TOWN OF WINDSOR

ORDINANCE NO. 2011-1417

AN ORDINANCE APPROVING A LOAN FOR SEWER SYSTEM IMPROVEMENTS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH

WHEREAS, the Town of Windsor acting by and through its Sewer Enterprise (the "Town"), in the County of Weld and State of Colorado, is duly organized and existing under the Constitution and the laws of the State of Colorado; and

WHEREAS, the members of the Board of Trustees of the Town (the "Board") have been duly elected and qualified; and

WHEREAS, the Town has heretofore determined and undertaken to operate, and maintain its sewer facilities as a public utility and income-producing project (the "System") and accounts for the financial operations of the System in the Town's Sewer Enterprise Fund; and

WHEREAS, pursuant to Section 13-1-90 of the Town Code, the Town has determined that the System is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution ("TABOR"); and

WHEREAS, the Board has heretofore determined that the interest of the Town and the public interest and necessity demand and require the acquisition, construction, and completion of a new 5.75 MGD lift station and headworks consisting of a new lift station, influent screens, and screening compactor influent wet well in order to accommodate increased sewage flows (the "Project"); and

WHEREAS, the Board has determined that the Project is necessary to assure ongoing compliance with applicable water quality regulations in light of increased sewage flows; and

WHEREAS, the Town has made application to the Colorado Water Resources and Power Development Authority (the "CWRPDA") for a loan to finance all or a portion of the cost of the Project; and

WHEREAS, the Town has determined that in order to finance all or a portion of the cost of the Project, it is necessary and advisable and in the best interests of the Town for the Town to enter into a loan agreement (the "Loan Agreement") with the CWRPDA, a body corporate and political subdivision of the State, pursuant to which CWRPDA shall loan the Town an amount of $3,168,867.00 at five percent (5%) interest (the "Loan") for such purposes; and

WHEREAS, the repayment obligations under the Loan Agreement shall be evidenced by a governmental agency bond (the "Bond") to be issued by the Town to CWRPDA; and

WHEREAS, the Town's obligations under the Loan Agreement and the Bond (collectively referred to herein as the "Financing Documents") shall constitute revenue obligations of the Town payable from the Net Revenues of the System (as defined in the Loan Agreement); and

WHEREAS, pursuant to TABOR, Title 31, Article 35, Part 4, C.R.S. (the "Sewer and Water Systems Act") and Title 37, Article 45.1, Part 1, C.R.S., the Financing Documents may be approved by the Board without an election; and

WHEREAS, the forms of the Financing Documents are on file with the Town Clerk; and

WHEREAS, the Board desires to approve the form of the Financing Documents and other documents referenced therein, authorize the execution of the Loan Agreement, and authorize the execution and delivery of the Bond; and

WHEREAS, none of the members of the Board have any financial interest or other potential conflicting interests in connection with the authorization or execution of the Financing Documents, or the use of the proceeds thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO AS FOLLOWS:

Section 1. Approvals, Authorizations, and Amendments.

(a) The forms of the Financing Documents as are on file with the Town Clerk are hereby approved, and the Mayor, Mayor *Pro Tem* and Town Clerk are hereby authorized and directed to execute the Financing Documents in substantially the forms as are on file with the Town Clerk, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Manager, and to authenticate and affix the seal of the Town thereto. The Town shall enter into and perform its obligations under the Financing Documents, in the forms of such Financing Documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Manager.

(b) The Mayor, Mayor *Pro Tem*, the Town Manager and the Town Clerk are further hereby authorized and directed to execute and authenticate such other documents, instruments, or certificates as are deemed necessary or desirable in connection with the Town's performance of its obligations under the Financing Documents.

Section 2. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the "Supplemental Act") provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Town hereby elects to apply all sections of the Supplemental Act to the Financing Documents.

Section 3. Delegation.

(a) Pursuant to §11-57-205 of the Supplemental Act, the Board hereby delegates to the Mayor and the Town Manager the independent authority to make the following

determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 3:

(i) The interest rate on the Loan;

(ii) The principal amount of the Loan;

(iii) The amount of principal of the Loan maturing in any given year and the final maturity of the Loan;

(iv) The dates on which the principal of and interest on the Loan are paid; and

(v) The existence and amount of capitalized interest or reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions:

(i) the interest rate on the Loan shall not exceed 5%;

(ii) the principal amount of the Loan shall not exceed $3,300,000.00;

(iii) the final maturity of each of the Loan shall not be later than December 1, 2031.

Section 4. Incontestable Recital. Pursuant to Section 31-35-413, C.R.S., the Bond and the Loan Agreement shall contain a recital that the Bond is issued under authority of the Sewer and Water Systems Act. Such recital shall conclusively impart full compliance with all of the provisions of the Sewer and Water Systems Act, and the Bond containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, C.R.S., the Bond and the Loan Agreement shall also contain a recital that the Bond is issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Section 6. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond and the Loan Agreement as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The amounts pledged to the payment of the Bond and the Loan Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Town irrespective of whether such persons have notice of such liens.

Section 7. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the adoption of this Ordinance.

Section 8. Limited Obligation. The Financing Documents are payable solely from the Pledged Property (as defined in the Loan Agreement) and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Bond. Such recourse shall not be available either directly or indirectly through the Board or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of its sale or purchase, CWRPDA specifically waives any such recourse.

Section 10. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied only to pay the costs and expenses of the Project, including costs related thereto. Neither CWRPDA nor any subsequent owner(s) of the Loan Agreement shall be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loan and the interest thereon.

Section 11. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor, the Town Manager and the Town Clerk are each designated as an Authorized Officer (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the Town, the Bond or the Loan Agreement. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 13. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than the maximum maturity of the Loan authorized hereby.

Section 14. Direction to Take Authorizing Action. The Mayor, the Town Manager, the Town Clerk, and other appropriate officers of the Town are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution and delivery of such certificates and affidavits as may reasonably be required by CWRPDA. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the Town of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 15. CWRPDA's Official Statement. The appropriate officers and employees of the Town are hereby authorized and directed to furnish and supply information

concerning the Town to CWRPDA for use in the preparation of an Official Statement to be used to market the CWRPDA Bonds.

Section 16. Ratification and Approval of Prior Actions. All actions heretofore taken by the Mayor, the Town Manager, any member of the Board, the Town Clerk, and the other officers and employees of the Town, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 17. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 18. Ordinance Irrepealable. After the Financing Documents are executed and delivered, this Ordinance shall constitute an irrevocable contract between the Town and CWRPDA, and shall be and remain irrepealable until the Bond shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the issuance of the Bond shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 19. Disposition. This Ordinance, as soon as possible after adoption, shall be numbered and recorded by the Town Clerk on the official records of the Town, and shall be authenticated by the signatures of the Mayor or Mayor *Pro Tem* and the Town Clerk.

Section 20. Disposition of Ordinance. This Ordinance, immediately on its final passage and adoption, shall be recorded in the book of ordinances kept by the Town for that purpose, authenticated by the signatures of the Mayor or Mayor *Pro Tem* and the Town Clerk, and shall be published in full in a newspaper of general circulation in the Town.

Introduced, passed on first reading by a vote of 6 for and 0 against, and ordered published this 12th day of September, 2011.

TOWN OF WINDSOR, COLORADO

By _____
~~John S. Vazquez~~, Mayor Pro-Tem
Matthew A O'Neill

ATTEST:

_____
Patti Garcia, Town Clerk

Introduced, passed on second reading by a vote of 6 for and 0 against, and ordered published this 26th day of September, 2011.

TOWN OF WINDSOR, COLORADO

By _____
John S. Vazquez, Mayor

ATTEST:

_____
Patti Garcia, Town Clerk

Approved as to form:

_____
Ian McCargar, Town Attorney

STATE OF COLORADO)
)
COUNTY OF WELD) SS.
)
TOWN OF WINDSOR)

I, Patti Garcia, the Town Clerk of the Town of Windsor, Colorado, do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance (the "Ordinance") concerning the Town's loan agreement with the Colorado Water Resources and Power Development Authority adopted by the Board of Trustees of the Town (the "Board") at regular meetings of the Board held at the Town Hall at a first reading on September 12, 2011 and a second reading on September 26, 2011.

2. The Ordinance was adopted at a first reading at an open, regular meeting of the Board on September 12, 2011, by a majority of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
John Vazquez			x	
Don Shanfelt	x			
Matthew O'Neill	x			
Robert Bishop-Cotner	x			
Don Thompson	x			
Kristie Melendez	x			
Mike Carrigan	x			

3. The Ordinance was adopted at a second reading at an open, regular meeting of the Board on September 26, 2011, by an affirmative vote of two-thirds (2/3) of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain
John Vazquez	x			
Don Shanfelt			x	
Matthew O'Neill	x			

Robert Bishop-Cotner	x			
Don Thompson	x			
Kristie Melendez	x			
Mike Carrigan	x			

4. The Ordinance has been signed by the Mayor or Mayor *Pro Tem*, sealed with the corporate seal of the Town, attested by me as Town Clerk, and duly recorded in the books of the Town; and that the same remains of record in the book of records of the Town.

5. That notices of the regular meetings of September 12, 2011 and September 26, 2011, attached hereto as **Exhibit A** were posted within the Town at least 24 hours before such meetings as required by law.

6. That the Ordinance was published by in full after initial adoption in the Windsor Beacon, a newspaper of general circulation within the Town on September 22, 2011 and was published by title after final adoption in the in the Windsor Beacon, a newspaper of general circulation within the Town on October 6, 2011. The affidavits of publication are attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this 10th day of October, 2011.

(SEAL)

Patti Garcia, Town Clerk

EXHIBIT A

(Notice of Meetings)

TOWN BOARD REGULAR MEETING
September 12, 2011 - 7:00 P.M. Town Board Chambers
301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

AGENDA

A. CALL TO ORDER

1. Roll Call

2. Pledge of Allegiance

3. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration by the Board

4. Board Liaison Reports
   - Town Board Member Bishop-Cotner – Historic Preservation Commission; Planning Commission Alternate
   - Town Board Member Carrigan – Water & Sewer Board
   - Mayor Pro-Tem O'Neill – Library Board; Planning Commission; North Front Range/MPO Alternate
   - Town Board Member Melendez – Chamber of Commerce; Cache La Poudre Trail Board; Downtown Development Authority
   - Town Board Member Thompson – Parks & Recreation Board; Great Western Trail Board; Tree Board
   - Mayor Vazquez – North Front Range/MPO; Student Advisory Leadership Team (SALT – Report on 3rd Monday of the month)

5. Public Invited to be Heard

B. CONSENT CALENDAR

1. Minutes of the August 22, 2011 Regular Town Board – P. Garcia
2. Special Event Liquor License – Windsor Lions Club Inc., Oktoberfest (Boardwalk Park) – P. Garcia
3. Liquor License Renewal – Safeway Store #1791, 3.2% Beer Retail License (off premise) – P. Garcia
4. List of Bills – D. Moyer

C. BOARD ACTION

1. Ordinance No. 2011-1417 – An Ordinance Authorizing Colorado Water and Power Authority Loan
   - First Reading
   - Legislative action
   - Staff presentation: Ian McCargar, Town Attorney

2. Ordinance No. 2011-1416 – An Ordinance amending Chapter 16 of the Windsor Municipal Code adopting certain regulations pertaining to administrative site plans for redevelopments
   - Second Reading
   - Legislative action
   - Staff presentation: Joe Plummer, Director of Planning

3. Resolution No. 2011-32 - A Resolution Extending the Deadline for the Town of Windsor and the City of Fort Collins to Take Certain Actions Under the Terms and Conditions of an Intergovernmental Agreement between the Town and the City Pertaining to the Development of the Interstate Highway 25 and State Highway 392 Interchange and the Area Surrounding that Interchange
    - Legislative action
    - Staff presentation: John Frey, Town Attorney

4. Resolution No. 2011-33 - A Resolution Approving an Oil and Gas Lease, and Related Terms, Between the Town of Windsor, Colorado, and Great Western Leasing, LLC, and Authorizing the Mayor to Execute the Same (Greenspire Subdivision Site)
    - Legislative action
    - Staff presentation: Ian McCargar, Town Attorney

5. Resolution No. 2011-34 - A Resolution Approving an Oil and Gas Lease, and Related Terms, Between the Town of Windsor, Colorado, and Great Western Leasing, LLC, and Authorizing the Mayor to Execute the Same (Diamond Valley Site)
    - Legislative action
    - Staff Presentation: Ian McCargar, Town Attorney

6. Resolution No. 2011-35 - A Resolution Making Certain Finding of Fact Concerning the Windsor Highlands Eleventh Annexation to the Town of Windsor, Colorado; Determining Substantial Compliance with Section 31-12-101, et seq., C.R.S., "The Municipal Act of 1965"; and Establishing Dates for Public Hearings before the Planning Commission and the Town Board
    - Legislative action
    - Staff presentation: Scott Ballstadt, Chief Planner

7. Public Hearing – Conditional Use Grant for oil and gas well facilities to be located in an I-L, Limited Industrial, zoning district located north of and adjacent to US 34 and east of and adjacent to WCR 13 – Conrad Zeiler, Zeiler Farms, Inc., property owner/ John Krattenmaker, Petroleum Development Corporation, applicant
    - Quasi-judicial action
    - Staff presentation: Diana Aungst, Associate Planner

8. Conditional Use Grant for oil and gas well facilities to be located in an I-L, Limited Industrial, zoning district located north of and adjacent to US 34 and east of and adjacent to WCR 13 – Conrad Zeiler, Zeiler Farms, Inc., property owner/ John Krattenmaker, Petroleum Development Corporation, applicant – D. Aungst
    - Quasi-judicial action
    - Staff presentation: Diana Aungst, Associate Planner

9. Public Hearing – Conditional Use Grant for oil and gas well facilities to be located in an I-L, Limited Industrial, zoning district located south of SH 392 and east of SH 257 – Christopher Ruff, 392 Ventures, LLC, property owner/Vince Harris, Baseline Corporation, applicant's representative
    - Quasi-judicial action
    - Staff presentation: Elizabeth Fields, Associate Planner

10. Conditional Use Grant for oil and gas well facilities to be located in an I-L, Limited Industrial, zoning district located south of SH 392 and east of SH 257 – Christopher Ruff, 392 Ventures, LLC, property owner/Vince Harris, Baseline Corporation, applicant's representative
    - Quasi-judicial action
    - Staff presentation: Elizabeth Fields, Associate Planner

11. Diamond Valley Plaza Bid Update
    - Staff presentation: Melissa Chew, Director of Parks & Recreation

12. Finance Report
    - Staff presentation: Dean Moyer, Director of Finance

13. 2012 Revenue Discussion
    - Staff presentation: Dean Moyer, Director of Finance

D. COMMUNICATIONS

1. Communications from the Town Attorney
2. Communications from Town Staff
3. Communications from the Town Manager
4. Communications from Town Board Members

E. ADJOURN

TOWN BOARD REGULAR MEETING
September 26, 2011 - 7:00 P.M.
Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

AGENDA

A. CALL TO ORDER

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   - Town Board Member Carrigan – Water & Sewer Board
   - Mayor Pro-Tem O'Neill – Library Board; Planning Commission; North Front Range/MPO Alternate
   - Town Board Member Melendez – Chamber of Commerce; Cache La Poudre Trail Board; Downtown Development Authority
   - Town Board Member Thompson – Parks & Recreation Board; Great Western Trail Board; Tree Board
   - Mayor Vazquez – North Front Range/MPO; Student Advisory Leadership Team (SALT Report on 3rd Monday of the month)

5. Public Invited to be Heard

B. CONSENT CALENDAR

1. Minutes of the September 12, 2011 Regular Town Board Meeting – P. Garcia
2. Liquor License Renewal – Otie's Wine & Spirits, Retail Liquor Store License – P. Garcia
3. Liquor License Renewal – Sports Center Discount Liquor, Retail Liquor Store License – P. Garcia

C. BOARD ACTION

1. Public Hearing – New Retail 3.2% Beer Off-Premises License for Carpco LLC dba 7-Eleven Store #39519A, 7486 Westgate, Windsor, CO 80528. Applicant: Carpco LLC
   - Quasi-judicial action
   - Staff presentation: Patti Garcia, Town Clerk & John Michaels, Chief of Police

2. Consideration of a New Retail 3.2% Beer Off-Premises License for Carpco LLC dba 7-Eleven Store #39519A, 7486 Westgate, Windsor, CO 80528. Applicant: Carpco LLC
   - Legislative Action
   - Staff presentation: Patti Garcia, Town Clerk & John Michaels, Chief of Police

3. Ordinance No. 2011-1417 – An Ordinance Authorizing Colorado Water and Power Authority Loan

- Second Reading
- Legislative action
- Staff presentation: Ian McCargar, Town Attorney

4. Resolution No. 2011-36 - A Resolution Approving the Award of Contract to RN Civil Construction for the Construction of Improvements to the Town of Windsor Waste Water Treatment Plant and Associated Facilities, and Directing the Town Manager to Execute such Contract Documents as are Necessary and Proper
   - Legislative action
   - Staff presentation: Dennis Wagner, Director of Engineering

5. Resolution No. 2011-37 – A Resolution Approving a License Agreement for Use of Municipally-Owned Right-of-Way Between the Town of Windsor, Colorado and Dark Comm, LLC, and Authorizing the Town Manager to Execute the Same
   - Legislative Action
   - Staff presentation: Ian McCargar, Town Attorney

D. COMMUNICATIONS

1. Communications from the Town Attorney
2. Communications from Town Staff
3. Communications from the Town Manager
4. Communications from Town Board Members

E. EXECUTIVE SESSION

An executive session pursuant to § 24-6-402 (4) (e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators - Downtown Development Authority Intergovernmental Agreement (Kelly Arnold)

F. ADJOURN

EXHIBIT B

(Affidavits of Publication)

Account #: WB0074

Your Local Newspaper Since 1896

Windsor Beacon

STATE OF COLORADO)
) ss: AFFIDAVIT OF PUBLICATION
COUNTY OF WELD)

Echo Villa , being duly sworn, deposes and says that said is the legal clerk of the Windsor Beacon; that the same is a weekly newspaper of general circulation and printed and published in the town of Windsor, in said county and state; that the notice or advertisement, of which the annexed is a true copy, has been published in said weekly newspaper for

1 Week;

that the notice was published in the regular and entire issue of every number of said newspaper during the period and time of publication of said notice, and in the newspaper proper and not in a supplement thereof; that the first publication of said notice was contained in the issue of said newspaper on

Thursday, September 22, 2011

that the last publication thereof was contained in the issue of said newspaper on

Thursday, September 22, 2011

that said Windsor Beacon has been published continuously and uninterruptedly during the period of at least six months next prior to the first publication of said notice or advertisement above referred to; that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof; and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

Echo Villa

Legal Clerk

Subscribed and sworn to before me, within the County of Weld, State of Colorado this

Thursday, September 22, 2011

My Commission expires 12/5/13

CONNIE JO RUIZ NOTARY PUBLIC STATE OF COLORADO

Connie Jo Ruiz

Notary Public

Legal No.0034181056

Delivered to:

TOWN OF WINDSOR,
DESC
301 WALNUT ST
WINDSOR, CO 80550-5141

Invoice Text TOWN OF WINDSOR ORDINANCE NO. 2011-1417
2011-1417

Affidavit Prepared
Thursday, September 22, 201
11:12 am

LEGAL NOTICES/ TOWN OF WINDSOR

TOWN OF WINDSOR

ORDINANCE NO. 2011-1417

AN ORDINANCE APPROVING A LOAN FOR SEWER SYSTEM IMPROVEMENTS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH

WHEREAS, the Town of Windsor acting by and through its Sewer Enterprise (the "Town"), in the County of Weld and State of Colorado, is duly organized and existing under the Constitution and the laws of the State of Colorado; and

WHEREAS, the members of the Board of Trustees of the Town (the "Board") have been duly elected and qualified; and

WHEREAS, the Town has heretofore determined and undertaken to operate, and maintain its sewer facilities as a public utility and income-producing project (the "System") and accounts for the financial operations of the System in the Town's Sewer Enterprise Fund; and

WHEREAS, pursuant to Section 13-1-90 of the Town Code, the Town has determined that the System is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution ("TABOR"); and

WHEREAS, the Board has heretofore determined that the interest of the Town and the public interest and necessity demand and require the acquisition, construction, and completion of a new 5.75 MGD lift station and headworks consisting of a new lift station, influent screens, and screening compactor influent wet well in order to accommodate increased sewage flows (the "Project"); and

WHEREAS, the Board has determined that the Project is necessary to assure ongoing compliance with applicable water quality regulations in light of increased sewage flows; and

WHEREAS, the Town has made application to the Colorado Water Resources and Power Development Authority (the "CWRPDA") for a loan to finance all or a portion of the cost of the Project; and

WHEREAS, the Town has determined that in order to finance all or a portion of the cost of the Project, it is necessary and advisable and in the best interests of the Town for the Town to enter into a loan agreement (the "Loan Agreement") with the CWRPDA, a body corporate and political subdivision of the State, pursuant to which CWRPDA shall loan the Town an amount of $3,168,867.00 at [_____] percent ([____]%) interest (the "Loan") for such purposes; and

WHEREAS, the repayment obligations under the Loan Agreement shall be evidenced by a governmental agency bond (the "Bond") to be issued by the Town to CWRPDA; and

WHEREAS, the Town's obligations under the Loan Agreement and the Bond (collectively referred to herein as the "Financing Documents") shall constitute revenue obligations of the Town payable from the Net Revenues of the System (as defined in the Loan Agreement); and

WHEREAS, pursuant to TABOR, Title 31, Article 35, Part 4, C.R.S. (the "Sewer and Water Systems Act") and Title 37, Article 45.1, Part 1, C.R.S., the Financing Documents may be approved by the Board without an election; and

WHEREAS, the forms of the Financing Documents are on file with the Town Clerk; and

WHEREAS, the Board desires to approve the form of the Financing Documents and other documents referenced therein, authorize the execution of the Loan Agreement, and authorize the execution and delivery of the Bond; and

WHEREAS, none of the members of the Board have any financial interest or other potential conflicting interests in connection with the authorization or execution of the Financing Documents, or the use of the proceeds thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO AS FOLLOWS:

Section 1. Approvals, Authorizations, and Amendments.

(a) The forms of the Financing Documents as are on file with the Town Clerk are hereby approved, and the Mayor, Mayor Pro Tem and Town Clerk are hereby authorized and directed to execute the Financing Documents in substantially the forms as are on file with the Town Clerk, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Manager, and to authenticate and affix the seal of the Town thereto. The Town shall enter into and perform its obligations under the Financing Documents, in the forms of such Financing Documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Manager.

(b) The Mayor, Mayor Pro Tem, the Town Manager and the Town Clerk are further hereby authorized and directed to execute and authenticate such other documents, instruments, or certificates as are deemed necessary or desirable in connection with the Town's performance of its obligations under the Financing Documents.

Section 2. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the "Supplemental Act") provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Town hereby elects to apply all sections of the Supplemental Act to the Financing Documents.

Section 3. Delegation.

(a) Pursuant to §11-57-205 of the Supplemental Act, the Board hereby delegates to the Mayor and the Town Manager the independent authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 3:

(i) The interest rate on the Loan;
(ii) The principal amount of the Loan;
(iii) The amount of principal of the Loan maturing in any given year and the final maturity of the Loan;
(iv) The dates on which the principal of and interest on the Loan are paid; and
(v) The existence and amount of capitalized interest or reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions:

(i) the interest rate on the Loan shall not exceed [_____]%;
(ii) the principal amount of the Loan shall not exceed $3,168,867.00;
(iii) the final maturity of each of the Loan shall not be later than December 1, 2031.

Section 4. Incontestable Recital. Pursuant to Section 31-35-413, C.R.S., the Bond and the Loan Agreement shall contain a recital that the Bond is issued under authority of the Sewer and Water Systems Act. Such recital shall conclusively impart full compliance with all of the provisions of the Sewer and Water Systems Act, and the Bond containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, C.R.S., the Bond and the Loan Agreement shall also contain a recital that the Bond is issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Section 6. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond and the Loan Agreement as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The amounts pledged to the payment of the Bond and the Loan Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Town irrespective of whether such persons have notice of such liens.

Section 7. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the adoption of this Ordinance.

Section 8. Limited Obligation. The Financing Documents are payable solely from the Pledged Property (as defined in the Loan Agreement) and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Bond. Such recourse shall not be available either directly or indirectly through the Board or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of its sale or purchase, CWRPDA specifically waives any such recourse.

Section 10. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied only to pay the costs and expenses of the Project, including costs related thereto. Neither CWRPDA nor any subsequent owner(s) of the Loan Agreement shall be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loan and the interest thereon.

Section 11. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor, the Town Manager and the Town Clerk are each designated as an Authorized Officer (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the Town, the Bond or the Loan Agreement. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 13. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than the maximum maturity of the Loan authorized hereby.

Section 14. Direction to Take Authorizing Action. The Mayor, the Town Manager, the Town Clerk, and other appropriate officers of the Town are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution and delivery of such certificates and affidavits as may reasonably be required by CWRPDA. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the Town of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 15. CWRPDA's Official Statement. The appropriate officers and employees of the Town are hereby authorized and directed to furnish and supply information concerning the Town to CWRPDA for use in the preparation of an Official Statement to be used to market the CWRPDA Bonds.

Section 16. Ratification and Approval of Prior Actions. All actions heretofore taken by the Mayor, the Town Manager, any member of the Board, the Town Clerk, and the other officers and employees of the Town, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 17. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 18. Ordinance Irrepealable. After the Financing Documents are executed and delivered, this Ordinance shall constitute an irrevocable contract between the Town and CWRPDA, and shall be and remain irrepealable until the Bond shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the issuance of the Bond shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 19. Disposition. This Ordinance, as soon as possible after adoption, shall be numbered and recorded by the Town Clerk on the official records of the Town, and shall be authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk.

Section 20. Disposition of Ordinance. This Ordinance, immediately on its final passage and adoption, shall be recorded in the book of ordinances kept by the Town for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and the Town Clerk, and shall be published in full in a newspaper of general circulation in the Town.

Introduced, passed on first reading by a vote of 6 for and 0 against, and ordered published this 12th day of September, 2011.

TOWN OF WINDSOR, COLORADO

John S. Vazquez, Mayor
Matthew A. O'Neill, Mayor Pro-Tem

ATTEST:
/s/Patti Garcia, Town Clerk

Windsor Beacon September22, 2011
34181056

Account #: WB0074

Your Local Newspaper Since 1896

Windsor Beacon

STATE OF COLORADO)
) ss: AFFIDAVIT OF PUBLICATION
COUNTY OF WELD)

TOWN OF WINDSOR
ORDINANCE NO. 2011-1417

AN ORDINANCE APPROVING A LOAN FOR SEWER SYSTEM IMPROVEMENTS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH

Introduced, passed on second reading by a vote of 6 for and 0 against, and ordered published this 26th day of September, 2011.

TOWN OF WINDSOR, COLORADO
/s/John S. Vazquez, Mayor
ATTEST:
/s/Patti Garcia, Town Clerk

Windsor Beacon October 6, 2011
34181432

Echo Villa , being duly sworn, deposes and says that said is the legal clerk of the Windsor Beacon; that the same is a weekly newspaper of general circulation and printed and published in the town of Windsor, in said county and state; that the notice or advertisement, of which the annexed is a true copy, has been published in said weekly newspaper for

1 Week;

that the notice was published in the regular and entire issue of every number of said newspaper during the period and time of publication of said notice, and in the newspaper proper and not in a supplement thereof; that the first publication of said notice was contained in the issue of said newspaper on

Thursday, October 6, 2011

that the last publication thereof was contained in the issue of said newspaper on

Thursday, October 6, 2011

that said Windsor Beacon has been published continuously and uninterruptedly during the period of at least six months next prior to the first publication of said notice or advertisement above referred to; that said newspaper has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879, or any amendments thereof; and that said newspaper is a daily newspaper duly qualified for publishing legal notices and advertisements within the meaning of the laws of the State of Colorado.

Legal Clerk

Subscribed and sworn to before me, within the County of Weld, State of Colorado this

Wednesday, October 05, 2011

My Commission expires: 2/5/13

NOTARY PUBLIC STATE OF COLORADO

Notary Public

Legal No.0034181432

Delivered to:

TOWN OF WINDSOR,
DESC
301 WALNUT ST
WINDSOR, CO 80550-5141

Invoice Text TOWN OF WINDSOR ORDINANCE NO. 2011-1417
2011-1417

Affidavit Prepared
Wednesday, October 5, 2011
8:53 am

Frey McCargar & Plock LLC
ATTORNEYS AT LAW

John P. Frey
Ian D. McCargar
John E. Plock

EXHIBIT E-1

OPINION OF GOVERNMENTAL AGENCY COUNSEL

November 1, 2011

Colorado Water Resources and
Power Development Authority

Wells Fargo Bank, National Association
as Trustee

_____
as Representative of the Underwriters

Ladies and Gentlemen:

We are attorneys admitted to practice in the State of Colorado and we have acted as counsel to the **TOWN OF WINDSOR, COLORADO, ACTING BY AND THROUGH ITS SEWER UTILITIES ENTERPRISE**(the "Governmental Agency"), which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of the Loan Agreement and its Governmental Agency Bond (as hereinafter defined).

In so acting we have examined the Constitution and laws of the State of Colorado. The Governmental Agency is not governed by any by-laws and, therefore, I have not examined same. We have also examined originals, or copies certified or otherwise identified to our satisfaction, of the following:

1. The Authority's Water Pollution Control Revolving Fund 2011 Series A Revenue Bond Resolution, adopted by the Authority on October 7, 2011 (the "Bond Resolution");

2. the Loan Agreement, dated as of November 1, 2011 (the "Loan Agreement") by and between the Authority and the Governmental Agency;

3. proceedings of the governing members of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

4. the Governmental Agency Bond, dated November 3, 2011 (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan;

5. proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and

6. There are no outstanding instruments relating to bonds, notes or other indebtedness of or relating to the Governmental Agency and, therefore, I have not examined any such materials.

7. We have also examined and relied upon originals, or copies certified or otherwise authenticated to our satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in our judgment we have deemed necessary or appropriate to enable us to render the opinions expressed below.

Based upon the foregoing, we are of the opinion that:

1. The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation with the legal right to carry on the business of the System (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted.

2. The Governmental Agency has full legal right and authority to execute the Loan Documents and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of, restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations) heretofore or hereafter enacted.

3. The proceedings of the Governmental Agency's governing members approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project have been duly and lawfully adopted and authorized in accordance with applicable Colorado law, (hereinafter collectively called the "Authorizing Resolutions"), which Authorizing Resolutions were duly approved and published in accordance with applicable Colorado law, at a meeting or meetings which were duly called pursuant to necessary public notice and held

in accordance with applicable Colorado law, and at which quorums were present acting throughout.

4. To the best of our knowledge, after such investigation as we have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Governmental Agency is a party or by which it, the System (as defined in the Loan Agreement) or its property or assets is bound.

5. To the best of our knowledge, after such investigation as we have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and, other than authorizations, licenses and permits relating to the siting, construction and acquisition of the Project which we expect the Governmental Agency to receive in the ordinary course of business, the undertaking and completion of the Project have been obtained or made.

6. To the best of our knowledge, after such investigation as we have deemed appropriate, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State of Federal) questioning the creation, organization or existence of the Governmental Agency or the validity, legality or enforceability of the Loan Documents or the undertaking or completion of the Project or which if adversely determined, could (a) materially adversely affect (i) the financial position of the Governmental Agency, (ii) the ability of the Governmental Agency to perform its obligations under the Loan Documents, (iii) the security for the Loan Documents, or (iv) the transactions contemplated by the Loan Documents, or (b) impair the ability of the Governmental Agency to maintain and operate its system.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. We express no opinion as to any matter not set forth in the numbered paragraphs herein.

The opinions expressed in this opinion letter are subject to the following:

The obligations of the Governmental Agency pursuant to the Loan Documents are subject to the application of equitable principles, to the reasonable exercise in the future by the State of Colorado and its governmental bodies of the police power inherent in the sovereignty of the State of Colorado, and to the exercise by the United States of America of the powers delegated to it by the Federal Constitution, including without limitation, bankruptcy powers.

No opinion is expressed herein regarding the validity or enforceability of Section 3.06 of the Loan Agreement or any other provision thereof which purports to require the Governmental Agency to indemnify or hold any person harmless.

We are opining only upon those matters set forth herein, and we are not passing upon any federal or state tax consequences arising from the receipt or accrual of interest on or the ownership or disposition of the Loan Documents.

This opinion letter is issued as of the date hereof and we assume no obligation to revise or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or changes in law that may hereafter occur.

In connection with the execution and delivery of the Loan Documents, we have represented the Governmental Agency which is our sole client in this transaction. Delivery of this letter to you does not establish an attorney-client relationship between the Authority and this firm. In connection with the Loan, the Authority has been represented by Fulbright & Jaworski L.L.P., as Bond Counsel, and Carlson, Hammond & Paddock, L.L.C., as General Counsel, which firms are hereby authorized to rely on the legal conclusions expressed herein in their respective capacities as Bond Counsel and General Counsel to the Authority.

This opinion letter is furnished to you solely for your information and benefit in connection with the initial execution and delivery of the Loan Documents and may not be relied upon by you for any other purpose or relied upon by any other person (other than the Authority's Bond Counsel) without the prior written consent of this firm.

Very truly yours,

FREY McCARGAR & PLOCK, LLC

Ian D. McCargar

Town Attorneys, Windsor, Colorado

TOWN OF WINDSOR
COLORADO

October 31, 2011

Paul F. Wisor, Esq.
Sherman & Howard L.L.C.
633 17th Street, Suite 3000
Denver, CO 80202

RE: Colorado Water and Power Authority Loan supporting documents

Mr. Wisor,

Enclosed find the following documents:

Ordinance 2011-1417 (six pages)

Certification of authenticity of documents (two pages)

Exhibit A: Agendas for September 12 and September 26 Town Board Regular Meetings (five pages)

Exhibit B: Affidavit of Publication in Windsor Beacon on September 22 and October 6 (four pages)

If you have questions, or require additional information, please contact Town Hall.

Sincerely,

Mary Lee
Deputy Town Clerk

301 Walnut Street · Windsor, Colorado · 80550 · phone 970-674-2400 · fax 970-674-2456
www.windsorgov.com