

**FINANCE MEMORANDUM**  
**#12-18**

DATE: December 10, 2012

TO: Honorable Mayor Joyce Downing and City Council Members

FROM: William Simmons, City Manager *WAS*  
Jason Loveland, Director of Finance *JL*

**SUBJECT:** CB-1786 – Advance Refunding of 2002A Certificate of Participation

**BACKGROUND:**

On December 1, 2002, the Northglenn Community Leasing Corporation (NCLC) issued Series 2002A Certificates of Participation (Certificates) in the amount of \$13,515,000 to be retired over a 20-year period at a net effective interest rate of 5.76%. The issued Certificates were used to finance the acquisition and construction improvements to Standley Lake Reservoir, which is used in the water and sewer utility of the City. The remaining principal due is \$8,420,000. These payments are payable from the Water and Wastewater Fund.

**UPDATE:**

On October 24<sup>th</sup> a Request for Proposal was submitted for the Refunding of the 2002A Certificates in an attempt to reduce the interest rate on the outstanding debt. Two proposals were received and evaluated by staff, BLX Consulting Group and Kutak Rock. A provider was selected and draft lease purchase agreements have been issued. The agreement has not been finalized at the time of this memo being prepared, however, CB-1786 provides the parameters for the final agreement.

The purpose of the parameters ordinance is to set in motion the process of locking in an interest rate with the lending institution and planning a closing date of the transaction. The final lease purchase agreement, as set-forth by CB-1786, will be restricted as follows:

- the aggregate amount of the principal component of Base Rentals shall not exceed \$9,000,000;
- the interest component of Base Rentals shall accrue at a rate or rates not exceeding 2.50%;
- the Lease, including all renewal terms thereof, shall terminate not later than December 1, 2023, and may also be made subject to prepayment and termination in whole or in part with or without a prepayment premium not to exceed 3.0% of the principal amount thereof;
- the City shall have the right to periodic releases of portions of the Leased Property and the option to purchase the interest of the Lessor in the Leased Property in the manner provided in the Lease; and
- the annual Base Rentals due under the Lease shall not exceed \$1,000,000.

The lease, substantially in its final form, is expected to be available by December 10<sup>th</sup> for further discussion.

**STAFF REFERENCE:**

If Councilmembers have any comments or questions, you may contact Jason Loveland at [jloveland@northglenn.org](mailto:jloveland@northglenn.org) or at 303-450-8817.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1786  
Series of 2012

\_\_\_\_\_  
Series of 2012

A BILL FOR AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF NORTHGLENN, COLORADO OF A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND A LESSOR TO BE IDENTIFIED, WITH RESPECT TO THE REFUNDING AT A LOWER INTEREST RATE OF A LEASE PURCHASE AGREEMENT DATED AS OF DECEMBER 1, 2002, BETWEEN THE CITY AND NORTHGLENN CAPITAL LEASING CORPORATION, ORIGINALLY ENTERED INTO TO FINANCE ADDITIONS AND IMPROVEMENTS TO THE CITY'S MUNICIPAL WATER SYSTEM; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND PROVIDING FOR RELATED MATTERS

WHEREAS, the City is a duly and regularly created, organized and existing home rule city, body corporate and politic of the State of Colorado (the "State"), existing as such under the Constitution and statutes of the State and its home rule charter (the "Charter"); and

WHEREAS, the City is authorized by its Charter and the laws of the State to purchase and hold real and personal property and to lease the same, either as lessee or lessor; and

WHEREAS, the City is authorized by Article XI of the Charter to exercise all home rule municipal powers with respect to all public utilities, including without limitation the water system (the "Water System") operated as a part of its joint water and sewer system (the "System"); and

WHEREAS, in order to finance improvements to Standley Lake Reservoir, the City previously entered into a Lease Purchase Agreement dated as of December 1, 2002 (the "2002 Lease") with Northglenn Capital Leasing Corporation ("NCLC"); and

WHEREAS, the rights of NCLC to payments of revenues under the 2002 Lease were assigned to Wells Fargo Bank, N.A., as trustee (the "Trustee") under an Indenture of Trust dated as of December 1, 2002 between the Trustee and NCLC (the "2002 Indenture"), pursuant to which 2002 Indenture the Trustee delivered Certificates of Participation, Series 2002A (the "Series 2002A Certificates") evidencing proportionate interests in the rights to receive revenues under the 2002 Lease; and

WHEREAS, the Council has determined that the refinancing of the 2002 Lease, if accomplished within the parameters established by this Ordinance, would be to the best advantage of the City and its inhabitants; and

WHEREAS, the Council has determined to authorize the refinancing of the 2002 Lease (the “Refunding Project”) through a new Lease Purchase Agreement (the “Lease”) to be entered into between the City and NCLC or a lessor to be identified as provided herein (the “Lessor”);

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

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

**Section 2. Findings; Authorizations.** The Council hereby finds and determines, pursuant to the laws of the State, that the Refunding Project is necessary, convenient, and in furtherance of the purposes of the Water System and the City and in the best interests of the City and its inhabitants; and the Council hereby authorizes the Refunding Project. The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the “Supplemental Securities Act”), to the extent applicable and not inconsistent herewith, to the Lease and related transactions.

**Section 3. Approval and Execution of Documents; Authorized Officers.** The Lease, in substantially the form filed in the office of the City Clerk prior to the final adoption of this Ordinance, is in all respects approved, authorized and confirmed, and the Mayor is hereby authorized and directed to execute and deliver, and the City Clerk of the City or any Deputy or Assistant City Clerk are hereby authorized and directed to affix the seal of the City to, and attest, the Lease, in substantially the form so filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney. The Council hereby designates the City Manager and the Finance Director (and any persons authorized by law to act on their behalf in their absence) to act as “Authorized Officers” under the Lease. Prior to the execution of the Lease, the identity of the Lessor, acceptance of the Lessor’s offer to enter into the Lease, the final Base Rentals due under the Lease and the other terms thereof, not inconsistent herewith, shall be established or approved by a certificate signed by the Finance Director (the “Final Terms Certificate”).

**Section 4. Additional Documents.** The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The appropriate officers of the City are also authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

**Section 5. Lease Terms.** The Lease shall provide for the payment of Base Rentals consisting of an interest component and a principal component, and the schedule of Base Rentals incorporated in the Lease shall be approved by Final Terms Certificate, subject to the following limitations:

(a) the aggregate amount of the principal component of Base Rentals shall not exceed \$9,000,000;

(b) the interest component of Base Rentals shall accrue at a rate or rates not exceeding 2.50%;

(c) the Lease, including all renewal terms thereof, shall terminate not later than December 1, 2023, and may also be made subject to prepayment and termination in whole or in part with or without a prepayment premium not to exceed 3.0% of the principal amount thereof;

(d) the City shall have the right to periodic releases of portions of the Leased Property and the option to purchase the interest of the Lessor in the Leased Property in the manner provided in the Lease; and

(e) the annual Base Rentals due under the Lease shall not exceed \$1,000,000.

**Section 6. No General Obligation or Other Indebtedness.** The obligation of the City to make rental payments under the Lease is subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance or the Lease shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

**Section 7. Findings; Expression of Need; Reasonable Rentals.** The City hereby declares its current need for the Leased Property. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until title to all of the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

The Council hereby determines and declares that, taking into account the provisions of the Lease, the Base Rentals due under the Lease, so long as they are within the limits provided in this Ordinance, will represent the fair value of the use of the Leased Property during the Lease Term, and that the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the City may exercise its option to purchase the Lessor's interest in such Leased Property, the fair purchase price thereof. The Council further hereby determines and declares

that the Base Rentals due under the Lease will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the uniqueness of the Leased Property, the cost of acquiring title to the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefits to the inhabitants of the City by reason of the acquisition of the Leased Property and the use of the Leased Property pursuant to the terms and provisions of the Lease, the City's option to purchase the Leased Property, the City's right to cause the termination of the Lease by declining to appropriate funds, and the expected eventual vesting of title to the Leased Property, free and clear of the Lease, in the City. The Council hereby determines and declares that the acquisition of the Leased Property and the leasing of the Leased Property pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as if the acquisition of the Leased Property were performed by the City other than pursuant to the Lease. The Council hereby determines and declares that, to the extent the useful life of the Leased Property is other than perpetual, after execution and delivery of the Lease, the maximum duration of the Lease, or the portion thereof allocable to any item of Leased Property separately identified in the Lease, will not exceed the weighted average useful life of such item or items of Leased Property.

**Section 8. Repealer.** All orders, bylaws, ordinances and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 9. Severability.** If any section, paragraph, clause or provision of this Ordinance (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease, and provisions for the conveyance of the Leased Property to the City under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

**Section 10. Recording and Authentication.** Upon adoption hereof, this Ordinance shall be numbered and recorded in the official records of the City, and its adoption and publication shall be authenticated by the signature of the Mayor, or Mayor pro-tem, and the City Clerk, and by the certificate of publication.

**Section 11. Effective Date.** This Ordinance shall take effect five days after publication following final passage.

