

**CITY OF RIFLE, COLORADO**

**ORDINANCE NO. 6**

**SERIES OF 2015**

FOR AN ORDINANCE AMENDING ORDINANCE NO. 4, SERIES OF 2015, WHICH AUTHORIZED THE FINANCING OF REPAIRS AND IMPROVEMENTS TO THE CITY'S WATER SYSTEM THROUGH THE EXECUTION AND DELIVERY OF A SITE LEASE BETWEEN THE CITY AS LESSOR AND A LESSEE TO BE IDENTIFIED AND A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND A LESSOR TO BE IDENTIFIED; PROVIDING FOR RELATED MATTERS AND DECLARING AN EMERGENCY

WHEREAS, by Ordinance No. 4, Series of 2015, the Council determined to authorize the City to enter into a Site Lease (the "Site Lease") for a term not to exceed 30 years with a lessee to be identified (the "Site Lessee") and a Lease Purchase Agreement (the "Lease") with the Site Lessee, as lessor (the "Lessor"), pursuant to which the City will lease the Leased Property back from the Lessor; and

WHEREAS, the proceeds received by the City in consideration of the execution and delivery of the Site Lease and the Lease were authorized by Ordinance No. 4, Series of 2015 to be used by the City for repairs and improvements to the City's main water storage facility and other parts of its municipal water system (the "Project"); and

WHEREAS, through a competitive process the City selected NBH Bank N.A. (the "Bank") as the entity to provide financing pursuant to the Site Lease and Lease; and

WHEREAS, pursuant to Section 5 of Ordinance No. 4, Series of 2015, the Bank has elected to take an assignment of the Lease rather than acting itself as Lessor; and

WHEREAS, the City will cause the formation of a nonprofit corporation, to be identified by Final Terms Certificate, to act as Lessor, in the manner authorized by Section 5 of Ordinance No. 4, Series of 2015; and

NOW, THEREFORE, THE COUNCIL OF THE CITY OF RIFLE, COLORADO ORDAINS:

**Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the provisions of this ordinance (the "Ordinance"), by the Council or the officers of the City, directed toward the implementation of the Project, including without limitation the preparation of the forms of Lease and the Site Lease and related documents, are hereby ratified, approved and confirmed.

**Section 2. Amendment to Prepayment Provision.** Ordinance No. 4, Series 2015, is hereby amended by striking Section 6(c) thereof and substituting the following in its place:

(c) the Lease, including all renewal terms thereof, shall terminate not later than December 31, 2040, and may also be made subject to prepayment and termination in whole or in part, with a prepayment premium calculated in the following manner: the prepayment premium shall be equal to (1) the present value of the difference between (a) the amount that would be realized by the Bank on the prepaid amount for the remaining term of the Lease at the fixed rate provided in the Lease for the interest component of Base Rentals and (b) the amount that would be realized by the Bank by reinvesting such prepaid amount for the remaining term of the Lease at the (i) then-current market swap rate in effect at the time of prepayment, as determined by the Bank plus (ii) a spread not to exceed 1.50%, as determined by Final Terms Certificate; both (a) and (b) being discounted at such then-current market swap rate excluding the spread; plus (2) the interest component of Base Rentals accrued from the last payment date to the date of prepayment. Should such present value have no value or a negative value, the Lease may be prepaid in whole or in part without prepayment premium.

For purposes of the foregoing paragraph, the term “market swap rate” means the swap rate sourced from the Federal Reserve’s “*H.15 Selected Interest Rates*” with a tenor closest to the remaining term of the Lease from the prepayment date to the final scheduled payment of Base Rentals. In the event that the remaining term of the Lease is in between tenors of available swap rates as published in the Federal Reserve’s “*H.15 Selected Interest Rates*,” a then-current swap rate will be interpolated by using the two published swap rates with tenors closest to the remaining term of the Lease. In the event that the Federal Reserve’s “*H.15 Selected Interest Rates*” is no longer available, the Bank will identify a reasonably comparable alternate swap rate, the source of which shall be disclosed to the City.

Except as expressly provided by this Ordinance, all other provisions of Ordinance No. 4, Series of 2015 shall continue in full force and effect without amendment.

**Section 3. Severability.** If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 4. Repealer of Measures.** All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

**Section 5. Declaration of Emergency.** The Council hereby finds and determines that, due to the risk of higher interest rates resulting in higher Base Rental payments if the Lease cannot be executed and delivered promptly, there exists an emergency with respect to the consummation of the transaction authorized hereby. Therefore, this Ordinance, being necessary to the public peace, health and safety, shall take effect immediately upon its passage and shall be published as soon as reasonably possible thereafter.

**Section 6. Disposition of Ordinance; Expiration.** This Ordinance, immediately on its final passage, shall be numbered and recorded in the Book of Ordinances kept for that purpose, authenticated by the signatures of the Mayor and City Clerk and shall be published as required by law. This Ordinance shall expire to the extent that the Site Lease and Lease authorized herein are not executed and delivered by June 30, 2015.

INTRODUCED, FINALLY ADOPTED AS AN EMERGENCY ORDINANCE AND ORDERED PUBLISHED AS SOON AS REASONABLY POSSIBLE, this \_\_\_\_ day of April, 2015.

[SEAL]

CITY OF RIFLE, COLORADO

By \_\_\_\_\_  
Randy Winkler, Mayor

Attest:

By \_\_\_\_\_  
Lisa Hamilton, City Clerk