surrender of such 2016 Bonds.

Section 11.09. Proof of Instruments. The fact and date of execution of any instrument under the provisions of this article may be proved as provided in Section 9.04 hereof.

Section 11.10. Proof of 2016 Bonds. The amount and number of the 2016 Bonds held by any Person executing such instrument and the date of his holding the same may be proved as provided by Section 9.04 hereof.

Section 11.11. Approval of Official Statement and Miscellaneous Documents. All action heretofore taken by any of the City's officials and the efforts of the City directed toward the issuance and sale of the 2016 Bonds, including use of a Preliminary Official Statement, are hereby ratified, approved and confirmed. The Council hereby ratifies and approves the final Official Statement in substantially the form of the Preliminary Official Statement, and the Mayor is hereby authorized and directed to execute the final Official Statement, with such changes as he shall deem necessary or appropriate. The Mayor, the Clerk, the Chief Financial Officer and the Director of Finance are hereby authorized to execute and deliver, and such officials and all other officers of the City are hereby authorized and directed to execute all other documents and certificates necessary or desirable to effectuate the issuance of the 2016 Bonds and the transactions contemplated thereby.

Section 11.12. Execution and Delivery of Continuing Disclosure Undertaking. The Mayor, Chief Financial Officer or Director of Finance is hereby authorized to execute and deliver, for and on behalf of the City, the Continuing Disclosure Undertaking with respect to the 2016 Bonds, the execution of the Continuing Disclosure Undertaking by such officer being conclusive evidence of the approval on behalf of the City of the terms and provisions thereof.

INTRODUCED, READ AND ADOPTED AS AN EMERGENCY
ORDINANCE BY A TWO-THIRDS VOTE OF THE COUNCIL MEMBERS
PRESENT AND ORDERED PUBLISHED BY TITLE THIS 3rd DAY OF MAY
2016.

[CITY SEAL]

By _____
Mayor

Attest:

By _____
Clerk