Memo

To: Honorable Mayor Hall & Board of Trustees

Through: Town Administrator Machalek

From: Jacqueline Wesley P.E., Utilities Project Manger
Tammy Zimmerman, Finance Director
Reuben Bergsten, Utilities Director

Department: Town Administrator's Office

Date: September 22, 2026

Subject: Ordinance 15-26 Prospect Mountain Water Project Repayment Surcharge

Type: Ordinance

Objective:

To set a new water rate class and establish a preliminary monthly surcharge of $150.00 for the benefitted properties in the former Prospect Mountain Water Company service area, so the Town can begin repayment of the Prospect Mountain water system reconstruction costs.

Present Situation:

The Prospect Mountain Water Company (PMWC) was a water utility incorporated in 1969. PMWC filed for Chapter 7 bankruptcy on April 22, 2015. The system was failing and could not reliably meet modern water quality, pressure, fire flow, and operational standards. At the request of the Bankruptcy Trustee, the Town entered into an operating agreement to maintain and operate the system while options for a long-term solution were developed.

The Town and the PMWC bankruptcy trustee later entered into a Voluntary Water System Transfer Agreement. The Colorado Public Utilities Commission (Decision CI9-0440) and U.S. Bankruptcy Court (Case:15-14286-TBM Doc#:185 Filed:05/24/19) approved the transfer. The agreement established that all project costs would be repaid by the Benefitted PMWC properties, rather than by existing Town water customers.

The Town of Estes Park is committed to providing equitable access to our services. Contact us if you need any assistance accessing material at 970-577-4777 or townclerk@estes.org.

As a municipal utility, the Town was able to secure United States Department of Agriculture Rural Development (USDA-RD) funding to reconstruct the infrastructure to current day standards. The project included a 180,000-gallon water storage tank, booster pump, over 5 miles of ductile iron pipe, and 43 fire hydrants for fire protection. The rebuilt system now provides drinking water that meets state and federal standards and provides fire hydrant coverage in the former PMWC service area.

While the Voluntary Water System Transfer Agreement originally anticipated issuing a final revenue bond upon project completion, the project was instead funded through a USDA-Rural Development (USDA-RD) package. This provided approximately $15.3 million in combined grant and low-interest loan funding. Given the highly favorable terms of the USDA-RD loan of 2.375% interest over a 40-year term, this financing is significantly more cost-effective than refinancing through the bond market.

With the USDA-RD loan officially closed as of August 13, 2026, debt repayment must now commence. Although the reconstructed infrastructure is operational and actively delivering potable water, a few construction related items remain incomplete. Consequently, the proposed $150.00 monthly charge remains preliminary and may be adjusted once all final project elements are fully closed out. Upon final cost determination, customers will have the option to pay their share of the project costs in a single payment; otherwise, the repayment remains with the property regardless of ownership until the loan repayment is complete.

The original Voluntary Transfer Agreement envisioned a definitive project closeout to establish a clear transition date for future utility customers. Under the agreement framework, properties connected before project closeout contribute to the project's repayment, as they directly Benefitted from PMWC's system as it was being reconstructed. Properties connecting after final closeout will be treated as standard new Town water customers, subject only to the existing tap fees and water rates in effect at the time of connection.

Proposal:

Staff propose that a monthly surcharge of $150.00 be added to the utility bills of the 134 benefitted properties served by the reconstructed PMWC system. The charge will begin with October 2026 service, appearing on bills mailed in November 2026. The surcharge is intended to cover the current USDA-RD loan payment, required debt service and short-lived asset reserves, unreimbursed project costs, and administrative costs associated with repayment of the project obligations. Once final project costs are determined, staff will bring a revised repayment surcharge to the Town Board. Property owners will receive written notice of the final repayment amount and the option to pay their allocated share in full. A lump-sum payment would settle the repayment obligation for that property and end the monthly surcharge for that property.

Staff also proposes that connections to the project infrastructure after the effective date of the attached ordinance be classified as “new customers” for purposes of Section 5.4.4 of the Voluntary Water System Transfer Agreement. Because there is no date certain for the formal project closeout, staff recommend using the effective date of the attached Ordinance as the new administrative trigger for this classification. This approach provides a clear date for determining whether a water service is subject to the project repayment surcharge.

Advantages:

- Existing Town water customers will not subsidize reconstruction of the former private PMWC water system; repayment is assigned to the benefitted properties.
- Retaining the 40-year USDA-RD loan preserves favorable long-term financing and helps keep the monthly repayment amount lower than it would likely be under replacement financing.
- The surcharge creates a clear, separate billing line item so the benefitted property owners can see the repayment obligation apart from regular water usage charges.

Disadvantages:

- Benefitted property owners will incur a new $150.00 monthly surcharge on their water bills for the 40-year repayment term; however, they can later choose to pay the final allocated debt in full.
- The preliminary amount may change after the remaining construction issues are finalized; however, the funding allows us to make the USDA-RD loan payments while closing out the remaining construction issues.

Action Recommended:

Staff recommend approving Ordinance 15-26 to establish the PMWC user class, authorize the preliminary $150.00 monthly surcharge for the 134 benefitted properties, and classify post-effective-date connections as new customers for purposes of the Voluntary Water System Transfer Agreement.

Finance/Resource Impact:

Estimated revenue from the preliminary surcharge is $241,200 annually, based on 134 benefitted properties at $150.00 per month. Revenue will be recorded in the Water Fund and applied to the USDA-RD loan payment, required reserve accounts, unreimbursed project costs, and administrative costs associated with the Prospect Mountain reconstruction project. Relevant project accounts include PMLOAN, PMIMPV, and PMWCON.

Level of Public Interest:

High for the 134 benefitted properties in the former PMWC service area because the ordinance creates a new monthly bill surcharge. Interest is also expected from Town water customers because the transfer agreement and proposed ordinance are intended to prevent existing Town water customers from subsidizing the reconstruction costs of the former private system.

Sample Motion:

I move for the approval of Ordinance 15-26.

Attachments:

1. Ordinance 15-26
2. Voluntary Water System Transfer Agreement
3. Property owner repayment letter

Attachment 1

ORDINANCE NO. 15-26

AN ORDINANCE AMENDING THE WATER RATE SCHEDULES OF THE TOWN OF ESTES PARK WATER ACTIVITY ENTERPRISE

WHEREAS, the Town of Estes Park, through its Water Activity Enterprise, owns and operates its municipal water system; and

WHEREAS, on April 22, 2015, Prospect Mountain Water Company (PMWC) filed a Chapter 7 Bankruptcy petition under the United States Bankruptcy Code with the United States Bankruptcy Court for the District of Colorado, and a trustee (the "Bankruptcy Trustee") was appointed to manage the Company; and

WHEREAS, on March 8, 2016, the Town and the Bankruptcy Trustee, acting for the PMWC, entered into an agreement for the Town to maintain and operate the Prospect Mountain System; and

WHEREAS, the Prospect Mountain System had exceeded its useful life and needed to be replaced to provide improved water quality, improved water pressure and fire flow volume, and to meet Town standards and requirements for water distribution systems; and

WHEREAS, on February 26, 2019, the Town, acting by and through the Enterprise, and the Bankruptcy Trustee, acting for the PMWC, entered into a Voluntary Water System Transfer Agreement for the transfer of the Prospect Mountain System to the Town in order for the Town, acting by and through the Enterprise, to undertake the rebuilding and improvement of the Prospect Mountain System to Town standards (the "Project"); and

WHEREAS, the Agreement requires that, upon completion of the Project, the Town's project costs and ongoing debt service costs shall be apportioned to former PMWC customers, amortized over forty years, and charged to the applicable customers on a monthly basis; and

WHEREAS, to provide funds to pay a portion of the costs of the Project, the Town passed ordinance No. 07-26 for a United States Department of Agriculture Rural Development (USDA-RD) loan; and

WHEREAS, the USDA-RD loan was closed on August 13, 2026; and

WHEREAS, the water rate schedule is adapted to include a new PMWC user class which will be used to repay the PMWC construction project related costs including the USDA-RD loan payments; and

WHEREAS, the Voluntary Transfer Agreement anticipated a final Revenue Bond to be issued to cover all project costs; and

WHEREAS, the USDA-RD loan provided favorable terms, and it is in the best financial interest to forgo another revenue bond issuance that would cover all project costs including early payoff of the USDA-RD loan; and

WHEREAS, the Town Board desires to adopt the new PMWC user class and associated charge attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Town by this ordinance does not adopt a final surcharge as described in the Voluntary Transfer Agreement, but only an interim charge to cover ongoing costs, including interest payments, to prevent interest capitalization while the final costs are determined, in order to keep the ultimate surcharge as low as possible for the benefit of its payers; and

WHEREAS, the Town will calculate the true and final system reconstruction surcharge as soon as practicable once final costs are known, and set that surcharge to replace this interim charge.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO AS FOLLOWS:

Section 1: The favorable USDA-RD loan will be retained, and a revised and final surcharge will be based on final project costs.

Section 2: Connections to the project's infrastructure after the date this ordinance takes effect are hereby classified as "new customers" as applicable to section 5.4.4 of the Voluntary Transfer Agreement, and will not be subject to the charge.

Section 3: In this ordinance, ellipses indicate material not reproduced as the Board intends to leave that material in effect as it now reads.

Section 4: Section 13.32.010 of the Estes Park Municipal Code is hereby amended by the addition of subsection 13.32.010(b)(2)(b), to read as follows:

13.32.010 - Water rate schedule.
…
(b) Rates. . . .
(2) Surcharges for repayment of USDA loans.
. . . .
(b) Prospect Mountain Water Project Repayment Surcharge

a. Customers of properties described in Exhibit 2 of the ordinance from which this subsection derives shall pay a monthly surcharge of $150.00 as a part of their monthly water bill. Owners of such properties shall pay the monthly surcharge regardless of whether they actually receive water service for that month.
b. A property may be removed from this monthly payment obligation by the payment to the Town of a lump sum calculated by the Finance Director to cover the remaining obligations attributable to the property over the life of the applicable USDA-RD loan. Upon payment of the lump sum, and written confirmation by the Finance Director of such payment, customers of such property shall no longer be required to pay the surcharge. No payment of a lesser amount shall be effective to decrease the surcharge.
c. The surcharge shall apply beginning with monthly water bills for October 2026 water services, as billed and mailed in November 2026.
d. This surcharge shall be in effect until the loan is paid off and terminated, in the written termination of the Finance Director, after which it shall be expired.

Section 4: The Estes Park Municipal Code is hereby amended by the addition of Exhibit 2 of Exhibit A of this ordinance as Exhibit 2 of section 13.32.010.

Section 5: The new Water Rate Schedule set forth on Exhibit A is hereby adopted and shall amend and replace the existing Water Rate Schedule in section 13.32.010(b)(1) of the Municipal Code.

Section 6: This Ordinance shall take effect and be enforced thirty (30) days after its adoption and publication.

PASSED AND ADOPTED by the Board of Trustees of the Town of Estes Park, Colorado this ____ day of _____, 2026.

TOWN OF ESTES PARK, COLORADO

By: _____
Mayor

ATTEST:

_____
Town Clerk

I hereby certify that the above Ordinance was introduced at a regular meeting of the Board of Trustees on the _____day of _____, 2026 and published by title in a newspaper of general circulation in the Town of Estes Park, Colorado, on the ___ day of _____, 2026, all as required by the Statutes of the State of Colorado.

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

EXHIBIT A of Ordinance 15-26

Revised Sept 2026

Town of Estes Park, CO
Water Rate Schedule 2020-2022

TO CALCULATE YOUR MONTHLY WATER BILL:

Follow the formulas below using the charts for Base Fee and Volume Charge

Residential:

Base Fee + ([(Gallons Used divided by 1,000) - 2] x Volume Charge) = Monthly Water Bill

Non-Residential:

Base Fee + [(Gallons Used divided by 1,000) x Volume Charge] = Monthly Water Bill

RESIDENTIAL BASE FEE, Includes the first 2,000 gallons per billing period

Residential Customers	2020		2021		2022	
	Urban	Rural	Urban	Rural	Urban	Rural
	$42.33	$65.61	$44.44	$66.67	$46.67	$67.67

Park Entrance Mutual Pipeline and Water Company Loan Repayment Surcharge		
Monthly	$115.89	Part of the Monthly Water Bill. In addition to the Residential Base Fee and Volume Charge. Applies to properties described in Exhibit 1

Prospect Mountain Water Company Project Repayment Preliminary Surcharge		
Monthly	$150.00	Will be revised once the final Surcharge is calculated. Part of the Monthly Water Bill. In addition to the Residential Base Fee and Volume Charge. Applies to properties described in Exhibit 2

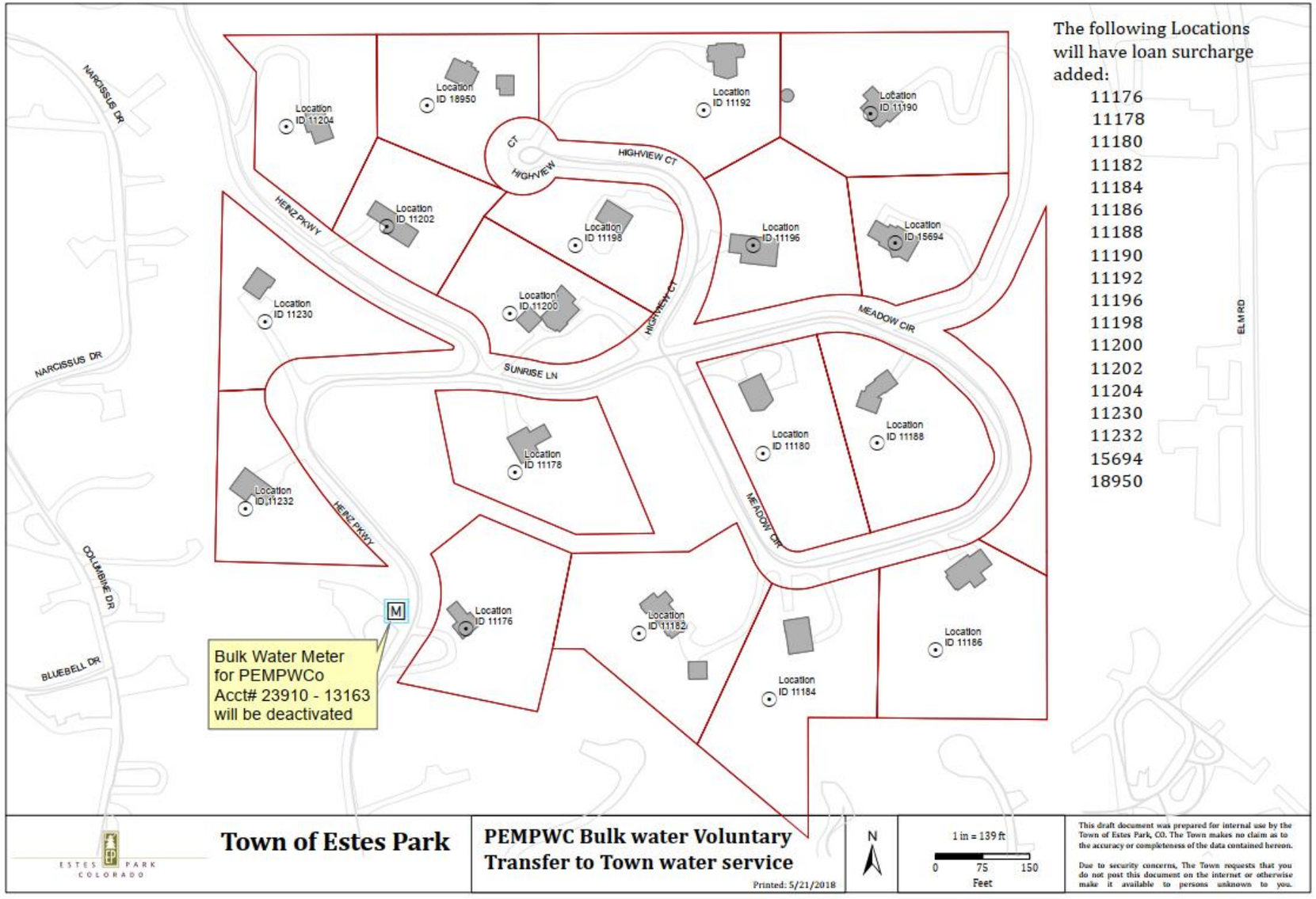
NON-RESIDENTIAL BASE FEE BY METER SIZE

METER SIZE	2020		2021		2022	
	Urban	Rural	Urban	Rural	Urban	Rural
5/8"	$36.47	$58.35	$40.84	$65.35	$44.93	$71.88
3/4"	$36.47	$58.35	$40.84	$65.35	$44.93	$71.88
1"	$60.89	$97.43	$68.20	$109.12	$75.02	$120.04
1-1/2"	$121.42	$194.27	$135.99	$217.58	$149.59	$239.34
2"	$194.34	$310.95	$217.66	$348.26	$239.43	$383.09
3"	$364.64	$583.42	$408.40	$653.43	$449.23	$718.78
4"	$607.85	$972.55	$680.79	$1,089.26	$748.87	$1,198.19
6"	$837.16	$1,339.45	$937.61	$1,500.18	$1,031.38	$1,650.20
8"	$1,944.61	$3,111.38	$2,177.96	$3,484.74	$2,395.76	$3,833.22
10"	$2,795.68	$4,473.08	$3,131.16	$5,009.85	$3,444.27	$5,510.84

Volume Charge By Rate Class Per 1000 Gallons

Rate Class	2020		2021		2022	
	Urban	Rural	Urban	Rural	Urban	Rural
Residential	$6.58	$10.20	$6.91	$10.37	$7.26	$10.53
Non-Residential	$5.51	$8.82	$5.62	$8.99	$5.73	$9.17
Pumped Flow	$9.21	$14.74	$9.67	$15.48	$10.16	$16.26
Bulk Water	$6.31	$12.19	$6.75	$13.04	$7.09	$13.69
Water Dispenser	$8.98		$9.54		$10.01	

Exhibit 1



The following Locations will have loan surcharge added:

11176
11178
11180
11182
11184
11186
11188
11190
11192
11196
11198
11200
11202
11204
11230
11232
15694
18950

ESTES PARK COLORADO

Town of Estes Park

PEMPWC Bulk water Voluntary Transfer to Town water service

Printed: 5/21/2018

N

1 in = 139 ft

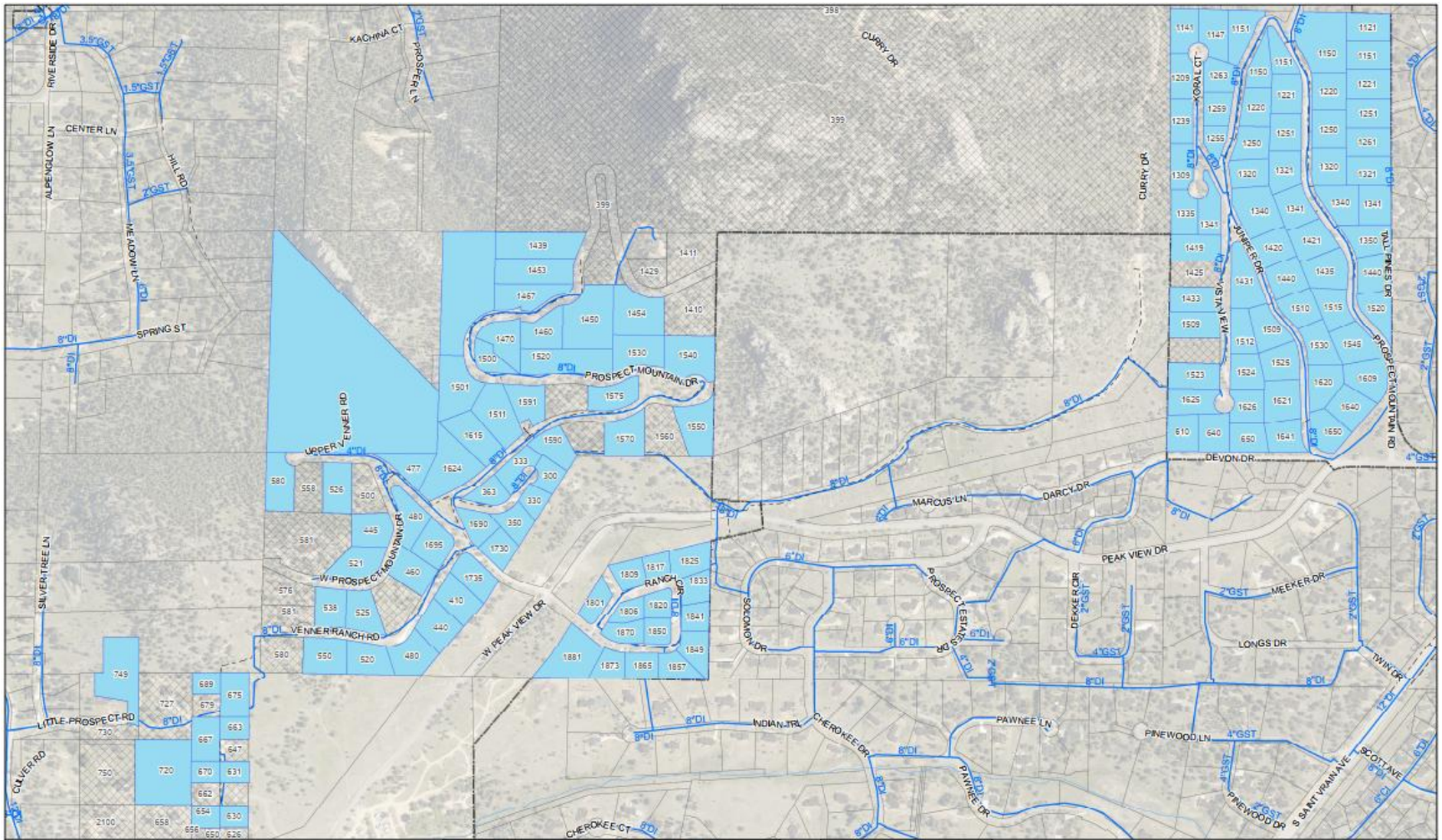
0 75 150

Feet

This draft document was prepared for internal use by the Town of Estes Park, CO. The Town makes no claim as to the accuracy or completeness of the data contained hereon.

Due to security concerns, The Town requests that you do not post this document on the internet or otherwise make it available to persons unknown to you.

EXHIBIT 2



TOWN OF ESTES PARK

Town of Estes Park
Water Division

Prospect Mountain Water Co Project Surcharge

N

1 in = 525 ft
0 290 580
Feet

9/9/2026

Legend

PMWC Benefitted Customer_9-9-2026

RECEPTION #20190076460, 12/4/2019 9:01:30 AM,
1 of 39, $203.00
Angela Myers, Clerk & Recorder, Larimer County, CO

Attachment 2

VOLUNTARY WATER SYSTEM TRANSFER AGREEMENT

This VOLUNTARY WATER SYSTEM TRANSFER AGREEMENT ("Agreement") is entered into this 20th day of February, 2019 between the Town of Estes Park, by and through its Water Enterprise (the "Town") and the Prospect Mountain Water Company, Inc., debtor in Chapter 7 bankruptcy Case No. 15-14286 TBM ("Prospect Mountain"), by and through its Bankruptcy Trustee, Daniel A. Hepner ("Trustee"); collectively (the "Parties").

RECITALS

A. The Town, through its Water Enterprise, operates and maintains a municipal water utility distribution system (the "Town's System") within the Town of Estes Park and surrounding areas.

B. Prospect Mountain is a privately-owned Colorado public water utility providing service in its designated service territory within unincorporated Larimer County, Colorado. Prospect Mountain provides water service to its service territory ("Service Territory") pursuant to a Certificate of Public Convenience and Necessity ("CPCN") issued by the Public Utilities Commission of the State of Colorado (the "Commission"). Prospect Mountain currently serves approximately 130 customers.

C. Prospect Mountain wishes to transfer its water distribution system infrastructure owned and used by Prospect Mountain (the "Prospect Mountain System") to the Town along with all of its property and its tangible and intangible assets; and the Town wishes to acquire the Prospect Mountain System and Prospect Mountain's real property and its tangible and intangible assets and incorporate the same into the Town's System.

D. Prospect Mountain and the Town entered into that certain Water Service Agreement dated August 13, 2012, in order for the Town to provide bulk water to Prospect Mountain.

E. On April 22, 2015, Prospect Mountain filed a Chapter 7 Bankruptcy Petition under the United States Bankruptcy Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Colorado ("Bankruptcy

Court"). Daniel A. Hepner was appointed Trustee in the Chapter 7 Bankruptcy Court proceeding and has managed Prospect Mountain since that time.

F. On March 8, 2016, Prospect Mountain and the Town entered into an Agreement to Operate Water System (the "Operating Agreement"). Since that time, the Town has been maintaining and operating the Prospect Mountain System pursuant to the terms of the Operating Agreement.

G. The Parties have determined the need to replace the Prospect Mountain System, which infrastructure has been in place for approximately 45 years and has exceeded its useful life, in order to provide improved water quality, water pressure and fire flow volume, and to meet the Town's System standards and requirements.

H. Preliminary engineering and environmental reports have been completed and approved by the Town for the demolition, redesign, and reconstruction of the Prospect Mountain System, including all infrastructure elements of the water distribution system below and above ground that is owned by Prospect Mountain (the "Project"). The Town Board determined that the Town would undertake the Project on the condition that existing customers of the Town would not incur costs related to the Project.

I. The Town has incurred unreimbursed expenses owed by Prospect Mountain in operating the Prospect Mountain System pursuant to the Operating Agreement to date and will continue to incur expenses until the transfer of the Prospect Mountain System to the Town.

J. To finance the cost of the Project, Prospect Mountain and the Town agreed that the Town would apply for Federal assistance.

K. The Town applied for and received approval of both a loan and a grant administered by the Rural Utility Service ("RUS") of the United States Department of Agriculture (the "Agency") dated September 28, 2018 (the "Letter") which is attached hereto as **Exhibit A.** The Letter describes the Project, the Project funding, the Project budget, and other requirements and conditions for the Project.

L. In order for the Town to obtain interim financing and enter into final design and construction contracts for the Project, Prospect Mountain has agreed to transfer the Prospect Mountain System, its tangible and intangible assets and

real property to the Town pursuant to the terms of this Agreement.

M. Following the transfer of Prospect Mountain System to the Town, most of the Town's expenses for the development and execution of the Project including administration, legal, construction, contingencies, engineering fees, lab services, and interest will be paid as set forth in Section II of the Letter. These costs will be solely due to the Project and attributable to customers located in the Prospect Mountain Service Territory.

N. Following transfer, Prospect Mountain shall not be liable to the Town or any third party for the Prospect Mountain System or for any expenses for the development and execution of the Project.

O. Following transfer, the Trustee shall take those steps necessary under the Bankruptcy Code to complete administration of the bankruptcy estate, including but not limited to, the payment of allowed claims and the distribution of any remaining funds in which the bankruptcy estate has an interest whether held in an estate account or in the Prospect Mountain Capital Improvement Fund (the "CIF") established at the direction of the Commission as approved by the Bankruptcy Court and the Commission.

P. The Parties contemplate that, after payment of all allowed claims authorized to be paid by the Bankruptcy Court, including all administrative expenses, any remaining funds held by the bankruptcy estate as well as any remaining funds in the CIF Account will be paid to the Town to be used for the benefit of the Prospect Mountain System for interim repairs prior to the Project construction, or for the Project if such interim expenses are not incurred.

Q. Time is of the essence to conclude the Bankruptcy Court proceeding, to transfer the Prospect Mountain assets to the Town, and to commence and complete reconstruction of the Prospect Mountain System.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Project Financing, Construction, and Costs

1.1 The terms and conditions of the Letter have been deemed acceptable by the Parties and form the basis for this Agreement.

1.2 Unless this Agreement is terminated as set forth herein, the Town shall be solely responsible for the terms and conditions, tasks and responsibilities as set forth in the Letter.

Section 2. Prospect Mountain Transfer

2.1 Subject to the terms and conditions herein, Prospect Mountain agrees to transfer to the Town and the Town agrees to accept, the following from Prospect Mountain (the "Assets"):

a. All tangible and intangible assets of Prospect Mountain, including, but not limited to, the water distribution infrastructure, storage tanks, pump stations, personal and real property, customer accounts, and all appurtenances thereto.

b. A sum to be determined as set forth in Section 2.7, below, representing all unpaid accounts receivable for customers of Prospect Mountain, if any, which remain after payment of all allowed claims and administrative expenses in the Bankruptcy Court.

c. By Trustee's Deed, the form of which is attached hereto as **Exhibit C**, any real property owned by Prospect Mountain. To the best of the Trustee's knowledge, information and belief, Prospect Mountain owns two parcels of real property which are set forth on **Exhibit B** attached hereto and incorporated herein by reference.

d. By Trustee's Deed, the form of which is attached hereto as **Exhibit C**, all easement rights of Prospect Mountain whether held in fee, by prescription, or by plat dedication, including but not limited to all utility easements and rights-of-way.

e. All funds held by the bankruptcy estate in the CIF that remain after the Trustee's payment of all allowed claims and administrative expenses authorized by the Bankruptcy Court to be paid as set forth in Section 2.7, below.

f. The Town acknowledges and agrees that the amounts of any funds available for transfer to the Town listed in this section are not known at this time. The Parties agree that this Agreement is not contingent in any way on the receipt by the Town of any specific amount of funds that may or may not exist in the CIF or in the bankruptcy estate at the conclusion of the bankruptcy proceeding.

2.2 Transfer of Prospect Mountain assets other than real property shall be by good and sufficient bill of sale, free and clear of all liens and encumbrances of record.

2.3 Transfer of uncollected accounts receivable, if any, shall be made by good and sufficient assignment without recourse pursuant to the True-Up Provisions in Section 2.7, below.

2.4 Transfer of remaining funds in the CIF or other funds in the bankruptcy estate shall be pursuant to the True-Up Provisions in Section 2.7, below.

2.5 Date of Transfer. The Date of Transfer shall consist of an initial closing in the items listed in Sections 2.1, but prior to the fulfillment of the True-Up Provisions discussed in Section 2.7, below. The Date of Transfer shall mark the date of termination of the Operating Agreement and Water Service Agreement and shall mark the point after which the Town will assume full and total control of Prospect Mountain and its assets. Following the initial closing on the Date of Transfer, Prospect Mountain shall have no further obligation or liability with respect to the maintenance or operation of the Prospect Mountain System and shall have no further control of its assets.

2.6 The Date of Transfer of Prospect Mountain and its assets shall occur on or before May 1, 2019 or as scheduled upon the fulfillment of the contingencies set forth in Section 3, below.

2.7 True-Up Provisions for Transfer of Funds. After entry of an Order of the Bankruptcy Court approving the Trustee's Final Report and Applications for Compensation, and after disbursement of all funds necessary to pay the allowed claims and administrative expenses set forth in the Trustee's Final Report, the Trustee and the Town shall perform the following tasks, referred to as the "True-Up Provisions":

2.7.1. The Trustee shall prepare a full accounting which shall identify all unused

funds remaining in the control of Prospect Mountain, including all funds held in all bankruptcy estate accounts and the CIF and a list of all uncollected accounts receivable;

2.7.2. The Trustee will provide such accounting to the Town for its review;

2.7.3. The Trustee will cause any available and remaining funds shown in such final accounting to be transferred to the Town by check;

2.7.4. The Trustee shall provide the Town with copies of all invoices for uncollected accounts receivable and shall assign such uncollected accounts by good and sufficient assignment as set forth in Section 2.3, above;

2.7.5. The Town shall accept the final accounting, subject to its determination that there are no calculation errors set forth in such accounting, but the Town agrees that it shall not have any recourse to challenge the amount of funds to be transferred to the Town other than as agreed to by the Trustee in his sole discretion as a calculation error in the accounting;

2.7.6. The Town agrees that no specific amount of funds has been represented or promised by Prospect Mountain to the Town under this section and no specific amount of funds for transfer is contemplated or required under the conditions precedent in Section 3, below.

2.8 Subsequent to the Date of Transfer and the fulfillment of the True-Up Provisions, the transaction shall be completed and this Agreement shall be of no further force or effect. The Town acknowledges and agrees that, at that time, the Trustee shall take those steps necessary for the Bankruptcy Court to close the bankruptcy proceeding, Prospect Mountain will cease to exist, and there shall be no liability or recourse available from Prospect Mountain to the Town or to any third party in any form or fashion whatsoever.

2.9 No representations or warranties. The Town acknowledges that the Trustee is unable to make, shall not be required to make, and shall not be deemed to have made, any representation or warranty whatsoever as to the physical condition of the Prospect Mountain System or its assets. The acquisition of the Prospect Mountain System by the Town is based solely on the basis of the Town's own review of the physical condition of the Prospect Mountain System, and documents relating to Prospect Mountain, including but not limited to the Preliminary Engineering Report and Environmental Assessment. The Trustee

cannot and shall not assume the risk that adverse matters may not have been disclosed to the Town by the Town's investigation.

2.10 As a standard matter of practice involving assets conveyed from bankruptcy estates through court appointed administrators, Trustee's limited knowledge of the Prospect Mountain System as the Trustee of a bankruptcy estate does not permit Trustee to convey the Prospect Mountain System and its other assets which are the subject of this Agreement other than in their present "AS IS" condition, subject to all faults. Accordingly, the Prospect Mountain System which is the subject of this Agreement is being conveyed "AS IS, AND WITH ALL FAULTS WITH NO REPRESENTATIONS MADE BY THE TRUSTEE."

Section 3. Conditions Precedent for Closing

3.1 Regulatory and Bankruptcy Court approvals. This Agreement shall be submitted for approval by the Commission and the Bankruptcy Court. Both the Commission and the Bankruptcy Court shall be advised by the Parties that this Agreement represents a package of compromises and necessary steps to implement the Letter and transfer the Prospect Mountain System. If the Commission or the Bankruptcy Court imposes conditions or modifications that materially alter this Agreement and are unacceptable to either party, then the Parties shall provide a good faith alternative for approval under rehearing procedures. If either the Commission or the Bankruptcy Court does not approve the alternative proposal of the Parties, and if the Town, after consultation with Prospect Mountain, determines that the material conditions or modifications render the Town unable to perform its obligations under the Letter, then either Party may terminate this Agreement for good cause upon thirty days written notice to the other Party.

3.1.1. Bankruptcy Court Approval. This Agreement is subject to, and shall not become effective until approved by, the written Order of the Bankruptcy Court upon such notice as may be required. Trustee shall apply to the Bankruptcy Court for an Order approving this Agreement.

3.1.2. Commission Approval. This Agreement is subject to, and shall not become effective until approved by, the final written decision of the Commission, upon such notice as may be required. Trustee and the Town shall jointly apply to the Commission for an order approving this Agreement. It is the intent of the Parties to request an affirmative determination from the Commission that, as a result of approving the Agreement transferring the Prospect Mountain System and all of Prospect Mountain's assets to the Town, and approval of the System

Reconstruction Surcharge, discussed below, the Commission will not exercise continuing jurisdiction over the Town or the Town's Water Enterprise with respect to the Prospect Mountain Service Territory.

3.2 Prospect Mountain shall make reasonable, good faith efforts to provide the necessary documentation to include all Prospect Mountain customers' property within the Northern Colorado Water Conservancy District and Municipal Subdistrict ("Northern").

3.3 New individual meters have been installed for all Prospect Mountain customers.

3.4 Prospect Mountain shall provide a list of all active and pending Prospect Mountain customers, property descriptions of all identified customers, and a listing of any property owners who have requested connection to the Prospect Mountain System but have not initiated connection procedures under Prospect Mountain's existing tariffs.

3.5 There have been no material changes in the terms and conditions of the Letter as of the Date of Transfer.

Section 4. Parties' Responsibilities Prior to Transfer

4.1 The Town shall continue to operate and maintain the Prospect Mountain System pursuant to the terms and conditions of the Operating Agreement including, but not limited to, operation and ordinary maintenance of the Prospect Mountain System, and the provision of bulk water.

4.2 The Town shall cooperate and provide any necessary information to Prospect Mountain in order for Prospect Mountain to obtain approvals from the Commission and the Bankruptcy Court for transfer of the Prospect Mountain System to the Town pursuant to the terms of this Agreement.

4.3 Prospect Mountain shall continue to perform its responsibilities pursuant to the terms and conditions of the Operating Agreement.

4.4 Operating Agreement Authorized Improvements. Pursuant to provisions of the Operating Agreement and as approved by the Commission in Decision No. C18-0380, the Trustee has transferred $261,000 to the Town to be used by the Town for interim capital improvements to the Prospect Mountain System deemed necessary by the Town to operate the Prospect Mountain System (the

"Authorized Improvements"). The Authorized Improvements include, but are not limited to, a new booster pump, SCADA system upgrades, tank demolition, and installation of individual water meters. The Town has determined that installation of the new booster pump should be postponed until reconstruction of the Prospect Mountain System as part of the Project.

4.4.1. Prospect Mountain agrees with the Town's position that the installation of the new booster pump is not consistent with the Project contemplated in the Letter and the Town's obligations thereunder, and to construct the new booster pump would be a waste of resources.

4.4.2. The Town estimates that it will take approximately $135,000 to install all of the water meters, complete the tank demolition, and upgrade the SCADA system. Accordingly, the Town anticipates that approximately $125,000 will remain after those expenditures.

4.4.3. The Parties agree that, in the application to be made to the Commission for the Commission's approval of this Agreement, Prospect Mountain shall request authorization from the Commission to amend or vacate Decision No. C18-0380 to allow the Town to use the remaining portion of the Operating Agreement authorized payments to the Town to pay unreimbursed operational costs incurred by the Town pursuant to the Operating Agreement. The Town acknowledges that this provision is subject to approval by the Commission given the Commission's prior decision authorizing these expenditures for specific capital projects. The Parties agree that this section is a material condition of the Agreement because the Operating Agreement unreimbursed costs will not be paid to the Town within the scope of the Letter or the Project and that such costs have been legitimately incurred by the Town through its obligations under the Operating Agreement.

4.4.4. The Town agrees that any remaining portion of said funds retained by the Town shall be used by the Town to maintain and operate the Prospect Mountain System prior to construction of the Project. In the event the funds retained by the Town are not used by the Town to operate and maintain the Prospect Mountain System prior to construction of the Project, the remaining retained funds shall be used for the Project.

4.5 The Parties agree that, other than the Agency approval attached as Exhibit A, no financing or financial approval is required by the Town as a condition precedent in Section 3, above.

4.6 The Town acknowledges that, following approval of this Agreement, all Town approvals have been achieved and no further votes of the Town Board or any referendum are required to effectuate this Agreement.

Section 5. Responsibilities of the Town Following Transfer

5.1 Upon the Date of Transfer, the Operating Agreement shall terminate. Prospect Mountain customers shall become Town water customers subject to the Town's Water Enterprise rules and regulations. The Town shall assume full control of Prospect Mountain as the incumbent utility, including but not limited to billing responsibility. Each customer shall be billed individually by the Town for water service at the Town's applicable water rate. All former Prospect Mountain customers will become subject to all the rules and regulations of the Town's Water Enterprise including, but not limited to, bill payment, termination of water service, and turn-on charges.

5.2 As part of the Project, each individual former customer of Prospect Mountain will be required to have a separate connection into the new water mains. As required in the Town's Water Enterprise rules and regulations, each service line shall be required to be owned and maintained by the property owner including the physical connection into the water main.

5.3 System Development Fee. The Town has been providing bulk water to Prospect Mountain according to the terms of the Water Service Agreement and the Operating Agreement. The Town's bulk water rate to Prospect Mountain includes the amortized cost of the Town's System Development Fee and Water Right Fee (collectively the "System Development Fee") for a property owner to obtain residential water service for a single-family residence from the Town over twenty (20) years. The following process represents the understanding of the Parties regarding the transition to the Town Water Enterprise and the process for implementing the charges required to repay the USDA loan.

5.3.1. The Town shall credit the pro-rata amount of the System Development Fee paid by Prospect Mountain from August 2012 to the Date of Transfer of the Assets for existing Prospect Mountain customers which the Town has determined to be 33% of the amortized System Development Fee for existing customers (the "Pro Rata Credit");

5.3.2. Following the Date of Transfer and until completion of the Project, for

properties that are not connected to the Prospect Mountain System which are located within the Service Territory, the Town will allow such properties to connect to the Town's System. Said properties shall pay the Pro Rata Credit prior to connection to the Town System. The new customers shall follow the Town's rules and procedures for connection to the Town's System;

5.3.3. For existing Prospect Mountain customers and new customers in the Service Territory that connect to the rebuilt system prior to completion of the Project, the remaining portion of the Town's System Development Fee will be paid through the Agency funding of the Project.

5.4 System Reconstruction Surcharge. Upon completion of the Project and disbursal from the Agency of all Project funds, the Town shall determine the final cost of construction of the Project. The final cost shall include legal and administrative costs of the Town, engineering, and all out-of-pocket miscellaneous costs attributable to the construction and administration of the Project, as well as the remaining portion of the Prospect Mountain ratepayers' System Development Fees (the "Town Costs"). The Letter includes an approved grant from the Agency that will be applied to reimburse the Town Costs. After accounting for 1) the grant portion of the Agency funding upon completion of the Project as a credit to the Town Costs, 2) any Town funds remaining from the transfer of the CIF and other accounts receivable under this Agreement as a credit to the Town Costs, 3) the amount owed per the terms of the Letter and the Agency Loan, 4) financing costs, and 5) any remaining unreimbursed Town Costs, the Town shall issue a Revenue Bond pursuant to Section II.5 of the Letter. The Revenue Bond will secure the Agency Loan part of the funding.

5.4.1 After the Town has issued the Revenue Bond, the Town shall calculate the System Reconstruction Surcharge (the "Surcharge"). The Surcharge will be solely applicable to former Prospect Mountain customers within the existing Service Territory that become customers of the Town, plus any new customers that connect to the Prospect Mountain System prior to the completion of the Project pursuant to section 5.3.2, above (the "Benefitted Town Customers").

5.4.2 The Surcharge formula will be determined based upon the payment schedule under the Revenue Bond and no other costs. The Town shall create an amortization schedule over 40 years to repay the Revenue Bond exactly and in full. The Town will identify the final number of Benefitted Town Customers and will convert the annual amortization schedule requirements into a monthly amount divided pro-rata and exclusively payable by the Benefitted Town

Customers on a monthly basis. The Town will credit any overpayment of the Revenue Bond to the Benefitted Town Customers after the Revenue Bond has been repaid in full.

5.4.3 The Parties agree that the Benefitted Town Customers are the beneficiaries of the Letter and the Revenue Bond and that such costs are exclusively caused by the Benefitted Town Customers. The Town agrees that, aside from the Surcharge, there will be no other charges to the Benefitted Town Customers that are different than those charged to all customers of the Town's Water Enterprise. The Surcharge formula and rate schedule shall not be modified by the Town until the Revenue Bond and Town Costs have been paid in full. At that time, the Surcharge will be eliminated.

5.4.4 Upon completion of the Project and the determination of the Surcharge as provided in Section 5.4 above, any new customers located within the former Service Territory shall be new customers of the Town and shall be responsible for paying the then current Town System Development Fee charges for connections to the Town's System and payment of the Town's water rates. Said new customers shall not be subject to the Surcharge.

5.5 Prospect Mountain shall have no responsibility or liability of any kind in connection with the requirements detailed in this section after the Date of Transfer.

Section 6. Closing and Date of Transfer

6.1 The Parties agree that, unless extended by mutual agreement of the Parties, the Date of Transfer for this Agreement shall occur on May 1, 2019. The Parties agree to make reasonable good faith efforts to achieve the contingencies listed in Section 3 by the Date of Transfer. However, if either Party believes an extension of the Date of Transfer is necessary to allow for the contingencies to be satisfied, then the Parties shall execute an extension of the Date of Transfer. Such extension shall be approved by both Parties and such approval shall not be withheld, shall not be unreasonable delayed, and shall not be unreasonably conditioned by the Parties in order to fulfill the contingencies.

6.2 The Parties agree that the Letter and Agency approval require that this Agreement be effectuated. With that understanding, this Agreement may be terminated only for good cause pursuant to Section 3.1, above. Specifically, a failure to achieve all closing conditions in Section 3, above, by the Date of Transfer shall not be a breach of this Agreement unless such conditions are not

achieved due to the negligent or willful and wanton conduct of the Trustee. Pursuant to Section 6.1, the Date of Transfer shall be extended as required by the Town in order to achieve the conditions precedent in Section 3, or the Town may, in its discretion, waive any condition precedent that is not fulfilled and notify the Trustee of its intention to schedule a Date of Transfer at any time.

Section 7. Additional Terms and Conditions

7.1 Additional Documents or Action. The Parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.

7.2 Integration and Amendment. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings between the Parties with respect to the operation and maintenance of the System. Only an instrument in writing signed by all Parties may amend this Agreement.

7.3 Governing Law. The laws of the State of Colorado shall govern this Agreement.

7.4 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties, and their respective legal representatives, successors, and assigns; provided, however, nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise specifically authorized in this Agreement.

7.5 Liability. Prospect Mountain agrees to indemnify, hold harmless and defend the Town, its officers, agents and employees from and against all liability for any and all claims, liens, suits, demands or actions for damages, injuries to persons, including death, property damage, including loss of use, and expenses, including court costs and reasonable attorney's fees, arising out of or resulting from activities under this Agreement, except for any such liability resulting from the negligence of the Town, its officers, agents and employees. Prospect Mountain's liability under this Section shall terminate on the Date of Transfer.

7.6 Governmental Immunity. The Town, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently three hundred fifty thousand dollars ($350,000) per person and nine hundred ninety thousand dollars ($990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado

Governmental Immunity Act, C.R.S. § 24 10 101, et seq., as amended, or otherwise available to the Town and its officers or employees.

7.7 No Waiver of Rights. The Town and Prospect Mountain understand and agree that neither Prospect Mountain nor the Town waive any rights they may have individually as entities to pursue any course of action deemed by Prospect Mountain or the Town to be in the best interest of the individual entity.

7.8 Waiver or Breach. The waiver by any party to a term of this Agreement or a breach of any term or provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach by any party.

7.9 Severability. If any clause, sentence, term, condition, covenant and/or provision of this Agreement is ruled to be illegal, null or void by a court of competent jurisdiction, then the remaining portions of this Agreement shall remain in full force and effect.

7.10 Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the prior written consent of the other.

7.11 Counterparts. This Agreement and future amendments, if any, may be executed by facsimile or electronic signatures. All facsimile or electronic signatures shall be considered the original signatures for all purposes. This Agreement and future amendments, if any, may be executed in counterparts. All counterparts, when taken together, shall be deemed as an original.

7.12 No Third Party Beneficiary. The Parties understand and agree that this Agreement between Prospect Mountain and the Town shall not benefit nor accrue to the interest of any other third party beneficiary including, but not limited to, any individual customer of Prospect Mountain.

7.13 Time is of the Essence. The Parties acknowledge that time is of the essence, and agree to fully and promptly cooperate in order to secure funding.

7.14 Notice. Any and all notices or any other communication herein required or permitted shall be deemed to have been given when personally delivered or deposited in the United States postal service as regular mail, postage prepaid, and addressed as follows or to such other person or address as a party may designate in writing to the other party:

The Town:	Town of Estes Park Attn: Town Administrator PO Box 1200 Estes Park, CO 80517
Prospect Mountain:	PROSPECT MOUNTAIN WATER CO C/O DANIEL A. HEPNER CH 7 TRUSTEE 950 SPRUCE ST STE 1C LOUISVILLE, CO 80027-1977 Email: d.hepner@dah-law.com
With Copy To:	Mark Detsky, Esq. Dietze and Davis, P.C. 2060 Broadway, Suite 400 Boulder, CO 80303 Telephone: 303-447-1375 Email: MDetsky@DietzeDavis.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

TOWN OF ESTES PARK BY AND THROUGH ITS WATER ENTERPRISE

By: _____
Title: Mayor
Name: Todd Jirsa

PROSPECT MOUNTAIN WATER COMPANY

By: _____
Title: DANIEL A. HEPNER, CH 7 TRUSTEE

EXHIBIT A

USDA Letter of Conditions

USDA

United States Department of Agriculture

Rural Development

Colorado State Office

Denver Federal Center
P.O Box 25426
Denver CO 80225

Voice 800-424-6214
Fax 866-587-7607

September 28, 2018

Town of Estes Park
PO Box 1200
Estes Park, CO 80517

SUBJECT: Recipient Name: Town of Estes Park
Project Name: Prospect Mountain Water Company
Water Application
CFDA NUMBER – 10.760

Loan:	$4,493,000
Grant:	$6,547,000
Applicant:	$45,000
Other Funding:	$25,000

Dear Mr. Lancaster:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan and grant will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA Rural Development, both of which are referred to throughout this letter as the Agency. Any changes in project cost, source of funds, scope of project, or any other significant changes in the project or applicant must be reported to and concurred with by the Agency by written amendment to this letter. If significant changes are made without obtaining such concurrence, the Agency may discontinue processing of the application.

All conditions set forth under Section III – Requirements Prior to Advertising for Bids must be met within 9 months of the date of this letter. If you have not met these conditions, the Agency reserves the right to discontinue the processing of your application.

If you agree to meet the conditions set forth in this letter and desire further consideration be given to your application, please complete and return the following forms within 7 days:

Form RD 1942-46, "Letter of Intent to Meet Conditions"
Form RD 1940-1, "Request for Obligation of Funds"
RUS Bulletin 1780-12, "Water and Waste System Grant Agreement"

The loan/grant will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is signed by the approving official. Thus, this letter in

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itself does not constitute loan and/or grant approval, nor does it ensure that funds are or will be available for the project. When funds are available, the Form 1940-1 will be provided to you for your signature. After you sign and return the form to the Agency, the request will be processed and loan/grant funds will be approved and obligated.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. All parties may access information and regulations referenced in this letter at our website located at www.rd.usda.gov.

The conditions are as follows:

SECTION I - PROJECT DETAIL

1. **Project Description** Funds will be used to upgrade the PMWC water distribution system to meet the Town of Estes Park standards. The system improvements will allow for disinfection and adequate fire flow throughout the Prospect Mountain service area. As a result, the Town of Estes Park will take ownership and operation of the system.

Facilities will be designed and constructed in accordance with sound engineering practices and must meet the requirements of Federal, State, and local agencies. The proposed facility design must be based on the Preliminary Engineering Report (PER) as concurred with by the Agency.

2. **Project Funding** – The Agency is offering the following funding for your project:

Agency Loan -	$4,493,000
Agency Grant -	$6,547,000

This offer is based upon the following additional funding being obtained.

Applicant Contribution -	$ 45,000
DOLA Funding -	$ 25,000

TOTAL PROJECT COST - $ 11,110,000

This funding is offered based on the amounts stated above. Prior to loan closing, any increase in non-Agency funding will be applied first as a reduction to Agency grant funds, up to the total amount of the grant, and then as a reduction to Agency loan funds.

Any changes in funding sources following obligation of Agency funds must be reported to the processing official. Project feasibility and funding will be reassessed if there is a significant change in project costs after bids are received. If actual project costs exceed the project cost estimates, an additional contribution by the Owner may be necessary. Prior to advertisement for construction bids, you must provide evidence of applicant contributions and approval of other

funding sources. This evidence should include a copy of the commitment letter. Agency funds will not be used to pre-finance funds committed to the project from other sources.

3. **Project Budget** Funding from all sources has been budgeted for the estimated expenditures as follows:

Project Costs:		Total Budgeted:
Administration	$375,000	
Construction	$6,378,000	
Contingency	$1,150,000	
Engineering Fees	$1,198,000	
Includes:		
Basic Services		$823,000
Resident Project Representative		$375,000
Interest - Interim	$87,500	
Land and Rights-of-Way	$1,602,000	
Easement Acquisition	$200,000	
Testing	$112,000	
Northern Water Inclusion	$7,500	
TOTAL	$11,110,000	

Obligated loan or grant funds not needed to complete the proposed project will be deobligated prior to start of construction. Any reduction will be applied to grant funds first. An amended letter of conditions will be issued for any changes to the total project budget.

SECTION II – LOAN AND GRANT TERMS

4. **Repayment** – The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, unless you request otherwise. Should the interest rate be reduced, the payment will be recalculated to the lower amount.

Your loan will be scheduled for repayment over a period of 40 years. Payments will be equal annual amortized installments, beginning one year after loan closing. For planning purposes, use a 2.375% interest rate and an amortization factor of 39.01, which provides for an annual payment of $175,272. The precise payment amount will be based on the interest rate at which the loan is closed, and may be different than the one above.

The payment due date will be established as the day that the loan closes. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided.

5. **Security** The loan will be secured by a Revenue bond with 1st lien position in the amount of $4,493,000. The bond will be fully registered as to both principal and interest in the

name of the United States of America, Acting through the United States Department of Agriculture.

The bond and any ordinance or resolution relating thereto must not contain any provision in conflict with the Agency Loan Resolution, applicable regulations, or its authorizing law. In particular, there must be no defeasance or refinancing clause in conflict with the graduation requirements of 7 U.S.C. 1983.

Additional security requirements are contained in RUS Bulletin 1780-12, "Water and Waste System Grant Agreement," and RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)." A draft of all security instruments, including draft bond resolution, must be reviewed and concurred in by the Agency prior to advertising for bids. The bond resolution and Loan Resolution must be duly adopted and executed prior to loan closing. The Grant Agreement must be fully executed prior to the first disbursement of grant funds.

6. **Electronic Payments** – Payments will be made on the day your payment is due through an electronic preauthorized debit system. You will be required to complete Form RD 3550-28, "Authorization Agreement for Preauthorized Payments," for all new and existing indebtedness to the Agency prior to loan closing. It will allow for your payment to be electronically debited from your account on the day your payment is due.

7. **Construction Completion Timeframe** - All projects must be completed and all funds disbursed within five years of obligation. If funds are not disbursed within five years of obligation, you must submit to the Agency a written request for extension of time with adequate justification of circumstances beyond your control. Requests for waivers beyond the initial extension will be submitted to the Assistant Administrator for concurrence decision.

8. **Disbursement of Agency Funds** - Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

Any applicant contribution will be the first funds expended, followed by other funding sources. Interim financing or Agency loan funds will be expended after all other funding sources unless a written agreement is reached with all other funding sources on how funds are to be disbursed prior to start of construction or loan closing, whichever occurs first. Interim financing funds or Agency loan funds must be used prior to the use of Agency grant funds. The Grant Agreement must not be closed and funds must not be disbursed prior to loan funds except as specified in RUS Instruction 1780.45(d). In the unlikely event the Agency mistakenly disburses funds, the funds will be remitted back to the Agency electronically.

Grant funds are to be deposited in an interest-bearing account (exception provided below) in accordance with 2 CFR Part 200 and interest in excess of $500 per year remitted to the Agency. The funds should be disbursed by the recipient immediately upon receipt and there should be

little interest accrual on the Federal funds. Recipients shall maintain advances of Federal funds in interest-bearing accounts, unless:

a. The recipient receives less than $120,000 in Federal awards per year.

b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

c. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

d. A foreign government or banking system prohibits or precludes interest-bearing accounts.

9. **Reserves** – Reserves must be properly budgeted to maintain the financial viability and sustainability of any operation. Reserves are important to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise. The following reserves are required to be established as a condition of this loan:

a. **Debt Service Reserve** – As a part of this Agency loan proposal, you must establish a debt service reserve fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment per year for ten years or until the balance is equal to one annual loan payment. Ten percent of the proposed loan installment would equal $1,461 per month; this amount should be deposited monthly until a total of $175,272 has accumulated. Prior written concurrence from the Agency must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully-funded amount is reached.

b. **Short-Lived Asset Reserve** – In addition to the debt service reserve fund, you must establish a short-lived asset reserve fund. Based on the preliminary engineering report, you must deposit at least $4,700 into the short-lived asset reserve fund annually for the life of the loan to pay for repairs and/or replacement of major system assets. It is your responsibility to assess your facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs.

Current assets can also be used to establish and maintain reserves for expected expenses, including but not limited to operation and maintenance, deferred interest during the construction period, and an asset management program.

SECTION III –REQUIREMENTS PRIOR TO ADVERTISING FOR BIDS

10. **Environmental Requirements** – USDA Rural Development has applied the *Nationwide Programmatic Agreement among the U.S. Department of Agriculture Rural Development*

Programs, National Conference of State Historic Preservation Officers and The Advisory Council on historic Preservation for Sequencing Section 106 (NPA) for this project to avoid an impending pooling, interest rate change, or another financial deadline.

USDA Rural Development has attached the *RD Staff NPA Certification Checklist* and *NPA Applicant Awareness Certificaton* forms to this agreement. These documents certify that USDA Rural Development and the applicant are aware of their roles and responsibilities under the NPA.

USDA Rural Development is aware that using the NPA conditionally concludes the Section 106 process. The disbursement of funds or construction may not begin until the Section 106 process has been completed and verified by the State Environmental Coordinator.

Any National Environmental Policy Act document (environmental report or assessment) will be supplemented to document the completion of Section 106.

The project as proposed has been evaluated to be consistent with the National Environmental Policy Act. Other Federal, State, tribal, and local laws, regulations and or permits may apply or be required. If the project or any project element deviates from or is modified from the originally-approved project, additional environmental review may be required

11. **Engineering Services** You have been required to complete an Agreement for Engineering Services, which should consist of the Engineers Joint Contract Documents Committee (EJCDC) documents as indicated in RUS Bulletin 1780-26. "Guidance for the Use of EJCDC Documents on Water and Waste Projects with RUS Financial Assistance," or other approved form of agreement. The Agency will provide concurrence prior to advertising for bids, and must approve any modifications to this agreement.

12. **Contract Documents, Final Plans, and Specifications**

a. The contract documents must consist of the EJCDC construction contract documents as indicated in RUS Bulletin 1780-26 or other Agency-approved forms of agreement.

b. The contract documents, final plans, and specifications must comply with RUS Instruction 1780, Subpart C Planning, Designing, Bidding, Contracting, Constructing and Inspections, and must be submitted to the Agency for concurrence prior to advertising for bids along with an updated cost estimate. The Agency may require another updated cost estimate if a significant amount of time elapses between the original submission and advertising for bids.

c. The use of any procurement method other than competitive sealed bids must be requested in writing and approved by the Agency.

13. **Legal Services** – You have been required to execute a legal services agreement with your attorney and bond counsel, if applicable, for any legal work needed in connection with this project. The agreement should stipulate an hourly rate for the work, with a "not to exceed"

amount for the services, including reimbursable expenses. RUS Bulletin 1780-7, "Legal Services Agreement," or similar format may be used. The Agency will provide concurrence prior to advertising for bids. Any changes to the fees or services spelled out in the original agreement must be reflected in an amendment to the agreement and have prior Agency concurrence.

14. **Property Rights** - Prior to advertising for bids, you and your legal counsel must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights-of-way needed for the project. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Such control over the lands and rights will be evidenced by the following:

a. **Right-of-Way Map** – Your engineer will provide a map clearly showing the location of all lands and rights-of-way needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
b. **Form RD 442-20, "Right-of-Way Easement"** – This form may be used to obtain any necessary easements for the proposed project.
c. **Form RD 442-21, "Right-of-Way Certificate" –** You will provide a certification on this form that all right-of-way requirements have been obtained for the proposed project.
d. **Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way" –** Your attorney will provide a certification and legal opinion on this form addressing rights-of-way, easements, and title.
e. **Preliminary Title Work (Title Report)** – When applicable, your attorney will provide a preliminary title opinion for any property related to the facility, currently owned and to be acquired, along with copies of deeds, contracts or options for purchasing said property. Form RD 1927-9, "Preliminary Title Opinion," may be used.

The approving official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. Any such waivers must be provided by the approving official in writing prior to closing or the start of construction, whichever occurs first.

You are responsible for the acquisition of all property rights necessary for the project and for determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee in order to validate the price to be paid.

15. **System Policies, Procedures, Contracts, and Agreements** – The facility must be operated on a sound business plan. You must adopt policies, procedures, and/or ordinances outlining the conditions of service and use of the proposed system. Mandatory connection policies should be used where enforceable. The policies, procedures, and/or ordinances must contain an effective collection policy for accounts not paid in full within a specified number of days after the date of billing. They should include appropriate late fees, specified timeframes for disconnection of service, and reconnection fees. A draft of these policies, procedures, and/or

ordinances must be submitted for Agency review and concurrence, along with the documents below, before closing instructions may be issued unless otherwise stated.

a. **Conflict of Interest Policy** – Prior to obligation of funds, you must certify in writing that your organization has in place an up-to-date written policy on conflict of interest. The policy will include, at a minimum: (1) a requirement for those with a conflict or potential conflict to disclose the conflict/potential conflict; (2) a clause that prohibits interested members of the applicant's governing body from voting on any matter in which there is a conflict, and (3) a description of the specific process by which the governing body will manage identified or potential conflicts.

   You must also submit a disclosure of planned or potential transactions related to the use of Federal funds that may constitute or present the appearance of personal or organizational conflict of interest. Disclosure must be in the form of a written letter signed and dated by the applicant's official. A negative disclosure in the same format is required if no conflicts are anticipated.

   Sample conflict of interest policies may be found at the National Council of Nonprofits website, https://www.councilofnonprofits.org/tools-resources/conflict-of-interest, or in Internal Revenue Service Form 1023, Appendix A, "Sample Conflict of Interest Policy," at http://www.irs.gov/pub/irs-pdf/i1023.pdf. Though these examples reference non-profit corporations, the requirement applies to all types of Agency borrowers.

   Assistance in developing a conflict of interest policy is available through Agency-contracted technical assistance providers if desired.

b. **Contracts for Other Services/Lease Agreement** Drafts of any contracts or other forms of agreements for other services, including audit, management, operation, and maintenance, or lease agreements covering real property essential to the successful operation of the facility, must be submitted to the Agency for review and concurrence prior to advertising for bids.

Fully executed copies of any policies, procedures, ordinances, contracts, or agreements must be submitted prior to loan closing, with the exception of the conflict of interest policy, which must be in place prior to obligation of funds.

16. **Closing Instructions** – The Agency will prepare closing instructions as soon as the requirements of the previous paragraphs are complete, as well as a draft of the security instrument(s). Closing instructions must be obtained prior to advertising for bids.

17. **Interim Financing** – For all loans exceeding $500,000, where loan funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be used to preclude the necessity for multiple advances of Agency loan funds. You must provide the Agency with a copy of the interim loan financing agreement for review prior to advertising for bids. The Agency approving official may

make an exception when interim financing is cost prohibitive or unavailable. Grant funds from the Agency will be disbursed by multiple advances through electronic transfer of funds after interim financing or Agency loan funds are expended, in accordance with RUS Instruction 1780.45.

18. **Construction Account** – You must establish a construction account for all funds related to the project. Construction funds will be deposited with an acceptable financial institution or depository that meets the requirements of 31 CFR Part 202. A separate account will not be required for Federal funds and other funds; however, the recipient must be able to separately identify, report, and account for all Federal funds, including the receipt, obligation and expenditure of funds. Financial institutions or depositaries accepting deposits of public funds and providing other financial agency services to the Federal Government are required to pledge adequate, acceptable securities as collateral, in accordance with 31 CFR Part 202. All funds in the account will be secured by a collateral pledge equaling at least 100% of the highest amount of funds expected to be deposited in the construction account at any one time. Your financial institution can provide additional guidance on collateral pledge requirements.

Agency funds will be disbursed into the borrower's depository account through an electronic transfer system. SF 3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," must be completed and submitted to the Agency prior to advertising for bids.

19. **System Users** – This letter of conditions is based upon your indication at application that there will be at least 128 residential users on the existing system when construction is completed.

Before the Agency can agree to the project being advertised for construction bids, you must certify that the number of users indicated at application are currently using the system or signed up to use the system once it is operational.

If the actual number of existing and/or proposed users that have signed up for service is less than the number indicated at the time of application, you must provide the Agency with a written plan on how you will obtain the necessary revenue to adequately cash flow the expected operation, maintenance, debt service, and reserve requirements of the proposed project (e.g., increase user rates, sign up an adequate number of other users, reduce project scope, etc.). Similar action is required if there is cause to modify the anticipated flows or volumes presented following approval.

If you are relying on mandatory connection requirements, you must provide evidence of the authorizing ordinance or statute along with your user certification.

20. **Other Funding** – Prior to advertising for bids, you must provide evidence of applicant contributions and approval of other funding sources. This evidence should include a copy of the commitment letter from each source.

21. **Proposed Operating Budget** – You must establish and/or maintain a rate schedule that provides adequate income to meet the minimum requirements for operation and maintenance

(O&M), debt service, and reserves. Prior to advertising for bids, you must submit a proposed annual operating budget to the Agency which supports the operation, maintenance, debt service, and reserves, as well as your proposed rate schedule. The operating budget should be based on a typical year cash flow after completion of the construction phase and should be signed by the appropriate official of your organization. Form RD 442-7, "Operating Budget," or similar format may be utilized for this purpose. It is expected that O&M will change over each successive year and user rates will need to be adjusted on a regular basis.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system. This assistance is available free to your organization. If you are interested please contact our office for information.

22. **Permits** – The owner or responsible party will be required to obtain all applicable permits for the project, prior to advertising for bids. The consulting engineer must submit written evidence that all applicable permits required prior to construction have been obtained with submission to the Agency of the final plans, specifications, and bid documents.

23. **Vulnerability Assessment/Emergency Response Plan (VA/ERP)** – The Agency requires all financed water and wastewater systems to have a VA/ERP in place. Borrowers with existing systems must provide a certification that a VA/ERP has been completed prior to advertising for bids. The VA/ERP documents themselves are not submitted to the Agency. The VA/ERP must address potential impacts from natural disasters and other emergency events. In particular, it should include plans to address impacts of flash flooding in areas where severe drought or wildfires occur. The documents should be reviewed and updated every three years at a minimum.

For new systems, see Section V of this letter of conditions. For VA/ERP requirements throughout the life of the loan, see Section VII. Technical assistance at no cost is available in preparing these documents.

24. **Bid Authorization** - Once all the conditions outlined in Section III of this letter have been met, the Agency will authorize you to advertise the project for construction bids. Such advertisement must be in accordance with applicable State statutes.

SECTION IV - REQUIREMENTS PRIOR TO START OF CONSTRUCTION

25. **Bid Tabulation** – Immediately after bid opening, you must provide the Agency with the bid tabulation and your engineer's evaluation of bids and recommendations for contract awards. If the Agency agrees that the construction bids received are acceptable, adequate funds are available to cover the total project costs, and all the requirements of Section III of this letter have been satisfied, the Agency will authorize you to issue the Notice of Award.

a. Cost Overruns. If bids are higher than expected, or if unexpected construction problems are encountered, you must utilize all options to reduce cost overruns. Negotiations, redesign, use of bidding alternatives, rebidding or other means will be considered prior to

commitment of subsequent funding by the Agency. Any requests for subsequent funding to cover cost overruns will be contingent on the availability of funds. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will compete for funds with all other applications on hand as of that date.

b. Excess Funds. If bids are lower than anticipated at time of obligation, excess funds must be deobligated prior to start of construction except in the cases addressed in this paragraph. In cases where the original PER for the project included items that were not bid, or were bid as an alternate, the State Office official may modify the project to fully utilize obligated funds for those items. Amendments to the PER, ER, and letter of conditions may be needed for any work not included in the original project scope. In all cases, prior to start of construction, excess funds will be deobligated, with grant funds being deobligated first. Excess funds do not include contingency funds as described in this letter.

26. **Contract Review** – Your attorney will certify that the executed contract documents, including performance and payment, if required, are adequate and that the persons executing these documents have been properly authorized to do so in accordance with RUS Instruction 1780.61(b).

Once your attorney has certified that they are acceptable, the contract documents will be submitted to the Agency for its concurrence. The Notice to Proceed cannot be issued until the Agency has concurred with the construction contracts.

27. **Final Rights-of-Way** – If any of the rights-of-way forms listed previously in this letter contain exceptions that do not adversely affect the suitability, successful operation, security value, or transferability of the facility, the approving official must provide a written waiver prior to the issuance of the Notice to Proceed. For projects involving the acquisition of land, you must provide evidence that you have clear title to the land prior to the issuance of the Notice to Proceed.

a. Final Title Work - Your attorney must furnish a separate final title opinion on all existing real property related to the facility, now owned and to be acquired for this project, as of the day of loan closing or start of construction, whichever occurs first. Form RD 1927-10, "Final Title Opinion" may be used.

28. **Insurance and Bonding Requirements** - Prior to the start of construction or loan closing, whichever occurs first, you must acquire and submit to the Agency proof of the types of insurance and bond coverage for the borrower shown below. The use of deductibles may be allowed, providing you have the financial resources to cover potential claims requiring payment of the deductible. The Agency strongly recommends that you have your engineer, attorney, and insurance provider(s) review proposed types and amounts of coverage, including any exclusions and deductible provisions. It is your responsibility and not that of the Agency to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained.

a. **General Liability Insurance** – Include vehicular coverage.
b. **Workers' Compensation** – In accordance with appropriate State laws.
c. **Fidelity or Employee Dishonesty Bonds** – Include coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through blanket coverage providing protection for all appropriate workers. During construction, each position should be bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The coverage may be increased during construction based on the anticipated monthly advances. After construction and throughout the life of the loan, the amount of coverage must be for at least the total annual debt service of all outstanding Agency loans. The Agency will be identified in the fidelity bond for receipt of notices. Form RD 440-24, "Position Fidelity Schedule Bond," or similar format may be used.
d. **Real Property Insurance** – Fire and extended coverage will normally be maintained on all structures except reservoirs, pipelines and other structures if such structures are not normally insured, and subsurface lift stations except for the value of electrical and pumping equipment. The Agency will be listed as mortgagee on the policy when the Agency has a lien on the property. Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all facilities identified above.

Insurance types described above are required to be continued throughout the life of the loan. See Section VII.

29. **Initial Compliance Review** – The Agency will conduct an initial compliance review of the borrower prior to loan closing or start of construction, whichever occurs first, in accordance with 7 CFR 1901, Subpart E.

SECTION V – REQUIREMENTS PRIOR TO LOAN CLOSING

30. **Interim Financing** - Interim financing is being used. Loan closing will occur near the end of construction when interim funds are about to be completely disbursed. Documents detailed above from Sections II and III regarding security, electronic payments (Form 3550-28), and system policies, procedures, contracts, and agreements must be adopted and/or executed and submitted to the Agency prior to loan closing. In addition, the following items are required prior to closing:

31. **Other Requirements** – All requirements contained in the Agency's closing instructions, as well as any requirements of your bond counsel and/or attorney, must be met prior to loan closing.

a. **System for Award Management**. You will be required to maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain an active registration in the System for Award Management (SAM) database. Renewal can be

done on-line at: http://sam.gov. This registration must be renewed and revalidated every twelve (12) months for as long as there are Agency funds to be expended. See Appendix A.

To ensure the information is current, accurate and complete, and to prevent the SAM account expiration, the review and updates must be performed within 365 days of the activation date, commonly referred to as the expiration date. The registration process may take up to 10 business days. (See 2 CFR Part 25 and the "Help" section at http://sam.gov).

b. **Litigation.** You are required to notify the Agency within 30 days of receiving notification of being involved in any type of litigation prior to loan closing or start of construction, whichever occurs first. Additional documentation regarding the situation and litigation may be requested by the Agency.

c. **Certified Operator**. Evidence must be provided that your system has or will have, as defined by applicable State or Federal requirements, a certified operator available prior to the system becoming operational, or that a suitable supervisory agreement with a certified operator is in effect.

SECTION VI – REQUIREMENTS DURING CONSTRUCTION AND POST CONSTRUCTION

32. **Resident Inspector(s)** – Full-time inspection is required unless you request an exception. Such requests must be made in writing and the Agency must concur with the request. Inspection services are to be provided by the consulting engineer unless other arrangements are requested in writing and concurred with by the Agency. A resume of qualifications of any resident inspector(s) will be submitted to the owner and Agency for review and concurrence prior to the pre-construction conference. The resident inspector(s) must attend the pre-construction conference.

33. **Preconstruction Conference** – A preconstruction conference will be held prior to the issuance of the Notice to Proceed. The consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, other funders, and other interested parties, and will provide minutes of this meeting to the owner and Agency.

34. **Inspections** - The Agency requires a pre-construction conference, pre-final and final inspections, and a warranty inspection. Your engineer will schedule a warranty inspection with the contractor and the Agency before the end of the one-year warranty period to address and/or resolve any warranty issues. The Agency will conduct an inspection with you of your records management system at the same time, and will continue to inspect the facility and your records system every three years for the life of the loan. See Section VII of this letter.

35. **Change Orders** – Prior Agency concurrence is required for all Change Orders.

36. **Payments** – Prior Agency concurrence is required for all Invoices and Partial Payment Estimates before Agency funds will be released. Requests for payment related to a contract or service agreement will be signed by the owner, project engineer, and contractor or service provider prior to Agency concurrence. Invoices not related to a construction contract or service agreement will include the owner's written concurrence.

37. **Use of Remaining Funds** – Applicant contribution and connection or tap fees will be the first funds expended in the project, followed by non-Agency sources of funds. Remaining funds may be considered in direct proportion to the amounts obtained from each source and handled as follows:

a. Remaining funds may be used for eligible loan and grant purposes, provided the use will not result in major changes to the original scope of work and the purpose of the loan and grant remains the same.
b. Grant funds not expended for authorized purposes will be cancelled (de-obligated) within 180 days of final completion of project. Prior to actual cancellation, you and your attorney and engineer will be notified of the Agency's intent to cancel the remaining funds and given appropriate appeal rights.
c. Loan funds that are not needed will be cancelled (de-obligated) prior to loan closing.

38. **Technical, Managerial and Financial Capacity** - It is required that members of the Board of Directors, City Council members, trustees, commissioners and other governing members possess the necessary technical, managerial, and financial capacity skills to consistently comply with pertinent Federal and State laws and requirements. It is recommended members receive training within one year of appointment or election to the governing board, and a refresher training for all governing members on a routine basis. The content and amount of training should be tailored to the needs of the particular individual and the utility system. Technical assistance providers are available to provide this training for your organization, often at no cost. Contact the Agency for information.

39. **Reporting Requirements Related to Expenditure of Funds**

a. **Financial Audit**- An annual audit under the Single Audit Act is required if you expend $750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

   All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

   If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may

include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit to be completed, the time frame in which the audit will be completed, and how irregularities will be reported.

b. **Subawards and Executive Compensation** – You as a recipient of Federal funds and your first-tier contractors are required by 2 CFR Part 170 to report disbursements to subrecipients in accordance with Appendix B of this letter and www.fsrs.gov. Your Agency processing office can provide more information.

SECTION VII – SERVICING REQUIREMENTS DURING THE TERM OF THE LOAN

40. Prepayment and Extra Payments - Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower, with no penalty.

Security instruments, including bonding documents, must contain the following language regarding extra payments, unless prohibited by State statute:

> *Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the installments last to become due under this note and shall not affect the obligation of borrower to pay the remaining installments as scheduled in your security instruments.*

41. Graduation - By accepting this loan, you are also agreeing to refinance (graduate) the unpaid loan balance in whole, or in part, upon request of the Government. If at any time the Agency determines you are able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms, you will be requested to refinance. Your ability to refinance will be assessed every other year for those loans that are five years old or older.

42. Security/Operational Inspections – The Agency will inspect the facility and conduct a review of your operations and records management system and conflict of interest policy every three years for the life of the loan. You must participate in these inspections and provide the required information.

43. Annual Financial Reporting/Audit Requirements – You are required to submit an annual financial report at the end of each fiscal year. The annual report will be certified by the appropriate organization official, and will consist of financial information and a rate schedule. Financial statements must be prepared on the accrual basis of accounting in accordance with generally accepted accounting principles (GAAP), and must include at a minimum a balance sheet and income and expense statement. The annual report will include separate reporting for each water and waste disposal facility, and itemize cash accounts by type (debt service, short-lived assets, etc.) under each facility. All records, books and supporting material are to be retained for three years after the issuance of the annual report. Technical assistance is available at no cost with preparing financial reports.

The type of financial information that must be submitted is specified below:

a. **Audits** – An annual audit under the Single Audit Act is required if you expend $750,000 or more in Federal financial assistance per fiscal year. The total Federal funds expended from all sources shall be used to determine Federal financial assistance expended. Expenditures of interim financing are considered Federal expenditures.

   All audits are to be performed in accordance with 2 CFR Part 200, as adopted by USDA through 2 CFR Part 400. Further guidance on preparing an acceptable audit can be obtained from the Agency. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. The audit must be prepared by an independent licensed Certified Public Accountant, or a State or Federal auditor if allowed by State law, and must be submitted within 9 months of your fiscal year end.

   If an audit is required, you must enter into a written agreement with the auditor and submit a copy to the Agency prior to the advertisement of bids. The audit agreement may include terms and conditions that the borrower and auditor deem appropriate; however, the agreement should include the type of audit or financial statements to be completed, the time frame in which the audit or financial statements will be completed, what type of reports will be generated from the services provided, and how irregularities will be reported.

b. **Financial Statements** – If you expend less than $750,000 in Federal financial assistance per fiscal year, you may submit financial statements in lieu of an audit which include at a minimum a balance sheet and an income and expense statement. You may use Form RD 442-2, "Statement of Budget, Income and Equity," and 442-3, "Balance Sheet," or similar format to provide the financial information. The financial statements must be signed by the appropriate borrower official and submitted within 60 days of your fiscal year end.

c. **Quarterly Reports** – Quarterly Income and Expense Statements will be required until the processing office waives this requirement. You may use Form RD 442-2 or similar format to provide this information, and the reports are to be signed by the appropriate borrower official and submitted within 30 days of each quarter's end. The Agency will notify you in writing when the quarterly reports are no longer required.

44. **Annual Budget and Projected Cash Flow** - Thirty days prior to the beginning of each fiscal year, you will be required to submit an annual budget and projected cash flow to this office. With the submission of the annual budget, you will be required to provide a current rate schedule, and a current listing of the Board or Council members and their terms. The budget must be signed by the appropriate borrower official. Form RD 442-2 or similar format may be used.

Technical assistance is available at no cost to help you evaluate and complete a rate analysis on your system, as well as completing the annual budget. If you are interested, please contact our office for information.

45. **Insurance**. You will be required to maintain insurance on the facility and employees as previously described in this letter for the life of the loan.

46. **Statutory and National Policy Requirements** – As a recipient of Federal funding, you are required to comply with U.S. statutory and public policy requirements, including but not limited to:

a. **Section 504 of the Rehabilitation Act of 1973** – Under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.

b. **Civil Rights Act of 1964** – All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and 7 CFR 1901, Subpart E, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by Paragraph 1901.202(e) of this Title.

c. **The Americans with Disabilities Act (ADA) of 1990** – This Act (42 U.S.C. 12101 et seq.) prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications.

d **Age Discrimination Act of 1975** This Act (42 U.S.C. 6101 et seq.) provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

e. **Limited English Proficiency (LEP) under Executive Order 13166** - LEP statutes and authorities prohibit exclusion from participation in, denial of benefits of, and discrimination under Federally-assisted and/or conducted programs on the ground of race, color, or national origin. Title VI of the Civil Rights Act of 1964 covers program access for LEP persons. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance, free of charge. You must take reasonable steps to ensure that LEP persons receive the language assistance necessary to have meaningful access to USDA programs, services, and information your organization provides. These protections are pursuant to Executive Order 13166 entitled, "Improving Access to Services by Persons with Limited English Proficiency" and further affirmed in the USDA Departmental Regulation 4330-005, "Prohibition Against National

Origin Discrimination Affecting Persons with Limited English Proficiency in Programs and Activities Conducted by USDA."

Agency financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap. You must display posters (provided by the Agency) informing users of these requirements, and the Agency will monitor your compliance with these requirements during regular compliance reviews.

47. **Compliance Reviews and Data Collection** – The Agency will conduct regular compliance reviews of the borrower and its operation in accordance with 7 CFR Part 1901, Subpart E, and 36 CFR 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines. Compliance reviews will typically be conducted in conjunction with the security inspections described in this letter. If beneficiaries (users) are required to complete an application or screening for the use of the facility or service that you provide, you must request and collect data by race (American Indian or Alaska Native, Asian, Black or African American, White); ethnicity (Hispanic or Latino, Not Hispanic or Latino); and by sex. The Agency will utilize this data as part of the required compliance review.

SECTION VIII – REMEDIES FOR NON-COMPLIANCE

Non-compliance with the conditions in this letter or requirements of your security documents will be addressed under the provisions of 7 CFR 1782 and other applicable regulations, statutes, and policies.

We look forward to working with you to complete this project. If you have any questions, please contact me at 720-544-2920 or by e-mail at Allison.trujillo@co.usda.gov.

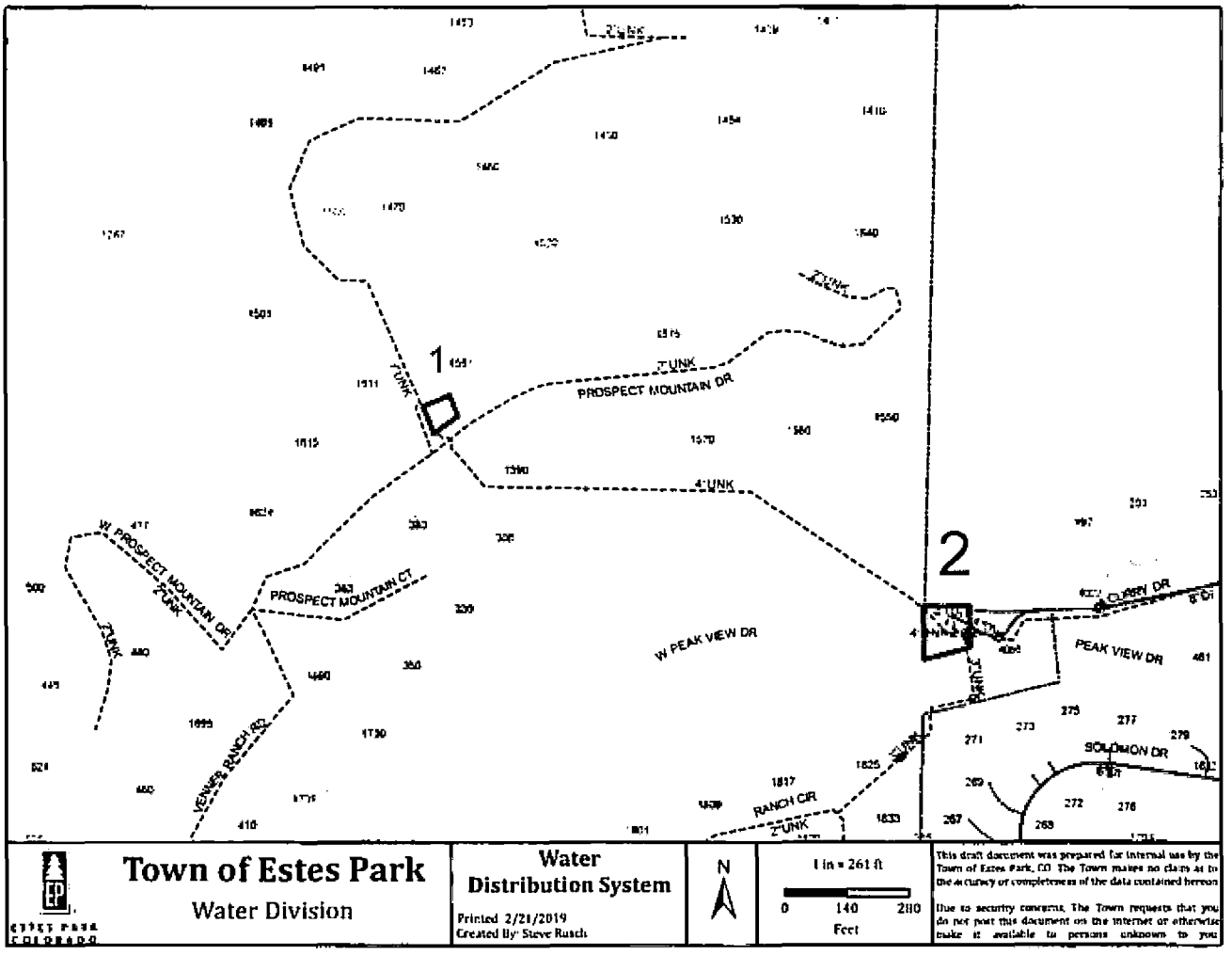
Sincerely,

ALLISON TRUJILLO
Area Loan Specialist

Attachments

cc: Reuben Bergsten, Utilities Director, Town of Estes Park
Mandy Rasmussen, Project Engineer, JVA, Inc.
Lillian Tolver, Project Engineer, JVA, Inc.
Robert Scarpa, Engineer, USDA Rural Development
April Dahlager, Community Programs Director, USDA Rural Development

EXHIBIT B
Service Line Ownership and Responsibility Delineation



1. Owner name: Prospect Mountain Water CO, Inc.
   Parcel #35363-07-042
   No site address, Prospect Mountain Drive
   0.07 acres
   (Existing tank to be demolished and pump pit)

2. Owner name: Prospect Mountain Water Company, Inc.
   Parcel #35364-00-014
   101 W. Peak View Drive
   0.25 acres
   (PROSPECT MOUNTAIN treatment plant)

EXHIBIT C

FORM OF TRUSTEE'S DEED

Daniel A. Hepner whose address is 950 Spruce Street, Suite 1C, Louisville, Colorado, in his capacity as trustee ("Trustee") of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado, pursuant to Order of the United States Bankruptcy Court for the District of Colorado entered on _____, 2019 and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells and quitclaims to Town of Estes Park, whose mailing address is P.O. Box 1200, Estes Park, Colorado 80517, any and all interests Trustee may have in the real property located in the County of Larimer, State of Colorado which property is legally described on Exhibit "A" attached hereto.

Signed this ___ day of _____, 2019.

DANIEL A. HEPNER, TRUSTEE

By: _____
Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM, United States Bankruptcy Court for the District of Colorado

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM, in the United States Bankruptcy Court for the District of Colorado.

WITNESS my hand and official seal.

My Commission expires: _____.

_____
Notary Public

EXHIBIT A to Trustee's Deed

1. Any real property owned by Prospect Mountain whether owned in fee, by prescription, or by plat dedication, including but not limited to the following parcels located in Larimer County, Colorado:

a. Parcel #35363-07-042
No site address, Prospect Mountain Drive
Consisting of 0.07 acres
(Existing tank site)

b. Parcel #35364-00-014
101 W. Peak View Drive
Consisting of 0.25 acres
(PROSPECT MOUNTAIN treatment plant)

2. All easement rights of Prospect Mountain whether held in fee, by prescription, or by plat dedication, including but not limited to all utility easements and rights-of-way.

AMENDMENT TO VOLUNTARY WATER SYSTEM TRANSFER AGREEMENT

This Amendment to the VOLUNTARY WATER SYSTEM TRANSFER AGREEMENT ("Agreement") dated February 26, 2019 between the Town of Estes Park, by and through its Water Enterprise (the "Town") and the Prospect Mountain Water Company, Inc., debtor in Chapter 7 bankruptcy Case No. 15-14286 TBM ("Prospect Mountain"), by and through its Bankruptcy Trustee, Daniel A. Hepner ("Trustee"),collectively (the "Parties"), is entered into this 23 day of April, 2019.

WHEREFORE, the Agreement, at Section 2.6, provided that the Date of Transfer of Prospect Mountain and its assets shall occur on or before May 1, 2019 or as scheduled upon the fulfillment of the contingencies set forth in Section 3 of the Agreement.

WHEREFORE, pursuant to Section 6.1 of the Agreement, the Parties agreed that, unless extended by mutual agreement of the Parties, the Date of Transfer shall occur on May 1, 2019. They also agreed that, if either Party believes an extension of the Date of Transfer is necessary to allow for the contingencies to be satisfied, then the Parties shall execute an extension of the Date of Transfer. Such extension shall be approved by both Parties and such approval shall not be withheld, shall not be unreasonable delayed, and shall not be unreasonably conditioned by the Parties in order to fulfill the contingencies.

WHEREFORE, the Parties have determined that an extension of the Date of Transfer is necessary in order to allow for the contingencies set forth in the Agreement to be satisfied.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in the Agreement, herein, and the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 2.7 of the Agreement is amended to provide: The Date of Transfer of Prospect Mountain and its assets shall occur on or before June 14, 2019 or as scheduled upon the fulfillment of the contingencies set forth in Section 3, below.

Section 6.1 of the Agreement is amended to provide: The Parties agree that, unless extended by mutual agreement of the Parties, the Date of Transfer for this Agreement shall occur on or before June 14, 2019. The Parties agree to make reasonable good faith efforts to achieve the contingencies listed in Section 3 by the Date of Transfer. However, if either Party believes an extension of the Date of Transfer is necessary to allow for the contingencies to be satisfied, then the Parties shall execute an extension of the Date of Transfer. Such extension shall be approved by both Parties

and such approval shall not be withheld, shall not be unreasonably delayed, and shall not be unreasonably conditioned by the Parties in order to fulfill the contingencies.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to Voluntary Water System Transfer Agreement on the date first set forth above.

TOWN OF ESTES PARK BY AND THROUGH ITS WATER ENTERPRISE	**PROSPECT MOUNTAIN WATER COMPANY**
By: _____	By: _____
Title: Mayor	Title: DANIEL A. HEPNER, CH 7 TRUSTEE
Name: Todd Jirsa	

RECEPTION #20190076461, 12/4/2019 9:01:30 AM,
1 of 3, $23.00
Angela Myers, Clerk & Recorder, Lanmer County, CO

TRUSTEE'S DEED

DANIEL A. HEPNER, whose address is 950 Spruce Street, Suite IC, Louisville, Colorado, in his capacity as trustee ("Trustee") of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado, pursuant to Order of the United States Bankruptcy Court for the District of Colorado entered on May 24, 2019, and for and in consideration of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells and quitclaims to the TOWN OF ESTES PARK, COLORADO, whose mailing address is P.O. Box 1200, Estes Park, Colorado 80517, any and all interests Trustee may have in the real property located in the County of Larimer, State of Colorado, described on Exhibit "A" attached hereto.

The intent of this Trustee's Deed is to convey to the Town of Estes Park, Colorado, any and all real property interests Prospect Mountain Water Company may have, of whatever kind or nature, in any real property located in Larimer County, Colorado.

NO DOCUMENTARY FEE REQUIRED PURSUANT TO C.R.S. SECTION 39-13-104(1)(a)

Signed this 13th day of June, 2019.

DANIEL A. HEPNER, TRUSTEE
By: Daniel A. Hepner, Trustee

Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM. United States Bankruptcy Court for the District of Colorado

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 13th day of June, 2019, by Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado.

WITNESS my hand and official seal.

My Commission expires: 7/21/2021.

CAROL S. CIAGLO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094022901
MY COMMISSION EXPIRES JULY 21, 2021

Carol S. Ciaglo
Notary Public

EXHIBIT A to Trustee's Deed

1. Any and all real property located in Larimer County, Colorado, in which Prospect Mountain Water Company currently has an interest, whether by deed or otherwise, including but not limited to:

A parcel of land in the Southwest corner of lot No. 19 in "Replat of the Portion of Venner Ranch Estates (2nd)", a subdivision of a portion of Section 36, T5N, R73W of the 6th P.M., Larimer County, Colorado, more particularly described as follows:

Commencing at the Southwest corner of said lot No. 19; thence N23°00'W a distance of 65 feet; thence N67°00'E a distance of 53.41 feet; thence S23°00'E a distance of 51.88 feet to a point of curvature on the South boundary of lot No. 19; thence in a Southwesterly direction along the curved boundary of said lot No. 19 for a distance of 55.02 feet to the point of beginning. The chord distance along said curved boundary between these two points is 55.00 feet and the bearing is S53°12'W. Said parcel of land contains 0.07 acres.

Assessor Parcel #35363-07-042
No site address, Prospect Mountain Drive
(Site of Prospect Mountain existing tank)

AND

An undivided two-thirds interest in a portion of the SE ¼ of Section 36, Township 5 North, Range 73 West of the 6th Principal Meridian, described as commencing at a point which bears N01°08'29"E, a distance of 937.5 feet from the South Quarter Corner of Section 36, said point being the True Point of Beginning; thence N01°08'29"E a distance of 120.0 feet; thence East, a distance of 100.0 feet; thence South a distance of 96.86 feet; thence South 77°16'W a distance of 104.97 feet to the True Point of Beginning. Said parcel of land contains 0.25 acres.

Larimer County Assessor Parcel #35364-00-014
101 W. Peak View Drive
(Site of Prospect Mountain treatment plant)

2. Any and all rights in any easements and rights-of-way in which Prospect Mountain Water Company has an interest, whether by deed, plat dedication or otherwise, over, across and/or under real property located in Larimer County, Colorado.

3. Any and all water distribution infrastructure, storage tanks and/or pump stations (whether above or below ground) currently existing in the service territory of Prospect Mountain Water Company described below in which Prospect Mountain Water Company has any interest:

BOUNDARY LEGAL DESCRIPTION:

BEGINNING AT THE WEST 1/4 CORNER OF SECTION 31, TOWNSHIP 5 NORTH, RANGE 72 WEST OF THE 6TH P.M. (ALSO BEING THE EAST 1/4 CORNER OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 73 WEST OF THE 6TH P.M.); THENCE N89°32'17"W 2656.04' ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36 TO THE CENTER QUARTER CORNER OF SAID SECTION 36; THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 S01°10'W 1557.9'; THENCE LEAVING SAID EAST LINE EAST 100'; THENCE SOUTH 96.86'; THENCE S77°16'W 104.97' TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36; THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 S01°10'W 937.5' TO THE SOUTH QUARTER CORNER OF SAID SECTION 36; THENCE N88°49'W 2655.9' ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 TO THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE S89°36'W 82.6' TO THE NORTHEAST CORNER OF LOT 3, SECTION 2, TOWNSHIP 4 NORTH, RANGE 73 WEST OF THE 6TH P.M.; THENCE ALONG THE EAST LINE OF SAID LOT 3 S00°05'22"E 1101.42', MORE OR LESS; THENCE S79°17'W 1017.8', MORE OR LESS; THENCE N00°06'E 894.97', MORE OR LESS, TO THE SOUTHWEST CORNER OF PARCEL #34022-00-018; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL N89°36'E 167.1', MORE OR LESS, TO THE SOUTHEAST CORNER OF SAID PARCEL; THENCE ALONG THE EASTERLY LINE OF SAID PARCEL N00°06'E 130.00', MORE OR LESS; TO THE NORTHEAST CORNER OF SAID PARCEL; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL S89°36'W 167.1' TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE N00°06'E 258.75', MORE OR LESS, TO THE NORTHERLY LINE OF SAID LOT 3; THENCE ALONG SAID NORTHERLY LINE N89°36'E 998.1', MORE OR LESS; THENCE N89°36'E 82.6' TO THE SOUTHWEST CORNER OF SAID SECTION 36;

THENCE N01°55'E 1292.9' ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 TO THE SOUTH 1/16TH CORNER COMMON TO SECTIONS 35 AND 36, T5N, R73W OF THE 6TH P.M., THENCE S89°08'E 1012.79', MORE OR LESS, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE LEAVING SAID NORTHERLY LINE N01°32'30"E 1298.96', MORE OR LESS, TO THE NORTHERLY LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36; THENCE S89°29'E 305.8' ALONG SAID NORTHERLY LINE TO THE WEST 1/16 CORNER OF SAID SECTION 36; THENCE N01°25'E 2613.3' ALONG THE WESTERLY LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 36 TO THE WEST 1/16 CORNER COMMON TO SECTIONS 25 AND 36, TOWNSHIP 5 NORTH, RANGE 73 WEST OF THE 6TH P.M.; THENCE N89°42'E 1295.3' ALONG THE NORTHERLY LINE OF SAID NORTHWEST QUARTER OF SAID SECTION 36 TO THE NORTH QUARTER CORNER OF SAID SECTION 36; THENCE N89°47'E 1298.4' TO THE EAST 1/16TH CORNER COMMON TO SAID SECTIONS 25 AND 36;

THENCE N00°07'E 659.6' ALONG THE WESTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25 TO THE NORTHERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25; THENCE N89°56'E 849.6' ALONG SAID NORTHERLY LINE TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25; THENCE S00°14'E 658.0 ALONG SAID EASTERLY LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 25 TO THE NORTHERLY LINE OF SAID SECTION 36; THENCE N89°47'E 646.4' ALONG THE NORTHERLY LINE OF SAID SECTION 36 TO THE NORTHEAST CORNER OF SAID SECTION 36 (ALSO BEING THE NORTHWEST CORNER OF SECTION 31, TOWNSHIP 5 NORTH, RANGE 72 WEST OF THE 6TH P.M.); THENCE S00°13'E 1331.3' TO THE NORTH 1/16 CORNER COMMON TO SAID SECTIONS 31 AND 36;

THENCE S88°42'E 1294.4' ALONG THE NORTHERLY LINE OF KORAL HEIGHTS FIRST ADDITION TO THE NORTHWEST 1/16TH CORNER OF SAID SECTION 31; THENCE S00°16'E 1321.5' ALONG THE EASTERLY LINE OF KORAL HEIGHTS FIRST ADDITION TO THE CENTER WEST 1/16TH CORNER OF SAID SECTION 31; THENCE S00°15'E 878.7' ALONG THE EASTERLY LINE OF KORAL HEIGHTS; THENCE S41°19'W 577.6', MORE OR LESS, TO THE SOUTHERLY LINE OF KORAL HEIGHTS; THENCE ALONG SAID SOUTHERLY LINE N89°20'W 943.84' TO THE SOUTH 1/16 CORNER COMMON TO SAID SECTIONS 31 AND 36; THENCE N01°07'24"E 1323.10' ALONG THE WESTERLY LINE OF KORAL HEIGHTS TO THE TRUE POINT OF BEGINNING; SAID PARCELS CONTAIN A TOTAL OF 479.6 ACRES, MORE OR LESS, AND ARE SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD, LARIMER COUNTY, COLORADO.

RECEPTION #20190076462, 12/4/2019 9:01:30 AM,
1 of 2, $18.00
Angela Myers, Clerk & Recorder, Larimer County, CO

BILL OF SALE

DANIEL A. HEPNER, whose address is 950 Spruce Street, Suite 1C, Louisville, Colorado, in his capacity as trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado, pursuant to Order of the United States Bankruptcy Court for the District of Colorado entered on May 24, 2019 ("Seller") and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby does grant and convey unto the TOWN OF ESTES PARK, COLORADO, whose mailing address is P.O. Box 1200, Estes Park, Colorado 80517 ("Buyer"), the following property, free and clear of all liens and encumbrances of record, to wit:

> Any and all tangible and intangible assets of Prospect Mountain Water Company, exclusive of all funds held by the Bankruptcy Estate, all funds in the Capital Improvement Fund held at U.S. Bank, and all uncollected accounts receivable, and, including, but not limited to, the following, including all appurtenances thereto: (a) the water distribution system infrastructure, storage tanks and pump station (whether above or below ground) currently existing in the service territory of Prospect Mountain Water Company described on Exhibit A attached hereto and incorporated herein by this reference; and (b) any and all personal property and equipment of Prospect Mountain Water Company (the "Assets").

The conveyance of said Assets is AS IS, WHERE IS, AND WITH ALL FAULTS, WITH NO REPRESENTATIONS MADE BY SELLER.

Signed this 12th day of June, 2019.

DANIEL A. HEPNER, TRUSTEE
By: _____
Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM United States Bankruptcy Court for the District of Colorado

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 13th day of June, 2019, by Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado.

WITNESS my hand and official seal.

My Commission expires: 7/21/2021.

CAROL S. CIAGLO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094022901
MY COMMISSION EXPIRES JULY 21, 2021

_____
Notary Public

EXHIBIT A

BOUNDARY LEGAL DESCRIPTION:

BEGINNING AT THE WEST 1/4 CORNER OF SECTION 31, TOWNSHIP 5 NORTH, RANGE 72 WEST OF THE 6TH P.M. (ALSO BEING THE EAST 1/4 CORNER OF SECTION 36, TOWNSHIP 5 NORTH, RANGE 73 WEST OF THE 6TH P.M.); THENCE N89°32'17"W 2656.04' ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 36 TO THE CENTER QUARTER CORNER OF SAID SECTION 36; THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 S01°10'W 1557.9'; THENCE LEAVING SAID EAST LINE EAST 100'; THENCE SOUTH 98.66'; THENCE S77°16'W 104.97' TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36; THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 S01°10'W 937.5' TO THE SOUTH QUARTER CORNER OF SAID SECTION 36; THENCE N88°49'W 2655.9' ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 36 TO THE SOUTHWEST CORNER OF SAID SECTION 36;

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RECEPTION #20190076463, 12/4/2019 9:01:30 AM,
1 of 1, $13.00
Angela Myers, Clerk & Recorder, Larimer County, CO

STATEMENT OF AUTHORITY

1. This Statement of Authority relates to an entity named Prospect Mountain Water Company, Inc., and is executed on behalf of the entity pursuant to the provisions of Section 38-30-172, C.R.S.

2. The type of entity is a:

☒ corporation	☐ registered limited liability partnership
☐ nonprofit corporation	☐ registered limited liability limited partnership
☐ limited liability company	☐ limited partnership association
☐ general partnership	☐ government or governmental subdivision or agency
☐ limited partnership	☐ trust (Section 38-30-108.5, C.R.S.)
☐ other:	

3. The entity is formed under the laws of: Colorado

4. The mailing address for the entity is: c/o Daniel A. Hepner, Ch. 7 Trustee, 950 Spruce Street, Suite 1C, Louisville, CO 80027, United States

5. The ☒ name ☒ position of each person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity is: Daniel A. Hepner in his capacity as trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado, pursuant to Order of the United States Bankruptcy Court for the District of Colorado entered on May 24, 2019. A copy of the Order is attached hereto.

6. The authority of the foregoing person to bind the entity is ☒ not limited ☐ limited as follows: N/A

7. Other matters concerning the manner in which the entity deals with interests in real property: N/A

Executed this 13th day of June, 2019.

DANIEL A. HEPNER, TRUSTEE
By: Daniel A. Hepner, Trustee
Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM. United States Bankruptcy Court for the District of Colorado

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 13th day of June, 2019, by Daniel A. Hepner, Trustee of the bankruptcy estate of Prospect Mountain Water Company, Chapter 7 Case No. 15-14286 TBM in the United States Bankruptcy Court for the District of Colorado.

CAROL S. CHAFFEE
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094022901
MY COMMISSION EXPIRES JULY 21, 2021

WITNESS my hand and official seal.

My Commission expires: 7/21/2021.

Carol S. Chaffee
Notary Public

RECEPTION #20190076464, 12/4/2019 9:01:30 AM,
1 of 2, $18.00
Angela Myers, Clerk & Recorder, Larimer County, CO

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:	)	
	)	Case No. 15-14286 TBM
PROSPECT MOUNTAIN WATER COMPANY, INC.,	)	Chapter 7
	)	
Debtor.	)	

I hereby attest and certify that the foregoing affixed document(s) herein is/are a full, true and correct copy of the original document filed/issued by this Court.
Certified on: 06/11/2019
By: SJ
Deputy Clerk, U.S. Bankruptcy Court - District of Colorado

ORDER GRANTING MOTION TO (I) APPROVE VOLUNTARY WATER SYSTEM TRANSFER AGREEMENT BETWEEN TRUSTEE AND TOWN OF ESTES PARK, (II) AUTHORIZE TRANSFER OF PROPERTY FROM TRUSTEE TO TOWN OF ESTES PARK PURSUANT TO 11 U.S.C. §§ 363(b) AND (f), AND (III) EXCLUDE CERTAIN PROPERTY FROM AUTOMATIC ABANDONMENT PURSUANT TO 11 U.S.C. § 554(c)

THIS MATTER, having come before this Court upon the Motion to (I) Approve Voluntary Water System Transfer Agreement between Trustee and Town of Estes Park, (II) Authorize Transfer of Property from Trustee to Town of Estes Park Pursuant to 11 U.S.C. §§ 363(b) and (f), and (III) Exclude Certain Property from Automatic Abandonment Pursuant to 11 U.S.C. § 554(c) (the "Motion") filed by Daniel A. Hepner, Chapter 7 Trustee (the "Trustee"), and the Court being duly advised in the premises, it is hereby

ORDERED that the Motion be and hereby is GRANTED. The Court APPROVES the Voluntary Water System Transfer Agreement (the "Transfer Agreement") and the transfer of the Assets[1] to the Town of Estes Park (the "Town"). It is

FURTHER ORDERED that except for the Permitted Exceptions, sale of the Assets shall be free and clear of any and all encumbrances of any nature whatsoever, whether known or unknown, pursuant to 11 U.S.C. §§ 363(b) and (f). It is

FURTHER ORDERED as follows:

1. The Trustee is authorized pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code to convey to the Town all of the bankruptcy estate's right, title, and interest in and to all of the Assets free and clear of any liens, claims or encumbrances, subject to the provisions of the Transfer Agreement.

2. All encumbrances with respect to the Assets, if any, shall attach solely to the proceeds of the sale under Section 363 of the Bankruptcy Code, unless paid at closing.

3. At closing, Trustee is authorized to pay all ordinary and customary closing costs

[1] Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

including, without limitation, transfers taxes, property taxes, recording fees, and all other fees and expenses authorized by the Transfer Agreement and necessary to effectuate the Transfer Agreement.

4. As of the Date of Transfer, the Operating Agreement and Water Service Agreement shall be deemed terminated.

5. Trustee is authorized to pay all amounts due under the Operating Agreement with funds from the CIF.

6. Trustee is authorized to surrender the CPCN at a time and in a manner consistent with effectuating the Transfer Agreement.

7. Trustee is authorized to make all disbursements in accordance with the True-Up Provisions.

8. The Trustee is authorized to execute, deliver, perform, consummate, and implement the Transfer Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the foregoing.

9. The Trustee may deliver the Assets to the Town pursuant to the terms and conditions of the Transfer Agreement.

10. Pursuant to 11 U.S.C. § 554(c), notwithstanding closure of the case, the following property is not abandoned:

a. all unpaid accounts receivable for Debtor's customers, which remain after payment of all allowed administrative expenses and allowed claims payable pursuant to 11 U.S.C. §§ 726(a)(1) through (a)(3); and

b. all funds held in the CIF that remain after the Trustee's payment of all allowed administrative expenses and allowed claims payable pursuant to 11 U.S.C. §§ 726(a)(1) through (a)(3).

11. Within forty-two (42) days following entry of an order approving Trustee's Final Report, Trustee shall file an accounting with this Court notifying it of distributions made to the Town pursuant to the True-Up Provisions. Upon filing of such accounting, all property of the Estate that has not been previously administered or transferred to the Town will be deemed abandoned.

12. The within order is self-executing and effective immediately upon entry, and the stay under Fed.R.Bankr.P. 6004(h) is hereby waived.

DATED this 24th day of May, 2019. BY THE COURT:

Thomas B. McNamara

Hon. Thomas B. McNamara
United States Bankruptcy Judge

Colorado.gov

COLORADO
Department of Regulatory Agencies
Public Utilities Commission



E-Filings
Decision Detail

Details of Decision C19-0440

Number: C19-0440

Title: Commission Decision Granting Application to Transfer Assets; to Relinquish Certificate of Public Convenience and Necessity; Approving Termination or Operating Agreement; Approving Termination of Water Service Agreement; Approving System Redevelopment Surcharge Formula; and Granting in-Part and Denying in-Part Request for Declaration and Determination

Mailed Date: 05/23/2019 04:29pm

Decision Type: Commission

Author: Gomez, Paul C.

Proceeding(s):

Proceeding Number	Proceeding Title	Industry
19A-0209W	Prospect Mountain Water Company/Town of Estes Park transfer	Water

Description: 1. The Joint Application of Daniel Hepner, Chapter 7 Trustee for the Prospect Mountain Water Company, Inc. (Prospect Mountain) and the Town of Estes Park (Estes Park) (together, Joint Applicants) for Approval of a Transfer of Assets is granted consistent with the discussion above. 2. The decision approving the transfer of assets shall include the following: a.) all real property and easement rights of Prospect Mountain to Estes Park; b.) all tangible and intangible assets of Prospect Mountain to Estes Park; and c.) all funds and accounts receivable held by Prospect Mountain to Estes Park upon the approval of the final report of the Trustee by the Bankruptcy Court. 3. The request of the Joint Applicants to surrender and retire Prospect Mountain's Certificate of Public Convenience and Necessity to serve in Larimer County, Colorado, and to wind down the utility upon the date of transfer to Estes Park is granted. 4. The request of the Joint Applicants to terminate the Operating Agreement between Prospect Mountain and Estes Park, approved in Decision No. C16-0571 as of the date of transfer, is granted. 5. The request of the Joint Applicants to change the use of certain funds provided to and held by Estes Park pursuant to Decision Nos. C16-0571 and C18-0380 is granted. 6. The request of the Joint Applicants to terminate the Water Service Agreement between Prospect Mountain and Estes Park, dated August 13, 2012 is granted. 7. The request by the Joint Applicants to approve the System Redevelopment Surcharge formula to be developed by Estes Park and charged solely to existing customers of Prospect Mountain and future Prospect Mountain area customers that connect to the system prior to the reconstruction of the Prospect Mountain distribution system by Estes Park is granted. 8. The request by the Joint Applicants for a declaration that the Commission approval of the System Redevelopment Surcharge formula constitutes the required approval under § 40-3.5-102, C.R.S., and that such approval will not be subject of further Commission review or approvals, and that Estes Park will not be subject to further Commission jurisdiction or rate review by virtue of that charge, other than the Commission's existing complaint jurisdiction over Estes Park is construed as a Petition for Declaratory Order pursuant to Commission Rule 4 Code of Colorado Regulations 723-1-1304(i). 9. The Petition for Declaratory Order by the Joint Applicants is granted in part and denied in part consistent with the discussion above. 10. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

Result(s) of Decision C19-0440

Result Date: May 23, 2019

Result Type: Granted

Details: 1. The Joint Application of Daniel Hepner, Chapter 7 Trustee for the Prospect Mountain Water Company, Inc. (Prospect Mountain) and the Town of Estes Park (Estes Park) (together, Joint Applicants) for Approval of a Transfer of Assets is granted consistent with the discussion above.

Result Date: May 23, 2019

Result Type: Information Only - No Action Taken

Details: 2. The decision approving the transfer of assets shall include the following: a.) all real property and easement rights of Prospect Mountain to Estes Park; b.) all tangible and intangible assets of Prospect Mountain to Estes Park; and c.) all funds and accounts receivable held by Prospect Mountain to Estes Park upon the approval of the final report of the Trustee by the Bankruptcy Court.

Result Date: May 23, 2019

Result Type: Granted

Details: 3. The request of the Joint Applicants to surrender and retire Prospect Mountain's Certificate of Public Convenience and Necessity to serve in Larimer County, Colorado, and to wind down the utility upon the date of transfer to Estes Park is granted.

Result Date: May 23, 2019

Result Type: Granted

Details: 4. The request of the Joint Applicants to terminate the Operating Agreement between Prospect Mountain and Estes Park, approved in Decision No. C16-0571 as of the date of transfer, is granted.

Result Date: May 23, 2019

Result Type: Information Only - No Action Taken

Details: 10. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

Result Date: May 23, 2019

Result Type: Granted

Details: 6. The request of the Joint Applicants to terminate the Water Service Agreement between Prospect Mountain and Estes Park, dated August 13, 2012 is granted.

Result Date: May 23, 2019

Result Type: Granted

Details: 7. The request by the Joint Applicants to approve the System Redevelopment Surcharge formula to be developed by Estes Park and charged solely to existing customers of Prospect Mountain and future Prospect Mountain area customers that connect to the system prior to the reconstruction of the Prospect Mountain distribution system by Estes Park is granted.

Result Date: May 23, 2019

Result Type: Information Only - No Action Taken

Details: 8. The request by the Joint Applicants for a declaration that the Commission approval of the System Redevelopment Surcharge formula constitutes the required approval under § 40-3.5-102, C.R.S., and that such approval will not be subject of further Commission review or approvals, and that Estes Park will not be subject to further Commission jurisdiction or rate review by virtue of that charge, other than the Commission's existing complaint jurisdiction over Estes Park is construed as a Petition for Declaratory Order pursuant to Commission Rule 4 Code of Colorado Regulations 723-1-1304(i).

Result Date: May 23, 2019

Result Type: Granted in Part

Details: 9. The Petition for Declaratory Order by the Joint Applicants is granted in part and denied in part consistent with the discussion above.

Result Date: May 23, 2019

Result Type: Granted

Details: 5. The request of the Joint Applicants to change the use of certain funds provided to and held by Estes Park pursuant to Decision Nos. C16-0571 and C18-0380 is granted.

Certificate of Service

Close

Technical Assistance Accessibility © 2026 State of Colorado, Denver, CO

Attachment 3

To: Property Owners in the Former Prospect Mountain Water Company Service Area

Date: September 10, 2026

Subject: New Monthly Water Surcharge of $150.00 Beginning October 2026 — Prospect Mountain Water System Improvements

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What this letter is about

The new water system serving your property is delivering water. We expect that, beginning with your utility bill mailed in November for October 2026 service, you will see a Project Repayment Surcharge line item to begin repaying the project costs. The amount of $150.00 per month is subject to change as a small portion of the project is not yet final. This letter explains what the charge is, how it was calculated, and how it came about.

How this project began

The Prospect Mountain Water Company was a private utility that filed for bankruptcy in 2015, abandoning its water system and service obligations. Facing a system that no longer met current standards, its customers were left without a reliable water source. The Town of Estes Park stepped in at the request of the bankruptcy trustee to assume responsibility for the system, preventing a critical service failure and ensuring its customers' continued access to safe, reliable water.

In 2019, the Town agreed to accept the transfer of the failing system on two primary conditions. First, to join the rest of the Town's water system, the failing water system must be rebuilt to meet the Town's standards. Second, the property owners who benefit from the new system must repay costs not covered by grants.

Funding the Town secured to help the neighborhood

Because the system became part of a municipal utility, the Town could pursue federal funding that a private water company — and individual property owners — could not access. The Town obtained approximately **$15.3 million** in grant and low-interest loan funding through the United States Department of Agriculture Rural Development (USDA-RD). **The USDA-RD grant covered more than 66% of the project cost.** The remaining project costs are paid by a USDA-RD low-interest rate loan and financed by the Town's Water Enterprise. The USDA-RD provided the longest repayment term available — 40 years — specifically to keep the monthly cost to property owners as low as possible.

What was built to serve your property

- New water distribution piping throughout the service area
- A new 180,000-gallon water storage tank and booster pump station

- 43 fire hydrants to provide fire protection

The result is drinking water that meets state and federal standards, a distribution system built and maintained to Town specifications, and fire hydrant coverage to support firefighting response.

What the charge is and how it was calculated

The monthly surcharge covers the loan payment on the rebuilt system, the reserve accounts the USDA-RD loan requires the Town to maintain, and project costs not covered by federal funding. It is separate from your regular water usage charges.

The total monthly obligation for the system is shared equally among the **134 properties** served by the system. **The obligation is attached to the property and held by any/all owner(s) of the property throughout the course of the 40-year repayment term.** This charge will appear as a separate line item on your monthly utility bill so you can see exactly what you are paying.

What is still being determined

The $150.00 charge covers the project's loan obligations and administrative costs. It is subject to change once the outstanding construction issues are finalized.

When finalized, you will receive written notice of the option to pay the amount in full. Until you hear from us, the repayment amount is $150.00 per month.

Option to pay in full

Once the final project cost is set, owners will have the option to pay their share in full instead of carrying the monthly charge for the 40-year term. Paying in full ends the charge for that property and settles the obligation — it does not transfer to a future owner.

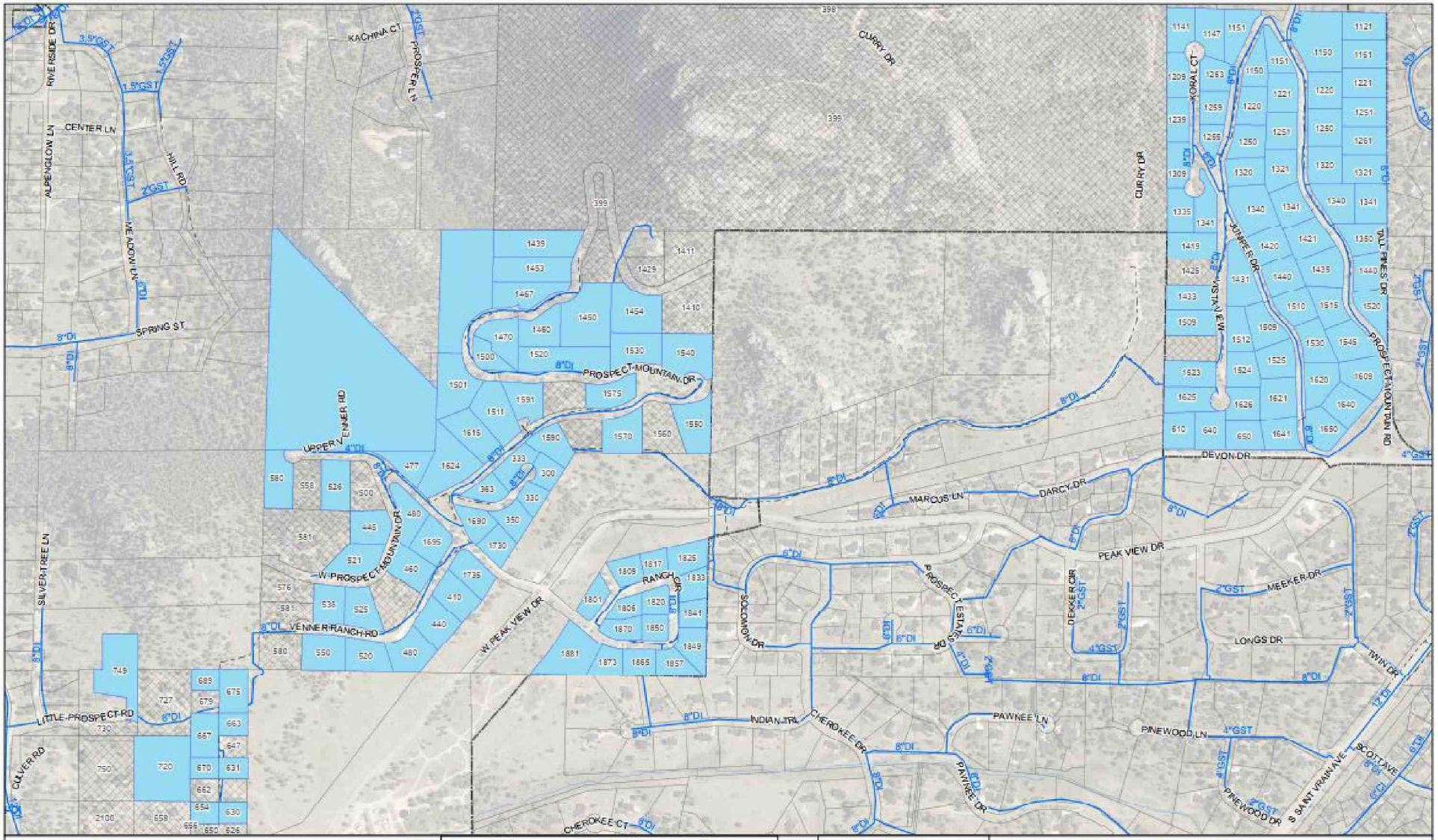
The Town Board is tentatively scheduled to consider this surcharge at their September 22nd Town Board meeting at 7 PM in the Town Board room, 170 MacGregor Ave.

Questions

We understand this is a significant monthly commitment, and we want every property owner to understand what it pays for. Contact Utilities Project Manager Jacqui Wesley at jwesley@estes.org or 970-577-6311, or visit **estes.org/prospect-mountain-water-project** for more information.

Sincerely,

Reuben Bergsten, Utilities Director, Town of Estes Park



TOWN OF ESTES PARK

Town of Estes Park
Water Division

Prospect Mountain Water Co Project Surcharge

N

1 in = 525 ft
0 290 580
Feet

9/9/2026

Legend

PMWC Benefitted Customer_9-9-2026