

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2024-254**

AN ORDINANCE OF THE TOWN OF JOHNSTOWN, COLORADO, ACTING BY AND THROUGH ITS WATER UTILITY ENTERPRISE, AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO PROVIDE FOR IMPROVEMENTS TO ITS WATER SYSTEM; ESTABLISHING COVENANTS IN CONNECTION WITH THE FINANCING AND PROVIDING FOR THE PAYMENT OF THE BONDS FROM WATER FUND REVENUES; AND APPROVING OTHER MATTERS IN CONNECTION WITH THE FINANCING.

WHEREAS, the Town of Johnstown, Colorado is a municipal corporation duly organized and operating as a home rule municipality under Article XX of the Constitution of the State of Colorado (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, pursuant to Section 13-70 of the Municipal Code, the Council has (i) recognized the establishment of the Town's Water Utility Enterprise, (ii) confirmed the operation of the Water Utility Enterprise as an "Enterprise" within the meaning of Section 20 of Article X of the State Constitution, and (iii) designated itself as the governing body of the Water Utility Enterprise to exercise the Town's legal authority relating to the Water Utility Enterprise, but not to levy a tax; and

WHEREAS, pursuant to Section 4-41 of the Municipal Code, the Water Fund, which accounts for the financial activity of the Water Utility Enterprise, is to receive less than ten percent of its annual revenue from Colorado state and local government grants combined; and

WHEREAS, pursuant to Sections 13.1 and 13.4 of the Charter, the Town may borrow money and issue bonds in such form and manner as the Council determines to be advantageous, by ordinance and without an election, when payable from revenues other than general ad valorem property taxes or sales and use taxes; and

WHEREAS, the Council has determined that the Town's interest and the public interest and necessity require the construction, acquisition, replacement and update of capital improvements to enable the Town to manage, maintain and operate the Town's water system; and

WHEREAS, Stifel, Nicolaus & Company, Incorporated, of Denver, Colorado, has presented a proposal to the Town to issue revenue bonds for the purpose of financing the costs of the Improvement Project, and the Council has determined that the negotiated sale of the Bonds to said company is to the best advantage of the Town; and

WHEREAS, the Bonds will not be payable from any tax, will not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or home rule limitation, and will not be considered or held to be general obligations of the Town; and

WHEREAS, the Town has received and there are available to the members of the Council, forms of documents relating to the financing of the Improvement Project, including the Preliminary Official Statement, the Bond Purchase Agreement and the Paying Agent and Registrar Agreement; and

WHEREAS, none of the members of the Council have any potential conflicting interests in connection with the authorization, issuance, or sale of the Bonds, or the use of the proceeds thereof; and

WHEREAS, Council desires to authorize the issuance and sale of the Bonds and, as provided in the Supplemental Public Securities Act, delegate authority to the Sale Delegate to make certain determinations regarding the Bonds to be set forth in the Sale Certificate in accordance with the provisions of this Ordinance; now therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Definitions. The following terms shall have the following meanings as used in this Ordinance:

“Bank” means UMB Bank, n.a., a national banking association duly organized and existing under the laws of the United States of America which has full and complete trust powers and is a qualified institution under Article 10.5 of Title 11, C.R.S., known as the Public Deposit Protection Act.

“Bonds” means the Water Revenue Bonds, Series 2024, dated as of the Dated Date.

“Bond Account” means the account established by the provisions hereof to account for the moneys to be applied to the payment of the debt service on the Bonds. The Bond Account shall be a subsidiary account or subaccount of the Water Fund or other appropriate fund of the Town and separately accounted for by the Town in accordance with the provisions hereof.

“Bond Counsel” means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, of Denver, Colorado; and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the Town with nationally recognized expertise in the issuance of municipal bonds.

“Bond Insurance Policy” means, if the Bonds are issued with bond insurance, the municipal bond insurance policy issued by the Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein. If the Bonds are not issued with bond insurance, this definition shall not be applicable.

“Bond Insurer” means, if the Bonds are issued with bond insurance, the bond insurer selected by the Sale Delegate pursuant to the Section hereof entitled “Bond Insurance,” or any successor thereto.

“Bond Purchase Agreement” means the Bond Purchase Agreement, pursuant to which the Town is to agree to sell and the Underwriter is to agree to purchase the Bonds at the prices and on the terms set forth therein.

“*Business Day*” means any day other than (a) a Saturday or Sunday, or (b) a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed for business.

“*Capital Improvements*” means the acquisition of land, water or water rights, easements, facilities, and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments, and extensions, for use by or in connection with the System which, under Generally Accepted Accounting Principles for governmental units as prescribed by the Governmental Accounting Standards Board, are properly chargeable as capital items.

“*Charter*” means the Town of Johnstown Home Rule Charter.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, unless the context clearly requires otherwise.

“*Combined Maximum Annual Principal and Interest Requirements*” means with regard to any two or more particular issues of bonds or other obligations, the maximum annual payments of principal of and interest on all of said issues, excluding redemption premiums, to become due during any Fiscal Year while such issues are outstanding; provided that such computation shall assume the redemption and payment of bonds or other obligations subject to mandatory redemption, but shall be made without regard to any right of optional redemption which has not been exercised.

“*Commitment*” means that certain offer, if any, to issue the Bond Insurance Policy and the Reserve Surety Bond by the Bond Insurer.

“*Continuing Disclosure Undertaking*” means an undertaking of the Town to facilitate compliance with Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12) in substantially the form appended to the Official Statement.

“*Council*” means the Town Council of the Town acting as the governing body of the Water Utility Enterprise.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Dated Date*” means the dated date for the Bonds set forth in the Sale Certificate.

“*DTC*” means The Depository Trust Company, New York, New York, and its successors in interest and assigns.

“*DTC Blanket Letter of Representations*” means the letter of representations from the Town to DTC to induce DTC to act as securities depository for the Bonds.

“*Enabling Laws*” means the Charter, the Water Activity Law, the Supplemental Public Securities Act and all other laws of the State of Colorado enabling the actions of the Town as contemplated by the provisions of this Ordinance.

“*Event of Default*” means any of the events specified the Section hereof titled “Events of Default.”

“*Federal Securities*” means bills, certificates of indebtedness, notes, bonds or similar securities which are direct noncallable obligations of the United States of America or which are fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America.

“*Fiscal Year*” means the 12 months commencing January 1 of any year and ending December 31 of said year.

“*Gross Revenue*” means all fees, including but not limited to user fees and plant investment fees, charges and revenues directly or indirectly derived by the Town for the services furnished by, or use of, the System, or any part thereof, including all income attributable to any future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the System or its operations; provided however, that there shall be excluded from Gross Revenue (a) moneys borrowed and used for providing Capital Improvements; (b) any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account pledged to the payment of any bonds or other obligations for the purpose of defeasing the same; and (c) any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

“*Improvement Project*” means any Capital Improvements which may be funded under the Enabling Laws, including but not limited to, the construction, installation, and equipping of new water treatment plant, a new water trunkline from Lone Tree Reservoir to the water treatment plant and any other System improvements as determined by the Council, as well as the payment of the costs of issuance of the Bonds.

“*Interest Payment Date*” means each June 1 and December 1, commencing December 1, 2024, or such other dates as established in the Sale Certificate for payment of interest on the Bonds.

“*Municipal Code*” means the Johnstown Municipal Code, as the same may be amended.

“*Net Revenues*” means Gross Revenue after deducting Operation and Maintenance Expenses.

“*Official Statement*” means the final Official Statement relating to the Bonds.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining, and repairing the System,

including without limitation legal and overhead expenses of the Town directly related to the administration of the System; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance or transfers for depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Capital Improvements, and charges for the accumulation of reserves. For purposes of the above definition expenses shall, to the extent possible, be determined in accordance with Generally Accepted Accounting Principles for governmental units as prescribed by the Governmental Accounting Standards Board.

“*Ordinance*” means this ordinance authorizing the issuance of the Bonds, including any amendments or supplements hereto.

“*Owner*” or “*Owners*” means the Person or Persons in whose name or names a Bond is registered on the registration books maintained by the Paying Agent pursuant hereto.

“*Parity Lien Obligations*” means any bonds or other obligations permitted to be issued pursuant to the Section hereof titled “Parity Lien Obligations”, with a lien that is equal and on a parity with the lien of the Bonds on the Net Revenues.

“*Paying Agent*” means the Bank and its successors in interest or assigns approved by the Town, which shall act as paying agent, bond registrar, and authenticating agent for the Bonds.

“*Paying Agent and Registrar Agreement*” means an agreement between the Town and the Paying Agent concerning the duties and obligations of the Paying Agent with respect to the Bonds.

“*Permitted Investments*” means any investment lawfully permitted by applicable State law, except to the extent that such investments may be further limited by the Bond Insurer.

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

“*Preliminary Official Statement*” means the Preliminary Official Statement prepared in connection with the sale and issuance of the Bonds.

“*Principal Payment Date*” means December 1, or such other date or dates of each year as established in the Sale Certificate for payment of principal of the Bonds.

“*Project Account*” means the account established by the provisions hereof to account for the moneys to be applied to the payment of the costs relating to the Improvement Project. The Project Account shall be a subsidiary account or subaccount of the Water Fund or other appropriate fund of the Town and separately accounted for by the Town in accordance with the provisions hereof.

“*Pro Rata Portion*” means the dollar amount derived by dividing the amount of principal or interest to come due on the next Principal Payment Date or Interest Payment Date by the number of monthly credits required to be made prior to such payment date.

“Record Date” means with respect to each Interest Payment Date, (a) if the Interest Payment Date is the first day of the month, the fifteenth day of the month immediately preceding the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs; or (b) if the Interest Payment Date is the fifteenth day of the month, the first day of the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs.

“Required Reserve” means an amount equal to the lesser of: (a) the Combined Maximum Annual Principal and Interest Requirements of the Bonds or (b) the maximum amount which may be credited to the Reserve Account and allow such account to qualify as a “reasonably required reserve or replacement fund” under Section 148(d) of the Code. Provided however, the amount of the Required Reserve may be established at a lesser amount in the Sale Certificate.

“Reserve Account” means the account established by the provisions hereof to provide additional security for the timely payment of the debt service on the Bonds. The Reserve Account shall be a subsidiary account or subaccount of the Water Fund or other appropriate fund of the Town and separately accounted for by the Town in accordance with the provisions hereof.

“Reserve Surety Bond” means a surety bond issued by the Bond Insurer for the purpose of meeting all or any portion of the Required Reserve and guaranteeing payments from the Reserve Account.

“Sale Certificate” means the certificate executed by the Sale Delegate under the authority delegated pursuant to this Ordinance.

“Sale Delegate” means the Town Manager or, in the event the Town Manager is unavailable, the Deputy Town Manager in her capacity as Town Treasurer.

“Supplemental Public Securities Act” means Part 2 of Article 57 of Title 11, C.R.S.

“State” means the State of Colorado.

“System” means all of the Town’s water system and water facilities, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto.

“Tax Letter of Instructions” means the Tax Letter of Instructions, dated the date on which the Bonds are originally issued and delivered to the Town by Bond Counsel, as such instructions may be superseded or amended in accordance with their terms.

“Town” means the Town of Johnstown, Colorado, acting by and through its Water Utility Enterprise.

“Underwriter” means Stifel, Nicolaus & Company, Incorporated, of Denver, Colorado.

“Water Activity Law” means Title 37, Article 45.1, C.R.S.

“*Water Fund*” means the fund established under Section 4-41 of the Municipal Code for the purpose of accounting for the financial activity of the Water Utility Enterprise.

“*Water Utility Enterprise*” means the Town’s Water Utility Enterprise recognized by the Town Council pursuant to Section 13-70 of the Municipal Code and which serves the purpose of managing, maintaining and operating the System.

Section 2. Authorization and Purpose of the Bonds. Pursuant to and in accordance with the State Constitution and the Enabling Laws, there shall be issued by the Town, acting by and through the Water Utility Enterprise, the “Water Revenue Bonds, Series 2024” for the purpose of providing funds for the Improvement Project.

Section 3. Bond Details.

(a) ***Registered Form, Denominations, Original Dated Date and Numbering.***

The Bonds shall be issued in fully registered form, shall be dated as of the Dated Date, and shall be registered in the names of the Persons identified in the registration books maintained by the Paying Agent pursuant hereto. The Bonds shall be issued in denominations of \$5,000 in principal amount or any integral multiple thereof. The Bonds shall be consecutively numbered, beginning with the number one, preceded by the letter “R.”

(b) ***Maturity Dates, Principal Amounts and Interest Rates.***

The Bonds shall mature on the Principal Payment Date of the years and in the principal amounts, and shall bear interest at the rates per annum (calculated based on a 360-day year of twelve 30-day months), set forth in the Sale Certificate.

(c) ***Accrual and Dates of Payment of Interest.***

Interest on the Bonds shall accrue at the rates set forth in the Sale Certificate from the later of the Dated Date or the latest Interest Payment Date (or in the case of defaulted interest, the latest date) to which interest has been paid in full and shall be payable on each Interest Payment Date.

(d) ***Delegation for Sales Certificate.***

The Council hereby delegates to the Sale Delegate for a period of two months from the date of adoption of this Ordinance (A) the matters set forth below, subject to the applicable parameters set forth in subsection (e) of this Section; and (B) any other matters that, in the judgment of the Sale Delegate, are necessary or convenient to be set forth in the Sale Certificate and are not inconsistent with the parameters set forth in this Section:

- (i) the Dated Date of the Bonds;
- (ii) the Principal Payment Date;
- (iii) the Interest Payment Date;
- (iv) the aggregate principal amount of the Bonds;

(v) the price at which the Bonds will be sold pursuant to the Bond Purchase Agreement;

(vi) the amount of principal of the Bonds maturing in any particular year and the respective interest rates borne by the Bonds;

(vii) the Bonds which may be redeemed at the option of the Town, the dates upon which such optional redemption may occur, and the prices at which such Bonds may be optionally redeemed;

(viii) the principal amounts, if any, of Bonds subject to mandatory sinking fund redemption and the years in which such Bonds will be subject to such redemption;

(ix) the amount of the Required Reserve; and

(x) whether the Bonds will be secured by an assurance of payment as provided in the Supplemental Public Securities Act.

(e) **Sale Parameters.** The authority delegated to the Sale Delegate by this Section shall be subject to the following parameters:

(i) the aggregate principal amount of the Bonds shall not exceed \$75,000,000;

(ii) the final maturity of the Bonds shall be no later than December 1, 2054; and

(iii) the net effective interest rate on the Bonds shall not exceed 4.75%.

(f) **Manner and Form of Payment.** Principal of each Bond shall be payable to the Owner thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at such other office of the Paying Agent designated by the Paying Agent for such purpose. Interest on each Bond shall be payable by check or draft of the Paying Agent mailed on each Interest Payment Date to the Owner thereof as of the close of business on the corresponding Record Date; provided that interest payable to any Owner may be paid by any other means agreed to by such Owner and the Paying Agent that does not require the Town to make moneys available to the Paying Agent earlier than otherwise required hereunder or increase the costs borne by the Town hereunder. All payments of the principal of and interest on the Bonds shall be made in lawful money of the United States of America.

(g) **Book-Entry Registration.** Notwithstanding any other provision hereof, the Bonds shall be delivered only in book entry form registered in the name of Cede & Co., as nominee of DTC, acting as securities depository of the Bonds and principal of and interest on the Bonds shall be paid by wire transfer to DTC; provided, however, if at any time the Paying Agent determines, and notifies the Town of its determination, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository

for the Bonds, the Paying Agent may, at its discretion, either (i) designate a substitute securities depository for DTC and reregister the Bonds as directed by such substitute securities depository; or (ii) terminate the book entry registration system and reregister the Bonds in the names of the beneficial owners thereof provided to it by DTC. Neither the Town nor the Paying Agent shall have any liability to DTC, Cede & Co., any substitute securities depository, any Person in whose name the Bonds are reregistered at the direction of any substitute securities depository, any beneficial owner of the Bonds or any other Person for (A) any determination made by the Paying Agent pursuant to the proviso at the end of the immediately preceding sentence or (B) any action taken to implement such determination and the procedures related thereto that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede & Co., any substitute securities depository or any Person in whose name the Bonds are reregistered.

Section 4. Redemption of Bonds Prior to Maturity.

(a) ***Optional Redemption.*** The Bonds shall be subject to redemption at the option of the Town, in whole or in part, and if in part in such order of maturities as the Town shall determine and by lot within a maturity on such dates as set forth in the Sale Certificate. As provided in the Section hereof entitled "Bond Details", the Sale Delegate is delegated authority to determine the dates on which the Bonds shall be subject to optional redemption and the redemption price or prices at which such redemption may be made.

(b) ***Mandatory Sinking Fund Redemption.*** All or any principal amount of the Bonds may be subject to mandatory sinking fund redemption by lot on the Principal Payment Date of the years and in the principal amounts specified in the Sale Certificate, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date. As provided in the Section hereof entitled "Bond Details", the Sale Delegate is delegated authority to determine the principal amounts and dates on which the Bonds shall be subject to mandatory sinking fund redemption.

(c) ***Redemption Procedures.*** Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the Town by electronic means to DTC or by sending a copy of such notice by electronic means to DTC or its successors, or by first class, postage prepaid mail, not less than thirty days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

Section 5. Form of the Bonds. The Bonds shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Town executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The Bond shall recite that it is issued under the authority of the Enabling Laws. Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

Section 6. Execution, Authentication and Delivery of the Bonds.

(a) **Execution.** The Bonds shall be executed in the name and on behalf of the Town with the manual or facsimile signature of the Mayor, shall bear a manual or facsimile of the seal of the Town and shall be attested by the manual or facsimile signature of the Town Clerk both of whom are hereby authorized and directed to prepare and execute the Bonds in accordance with the requirements hereof. Should any officer whose manual or facsimile signature appears on the Bonds cease to be such officer before delivery of any Bond, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes.

(b) **Authentication.** When the Bonds have been duly executed, the officers of the Town are authorized to, and shall, deliver the Bonds to the Paying Agent for authentication. No Bond shall be secured by or entitled to the benefit of this Ordinance, or shall be valid or obligatory for any purpose, unless the certificate of authentication of the Paying Agent has been manually executed by an authorized signatory of the Paying Agent. The executed certificate of authentication of the Paying Agent upon any Bond shall be conclusive evidence, and the only competent evidence, that such Bond has been properly authenticated hereunder.

(c) **Delivery.** Upon the authentication of the Bonds, the Paying Agent shall deliver the same in accordance with the instructions of the Underwriter upon receipt of the agreed purchase price of the Bonds from the Underwriter and the issuance of the approving opinion of Bond Counsel.

Section 7. Registration, Transfer and Exchange of the Bonds.

(a) **Registration.** The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of Bonds shall be recorded. The person in whose name any Bond shall be registered on such registration books shall be deemed to be the absolute owner thereof for all purposes, whether or not payment on any Bond shall be overdue, and neither the Town nor the Paying Agent shall be affected by any notice or other information to the contrary.

(b) **Transfer and Exchange.** The Bonds may be transferred or exchanged, at the principal office of the Paying Agent for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith.

Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the Town shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond.

(c) **Limitations on Transfer.** The Town and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning at the close of business on the Record Date and ending at the opening of business on the first Business Day following the ensuing interest payment date. The Paying Agent shall not be required to transfer any Bonds selected or called for redemption.

Section 8. Replacement of Lost, Destroyed or Stolen Bonds. If any Bond shall become lost, apparently destroyed, stolen or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed, stolen or taken bond and the Town shall execute and the Paying Agent shall authenticate and deliver a replacement Bond upon the Owner furnishing, to the satisfaction of the Paying Agent: (a) proof of ownership (which shall be shown by the registration books of the Paying Agent); (b) proof of loss, destruction or theft; (c) an indemnity to the Town and the Paying Agent with respect to the Bond lost, destroyed or taken; and (d) payment of the cost of preparing and executing the new bond or bonds.

Section 9. Reaffirmation of the Water Fund; Establishment of Accounts.

(a) **Reaffirmation of Water Fund.** The Town hereby reaffirms the establishment of the Water Fund.

(b) **Establishment of Accounts in Water Fund.** There are hereby created and established within the Water Fund, in addition to other accounts which are established in said fund, the Bond Account, the Reserve Account and the Project Account. In accordance with generally accepted accounting principles, for the purpose of accounting for the moneys provided for in this Ordinance the Town Director of Finance may create offsetting revenue and expense accounts not inconsistent with the provisions hereof, all as may be determined by the Town Director of Finance.

(c) **Investments.** Proceeds of the Bonds delivered to the Town pursuant to the Section hereof titled "Application of Bond Proceeds," moneys on deposit in the Bond Account and the Reserve Account, and any moneys held by the Paying Agent with respect to the Bonds, shall be invested or deposited in securities or obligations which are Permitted Investments. The investment of moneys shall, however, be subject to the covenants and provisions of the Sections hereof titled "Federal Tax Covenants" and "Reserve Account". Subject to such covenants and provisions, all investment earnings shall be credited to the respective accounts in which such earnings have been generated.

Section 10. Application of Bond Proceeds. Upon payment to the Town of the purchase price of the Bonds in accordance with the Bond Purchase Agreement, the Bonds shall be delivered to, or as directed by, the Underwriter and the proceeds received by the Town from the sale of the Bonds shall be applied as a supplemental appropriation by the Town for payment of the costs of issuance of the Bonds (including the payment of the premiums due in connection with the issuance

of the Bond Insurance Policy and the Reserve Surety Bond) and thereafter for deposit to the Reserve Account, the amount, if any, necessary to fund the Reserve Account in the amount of the Required Reserve, with the balance for deposit to the Project Account. The moneys deposited into the Project Account shall be used to pay the costs of the Improvement Project. Upon completion of the Improvement Project, the balance of moneys in the Project Account, if any, shall be transferred to the Bond Account.

Section 11. Deposit of Gross Revenues. The Town shall deposit to the Water Fund all Gross Revenue immediately upon receipt. The Town shall pay from the Water Fund all Operation and Maintenance Expenses as they become due and payable. After such payments, the Town shall apply the Net Revenues in the following order of priority:

FIRST, to the credit of the Bond Account, the amounts required by the Section hereof titled "Bond Account", and to the credit of any other account established for the payment of the principal of, premium if any, and interest on Parity Lien Obligations, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Obligations;

SECOND, to the credit of the Reserve Account, the amounts required by the Section hereof entitled "Reserve Account" and any similar reserve account established to prevent a default in the timely payment of Parity Lien Obligations;

THIRD, to the payment and reimbursement of all amounts due in connection with the Reserve Surety Bond and any similar surety or reserve account contract for Parity Lien Obligations;

FOURTH, to the credit of any other fund or account hereafter established for the payment of the principal of, premium, if any, and interest on subordinate lien obligations, including any sinking fund, reserve fund, or similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of the subordinate lien obligations; and

FIFTH, to the credit of any other fund or account as may be designated by the Town, to be used for any lawful purpose, any moneys remaining in the Water Fund after the payments and accumulations set forth in First through Fourth above.

Section 12. Bond Account.

(a) ***Use of Moneys in Bond Account.*** Moneys deposited in the Bond Account shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds.

(b) ***Deposits to Bond Account.*** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the Town shall credit to the Bond Account from the Net Revenues, an amount equal to the Pro Rata Portion of the interest and principal to come due on the Bonds on the next succeeding Interest Payment Date and Principal Payment Date, respectively. All deposits to the Bond Account shall first be allocated to the payment of interest to come due on the Bonds.

Section 13. Reserve Account.

(a) ***Use of Money in Reserve Account.*** Moneys in the Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, or interest on the Bonds, and the Reserve Account is hereby pledged to the payment of the Bonds. In the event the amounts credited to the Bond Account are insufficient to pay the principal of, premium if any, or interest on Bonds when due, the Town shall transfer from the Reserve Account to the Bond Account an amount which, when combined with moneys therein, will be sufficient to make such payments when due.

(b) ***Maintenance of Reserve Account.*** The Reserve Account shall be maintained in the amount of the Required Reserve. If at any time the amount of the Reserve Account is less than the Required Reserve, the Town shall deposit to the Reserve Account from Net Revenues, amounts sufficient to bring the amount credited to the Reserve Account to the Required Reserve. Such deposits shall be made as soon as possible after such use, but in accordance with and subject to the limitations of the Section hereof entitled "Deposit of Gross Revenues."

(c) ***Permitted Investments and Reserve Surety Bond.*** The Required Reserve shall be funded and maintained by any one of or any combination of cash, Permitted Investments, or a Reserve Surety Bond; provided any cash or Permitted Investments shall be transferred from the Reserve Account to the Bond Account prior to any demand being made on the Reserve Surety Bond. A Reserve Surety Bond shall satisfy the Required Reserve Amount by the amount payable to the Town pursuant to the Reserve Surety Bond. Investments purchased with funds credited to the Reserve Account shall be subject to any further limitations required by the Bond Insurer. So long as the amount of the Reserve Account is equal to the Required Reserve, all interest income from the investment or reinvestment of moneys credited to the Reserve Account shall be credited to the Bond Account; provided that if the amount of the Reserve Account is less than the Required Reserve, then such interest income shall be credited to the Reserve Account.

Section 14. Pledge and Lien for Payment of Bonds.

(a) ***Pledge of Revenues.*** The Town hereby pledges for the payment of the principal of, premium, if any, and interest on the Bonds at any time outstanding, and grants an irrevocable and first lien for such purpose on Net Revenues and on all moneys on deposit in the Reserve Account; provided however, the first lien on Net Revenues is not exclusive if Parity Lien Obligations are issued. These pledges shall be valid and binding from and after the date of the first delivery of the Bonds, and the moneys, as received by the Town and hereby pledged, shall immediately be subject to the lien of the respective pledges without any physical delivery thereof, any filing, or further act.

(b) ***Superior Liens Prohibited.*** With the exception of any superior liens in existence as of the date hereof, the Town shall not pledge or create any other lien on the revenues and moneys pledged pursuant to the preceding paragraph (a) of this Section hereof that is superior to the pledge thereof or lien thereon pursuant to such paragraph.

(c) ***Subordinate Liens Permitted.*** Nothing herein shall prohibit the Town from issuing subordinate lien obligations and pledging or creating a lien on the revenues and moneys pledged and the lien created pursuant paragraph (a) of this Section that is subordinate to the pledge thereof or lien thereon pursuant to paragraph (a) of this Section; provided that no Event of Default shall have occurred and be continuing.

(d) ***No Prohibition on Additional Security.*** Nothing herein shall prohibit the Town from applying any legally available revenues that are not Net Revenues to the payment of the Bonds (and thereby subjecting the moneys so deposited to the pledge made and lien granted in paragraph (a) of this Section).

(e) ***Bonds Are Special, Limited Obligations of the Town.*** The Owners may not look to any general or other fund of the Town for the payment of the principal of or interest on the Bonds, except the funds and accounts pledged thereto by this Ordinance, and the Bonds shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or Charter limitation, nor shall they be considered or held to be general obligations of the Town.

Section 15. Parity Lien Obligations. The Town shall not issue Parity Lien Obligations having a lien which is on a parity with the lien of the Bonds set forth in paragraph (a) of the Section hereof titled "Pledge and Lien for Payment of Bonds" unless all of the following conditions are satisfied:

(a) ***Parity Lien Test.*** The Mayor or other Town official or employee designated in writing by the Mayor certifies in writing that either:

(i) the proceeds of the proposed Parity Lien Obligations will be used to refund the Bonds, or other Parity Lien Obligations, and the maximum annual principal of and interest due on the proposed Parity Lien Obligations is not greater than the maximum annual principal of and interest due on the Bonds, or other outstanding Parity Lien Obligations, that will be refunded; or

(ii) the Net Revenues for any 12 consecutive months in the 18 months immediately preceding the month in which such certification is delivered (referred to in this clause as the "test period") have been equal to at least 110% of the sum of the Combined Maximum Annual Principal and Interest Requirements on the Bonds and any outstanding Parity Lien Obligations, and the proposed Parity Lien Obligations during each calendar year following the date of issuance of the proposed Parity Lien Obligations; provided that in calculating the Net Revenues during the test period, the Town may add an amount by which the Town reasonably estimates the Net Revenues would have been increased during the test period from any increase in rates, fees, and charges for services furnished by or the use of the System during or since said test period, the effect of which is to estimate a sum which would have been realized had the increase been in effect during the entire test period.

(b) **No Event of Default.** The Mayor (or other Town official or employee designated in writing by the Mayor) certifies in writing that no Event of Default has occurred and is continuing and that the Town is current in the accumulation of all amounts required to be then accumulated in the Bond Account and the Reserve Account, as required by this Ordinance

(c) **Refunding Obligations.** Notwithstanding the foregoing, the Town may issue refunding obligations payable out of, or secured by a lien on, the Net Revenues without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

Section 16. Additional General Covenants. In addition to the other covenants of the Town contained herein, the Town hereby further covenants for the benefit of Owners of the Bonds that:

(a) **Maintenance of Water Activity Rates and Coverage.** The Town hereby covenants that it will establish, maintain, enforce, and collect rates, fees, and charges for services furnished by or the use of the System to create Gross Revenue each Fiscal Year sufficient to pay Operation and Maintenance Expenses and to create Net Revenues in an amount: (a) equal to not less than 110% of the amount necessary to pay when due the principal of and interest on the Bonds and any Parity Lien Obligations coming due during such Fiscal Year; (b) sufficient to make up any deficiencies in the Reserve Account; and (c) sufficient to make any required reimbursement due in connection with the Reserve Surety Bond. In the event that the Gross Revenue at any time is not sufficient to make such payments, the Town shall promptly increase such rates, fees, and charges to an extent which will ensure the payments and accumulations required by this Ordinance.

(b) **Efficient Operations.** The Town will continue to operate and manage the System in an efficient and economical manner in accordance with all applicable laws, rules and regulations, and keep and maintain separate accounts of the receipts and expenses thereof in such manner that the Net Revenues may at all times be readily and accurately determined.

(c) **No Free Service.** Upon the occurrence of an Event of Default and for so long as the Event of Default is continuing, the Town will furnish no free service from the System, and if the Town shall use the facilities of the System for its own purposes, it shall pay monthly a fair and reasonable amount for such service. In no event shall the Town be required to meter its use nor shall the Town be required to pay a greater amount than would be charged a private consumer for the same amount of service. The Town shall include in its annual appropriation and budget amounts sufficient to pay for all service so used.

(d) **Sale or Alienation of Property.** The Town will not sell or alienate any of the property constituting any part or all of the System in any manner or to any extent as might reduce the security provided for the payment of the Bonds, but the Town may sell any portion of such property which shall have been replaced by other similar property of at least equal value, or which shall cease to be necessary for the efficient operations;

provided however, that the proceeds of any such sale of System property shall be included as part of the Gross Revenue.

(e) ***Billing and Enforcement.*** The Town will promptly render bills for services furnished by or the use of the System, shall use all legal means to assure prompt payment thereof, shall take such action as may be necessary to make delinquent rates, fees, and charges of the System a lien upon the real property served, and to the extent permitted by law, shall discontinue service to any user who becomes delinquent in the payment of such charges until the delinquency and all interest, costs, and expenses incident thereto have been paid in full; provided however, as long as the Town is compliance with paragraph (a) of this Section regarding maintenance of the required coverage level and no Event of Default has occurred and is continuing, in the event of unforeseen circumstances such as the widespread occurrence of an infectious disease, the Council shall have the ability to temporarily defer or waive the payment of delinquent rates, fees and charges, or the pursuit of actions customarily taken in connection with bills for services furnished by or the use of the System.

(f) ***Audits.*** At least once a year in the time and manner provided by law, the Town will cause an audit to be performed of the records relating to the revenues and expenditures of the System. Such audit may be made part of and included within the general audit of the Town, and made at the same time as the general audit. In addition, at least once a year in the time and manner provided by law, the Town will cause a budget to be prepared and adopted. Copies of the budget and the audit will be filed and recorded in the places, time, and manner provided by law.

(g) ***Insurance.*** The Town will carry fire and extended coverage, workers' compensation, public liability, and such other forms of insurance on insurable System property as would ordinarily be carried by utilities having similar properties of equal value, such insurance being in such amounts as will protect the System and its operations. In the event of any loss or damage to the System, or in the event part or all of the System is taken by the exercise of a power of eminent domain, the insurance proceeds or the condemnation award shall be used for restoring, replacing or repairing the property lost, damaged or taken, and the remainder thereof, if any, shall be considered as Gross Revenue; provided however, that if the Council determines that the operation of the System and the security for the Bonds will not be adversely affected thereby, the Town Council may determine not to restore, replace or repair the property lost, damaged or taken and all of the insurance proceeds or condemnation award shall be considered as Gross Revenue.

(h) ***Enterprise Status.*** The Town has and will continue to maintain the System as an "enterprise" within the meaning Article X, Section 20 of the Colorado Constitution; provided, however, after the current calendar year the Town may disqualify the System as an "enterprise" in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made pursuant to this Ordinance with respect to the Bonds. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made pursuant to this Ordinance are materially, adversely affected, the Town covenants to (i) immediately take all actions necessary to qualify

System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and (ii) permit the enforcement of the covenants made herein.

(i) ***Book-Entry Registration.*** The DTC Blanket Letter of Representations previously entered into with DTC shall govern the book-entry registration system for the Bonds.

Section 17. Federal Tax Covenants. For purposes of ensuring that the interest on the Bonds is and remains excluded from gross income for federal income tax purposes, the Town hereby covenants that:

(a) ***Prohibited Actions.*** The Town will not use or permit the use of any proceeds of the Bonds or any other funds of the Town from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code, or would otherwise cause the interest on any Bond to be includible in gross income for federal income tax purposes.

(b) ***Affirmative Actions.*** The Town will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid by the Town on the Bonds shall not be includible in gross income for federal income tax purposes under the Code or any other valid provision of law. In particular, but without limitation, the Town represents, warrants and covenants to comply with the following rules unless it receives an opinion of Bond Counsel stating that such compliance is not necessary: (i) gross proceeds of the Bonds will not be used in a manner that will cause the Bonds to be considered “private activity bonds” within the meaning of the Code, (ii) the Bonds are not and will not become directly or indirectly “federally guaranteed,” and (iii) the Town will timely file Internal Revenue Form 8038G which shall contain the information required to be filed pursuant to Section 149(e) of the Code.

(c) ***Tax Letter of Instructions.*** The Town will comply with the Tax Letter of Instructions delivered to it on the date of issuance of the Bonds, including but not limited by the provisions of the Tax Letter of Instructions regarding the application and investment of Bond proceeds, the calculations, the deposits, the disbursements, the investments and the retention of records described in the Tax Letter of Instructions; provided that, in the event the Tax Letter of Instructions are superseded or amended by new Tax Letter of Instructions drafted by, and accompanied by an opinion of, Bond Counsel stating that the use of the new Tax Letter of Instructions will not cause the interest on the Bonds to become includible in gross income for federal income tax purposes, the Town will thereafter comply with the new Tax Letter of Instructions.

Section 18. Defeasance. Any Bond shall not be deemed to be outstanding hereunder if it shall have been paid and cancelled or if cash or Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the Town shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit described above, the

Town may include interest to be earned on the Federal Securities. If less than all the Bonds are to be defeased pursuant to this Section, the Town, in its sole discretion, may select which of the Bonds shall be defeased.

Notwithstanding anything herein to the contrary, in the event that the principal and/or interest due on the Bonds shall be paid by the Bond Insurer pursuant to the Bond Insurance Policy, the Bonds shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Town, and all covenants, agreements and other obligations of the Town to the Owners shall continue to exist and shall run to the benefit of the Bond Insurer, and the Bond Insurer shall be subrogated to the rights of such Owners.

Section 19. Events of Default. With respect to the Bonds, each of the following events constitutes an Event of Default:

(a) ***Nonpayment of Principal or Interest.*** The failure to make any payment of principal of, premium, if any, or interest on the Bonds when due hereunder;

(b) ***Material Covenant Breach.*** A breach by the Town of any material covenant set forth herein relating to the Bonds or failure by the Town to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the Town Attorney of the Town of written notice thereof from the Paying Agent or from the Owners of at least 10% in principal amount of the outstanding Bonds;

(c) ***Cross Defaults.*** The occurrence and continuance of an “event of default,” as defined in any Ordinance providing for the issuance of Parity Lien Obligations; or

(d) ***Appointment of Receiver.*** An order or decree is entered by a court of competent jurisdiction appointing a receiver for all or any portion of the revenues and moneys pledged for the payment of the Bonds pursuant hereto is entered with the consent or acquiescence of the Town or is entered without the consent or acquiescence of the Town but is not vacated, discharged or stayed within thirty days after it is entered.

Section 20. Remedies for Events of Default.

(a) ***Remedies.*** Upon the occurrence and continuance of any Event of Default, the Owners of not less than 25% in principal amount of the applicable Bonds then outstanding for which the Event of Default has occurred, may proceed against the Town to protect and to enforce the rights of any Owner of the applicable Bonds under this Ordinance by mandamus, injunction or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction: (i) for the payment of interest on any installment of principal of any Bond that was not paid when due at the interest rate borne by such bond; (ii) for the appointment of a receiver or an operating trustee; (iii) for the specific performance of any covenant contained herein; (iv) to enjoin any act that may be unlawful or in violation of any right of any Owner of any Bond; (v) to require the Town to act as if it were the trustee of an express trust; (vi) for any other proper legal or equitable remedy as such Owner may deem most effectual to protect their rights; or (vii) any combination of such remedies or as otherwise may be authorized by any statute or other provision of law;

provided, however, that acceleration of any amount not yet due on the Bonds according to their terms shall not be an available remedy. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the applicable Bonds then outstanding. Any receiver or operating trustee appointed in any proceedings to protect the rights of Owners of Bonds hereunder may collect, receive and apply all revenues and moneys pledged for the payment of the Bonds pursuant hereto arising after the appointment of such receiver or operating trustee in the same manner as the Town itself might do.

(b) ***Failure To Pursue Remedies Not a Release; Rights Cumulative.*** The failure of any Owner of any Bond then outstanding to proceed in any manner herein provided shall not relieve the Town of any liability for failure to perform or carry out its duties hereunder. Each right or privilege of any such Owner or trustee therefor is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege thereof. Each Owner of any Bond shall be entitled to all of the privileges, rights and remedies provided or permitted in this Ordinance and as otherwise provided or permitted by law or in equity. Nothing herein affects or impairs the right of any Owner of any Bond to enforce the payment of the debt service due in connection with his or her Bond or the obligation of the Town to pay the debt service of each Bond to the Owner thereof at the time and the place specified herein.

(c) ***Obligations of Town and Paying Agent in Connection With Events of Default.*** Upon the occurrence and continuation of any of Events of Default: (i) the Town shall take all proper acts to protect and preserve the security for the payment of the Bonds and to insure the payment of debt service on the Bonds promptly when due; and (ii) the Town and the Paying Agent shall give the Owners of the Bonds then outstanding notice by first-class mail or by electronic means to DTC or its successors of (A) any default in the payment of, premium, if any, or interest on the Bonds immediately after discovery thereof; and (B) any other Event of Default within 30 days after discovery thereof. During the continuation of any Event of Default, except to the extent it may be unlawful to do so, all revenues and moneys pledged for the payment of the Bonds pursuant hereto shall be held for and applied to the debt service on all Bonds on an equitable and prorated basis. If the Town fails or refuses to proceed as provided in this paragraph, the Owners of not less than 25% in principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and to enforce the rights of the Owners of the Bonds as provided in this paragraph; and to that end any such rights of Owners of Bonds then outstanding shall be subrogated to all rights of the Town under any agreement or contract involving the revenues and moneys pledged for the payment of the Bonds pursuant hereto that was entered into prior to the effective date of this Ordinance or thereafter while any of the Bonds are outstanding. Nothing herein requires the Town to proceed as provided in this paragraph if it determines in good faith and without any abuse of its discretion that such action is likely to affect materially and prejudicially the Owners of the Bonds then outstanding.

(d) ***Bond Insurer.*** To the extent that this Ordinance confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Ordinance,

the Bond Insurer is hereby explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder. Upon the occurrence and continuance of an Event of Default, so long as it is not in default of its obligations under the Bond Insurance Policy, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted to the Owners under this Ordinance and pursuant to State law.

Section 21. Bond Insurance. Upon the recommendation of the Underwriter based upon market conditions and the rating on the Bonds, one or more bond insurers may be requested to submit bids to issue the Bond Insurance Policy. In the event that the Sale Delegate determines, based upon information provided by the Underwriter, that the lowest acceptable premium bid for issuance of the Bond Insurance Policy is less than the interest cost savings to be realized by the Town as a result of the issuance of the Bond Insurance Policy, the Sale Delegate may accept the Commitment issued by the lowest acceptable bidder and the Bonds shall be issued insured by the Bond Insurance Policy issued by such lowest acceptable bidder, who may be deemed to be the Bond Insurer hereunder. In the event the Sale Delegate determines, based upon information provided by the Underwriter that the lowest acceptable premium bid for the Bond Insurance Policy is more than the interest cost savings to be realized by the Town as a result of the issuance of the Bond Insurance Policy, the Bonds shall be issued without bond insurance. If the Bonds are issued insured by the Bond Insurance Policy, the officers and employees of the Town are hereby authorized and directed to take all actions necessary to cause the Bond Insurer selected to issue the Bond Insurance Policy in accordance with the Commitment, including without limitation, payment of the premium due in connection therewith and entering into any authorizing agreements. For purposes of this Section, the term “lowest acceptable premium bid” means the lowest bid submitted which is not conditioned upon the Town’s compliance with conditions deemed unacceptable by the Sale Delegate, and the term “lowest acceptable bidder” means the bidder submitting the lowest acceptable premium bid.

Section 22. Amendment of Ordinance.

(a) *Amendments Permitted Without Notice to or Consent of Owners.* The Town may, without the consent of or notice to the Owners of the Bonds, adopt one or more ordinances amending or supplementing this Ordinance, which ordinances shall thereafter become a part hereof, for any one or more or all of the following purposes:

- (i) to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision of this Ordinance;
- (ii) to subject to this Ordinance additional revenues, properties or collateral;
- (iii) to facilitate the designation of a substitute securities depository or to terminate the book-entry registration system for the Bonds;
- (iv) to facilitate the issuance of Parity Lien Obligations; and
- (v) to make any other change that does not materially adversely affect the Owners of the Bonds.

(b) ***Amendments Requiring Notice to and Consent of Owners.*** Except for amendments permitted by paragraph (a) of this Section, this Ordinance may only be amended (i) by an ordinance of the Town amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof); and (ii) with the written consent of the Owners of at least 66-2/3% in aggregate principal amount of the Bonds then outstanding; provided that any amendment that makes any of the following changes with respect to any Bond shall not be effective without the written consent of the Owner of such bond: (A) a change in the maturity of such bond; (B) a reduction of the interest rate on such bond; (C) a change in the terms of redemption of such bond; (D) a delay in the payment of principal of, premium, if any, or interest on such bond; (E) the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is superior to the pledge and lien for the payment of such bond hereunder; (F) a relaxation of the conditions to the issuance of Parity Lien Obligations or to the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is equal to or on a parity with the pledge and lien for the payment of such bond hereunder; (G) a reduction of the principal amount or percentage of Bonds whose consent is required for an amendment to this Ordinance; or (H) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such bond.

(c) ***Bond Insurance.*** Notwithstanding the foregoing, the Bond Insurer's consent shall be required in addition to the consent of Owners, when required, for the following purposes: (i) execution and delivery of any supplemental Ordinance or any amendment, supplement or change to or modification of this Ordinance; (ii) removal of the Paying Agent and selection and appointment of a successor; and (iii) initiation or approval of any action not described in (i) or (ii) above which requires the consent of Owners.

(d) ***Procedure for Notifying and Obtaining Consent of Owners.*** Whenever the consent of an Owner or Owners of Bonds is required under the preceding paragraph (b) of this Section, the Town shall mail a notice to such Owner or Owners at their addresses as set forth in the registration books maintained by the Paying Agent or by electronic means to DTC or its successors and to the Underwriter, which notice shall briefly describe the proposed amendment and state that a copy of the amendment is on file in the office of the Town Clerk for inspection. Any consent of any Owner of any Bond obtained with respect to an amendment shall be in writing and shall be final and not subject to withdrawal, rescission or modification for a period of sixty days after it is delivered to the Town unless another time period is stated for such purpose in the notice mailed pursuant to this paragraph.

Section 23. Findings and Determinations; Limitation of Actions. The Council hereby finds, determines and declares that it is in the best interest of the Town and its residents that the Bonds be authorized, sold, issued and delivered at the time, in the manner and for the purposes provided herein. The Council elects to apply all of the provisions of the Supplemental Public Securities Act. In accordance with Section 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Bonds more than thirty days after the authorization of such securities.

Section 24. Appointment and Duties of Paying Agent. The Paying Agent is hereby appointed as paying agent, registrar and authenticating agent for the Bonds unless and until the Town removes it as such and appoints a successor Paying Agent, in which event such successor shall automatically succeed to the duties of the Paying Agent hereunder and its predecessor shall immediately turn over all its records regarding the Bonds to such successor. The Paying Agent, by accepting its duties as such, agrees to perform all duties and to take all actions assigned to it hereunder in accordance with the terms hereof. The appointment and acceptance of the duties of Paying Agent hereunder may be affected through the execution of an agreement between the Town and the Paying Agent.

Section 25. Approval of Miscellaneous Documents. The Mayor, the Town Clerk, the Sale Delegate and all other officers of the Town are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the Bonds and the transactions contemplated hereby including, but not limited to, the execution of the Bond Purchase Agreement, the Paying Agent and Registrar Agreement, the Commitment, the and the Continuing Disclosure Undertaking in substantially the forms presented to this meeting of the Council, as well as the Commitment, the standard form of repayment agreement required by the Bond Insurer in connection with the issuance of the Reserve Surety Bond and such certificates and affidavits as may be reasonably required in connection with the issuance of the Bonds. The execution by any member of the Council of any document authorized herein shall be conclusive proof of the approval by the Town of the terms thereof.

Section 26. Official Statement. The Preliminary Official Statement is hereby authorized and approved. The Preliminary Official Statement is hereby deemed by the Council to be final as of its date within the meaning of Rule 15c2-12(b)(1) of the U.S. Securities and Exchange Commission. The Council hereby authorizes the preparation and distribution of a final Official Statement in conjunction with an offer of the Bonds to the public. The Official Statement shall contain such corrections and additional or updated information so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Mayor is hereby authorized to execute copies of the Preliminary Official Statement and the Official Statement on behalf of the Town.

Section 27. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or by the officers and employees of the Town directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 28. Events Occurring on Days That Are Not Business Days. Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this section, is to be made or is to occur on a day that is not a Business Day shall instead be made or occur on the next succeeding day that is a Business Day.

Section 29. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 30. Ordinance Irrepealable. After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the Town, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 31. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 32. Repealer. All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 33. Publication, Effective Date; Recording. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Charter. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado this 1 day of July, 2024.

ATTEST:



TOWN OF JOHNSTOWN


Hannah Hill, Town Clerk


Michael P. Duncan, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado this _____ day of _____, 2024.

ATTEST:

TOWN OF JOHNSTOWN

Hannah Hill, Town Clerk

Michael P. Duncan, Mayor

APPENDIX A

FORM OF THE BOND

**UNITED STATES OF AMERICA
STATE OF COLORADO**

No. R- _____

\$ _____

**TOWN OF JOHNSTOWN, COLORADO
ACTING BY AND THROUGH ITS WATER UTILITY ENTERPRISE
WATER REVENUE BOND
SERIES 2024**

Interest Rate:	Maturity Date:	Dated Date:	CUSIP:
%	_____	_____, 2024	_____

REGISTERED OWNER: Cede & Co.
Tax Identification Number: 13-2555119

PRINCIPAL SUM: _____ DOLLARS

TOWN OF JOHNSTOWN, COLORADO, in the State of Colorado, a duly organized and validly existing Town and political subdivision of the State of Colorado, acting by and through its Water Utility Enterprise (the "Town"), for value received, hereby promises to pay to the order of the registered owner named above or registered assigns, solely from the special funds as hereinafter set forth, on the maturity date stated above, the principal sum stated above, in lawful money of the United States of America, with interest thereon from the Dated Date stated above, at the interest rate per annum stated above, payable on June 1 and December 1 of each year, commencing December 1, 2024, the final installment of the principal of and interest on this bond being payable to the registered owner hereof upon presentation and surrender of this bond at UMB Bank, n.a., as Paying Agent (the "Paying Agent"), at such location as identified by the Paying Agent. Prior to the final installment of principal and interest on this bond, this bond is payable by check or draft of the Paying Agent mailed on the Principal Payment Date or the Interest Payment Date to the Owner thereof as of the Record Date to the registered owner hereof as of the close of business on the fifteenth day of the month (whether or not such day is a Business Day) preceding the interest payment date.

This bond is one of an issue of bonds of the Town designated Water Revenue Bonds, Series 2024, issued in the principal amount of \$_____ (the "Bonds"). The Bonds are being issued by the Town for the purpose of financing certain water improvements, pursuant to and in full conformity with the Constitution and laws of the State of Colorado and an ordinance (the "Ordinance") duly adopted by the Town prior to the issuance hereof.

[The redemption provisions provided in the Ordinance shall be set forth in this place.]

The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of the Bonds shall be recorded. The person in whose name this bond shall be registered on such registration books shall be deemed to be the absolute owner hereof for all purposes, whether or not payment on this bond shall be overdue, and neither the Town nor the Paying Agent shall be affected by any notice or other information to the contrary. This bond may be transferred or exchanged, at the principal operations office of the Paying Agent or at such other location as identified by the Paying Agent, for a like aggregate principal amount of the Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith.

The Town pledges for the payment of the principal of, premium, if any, and interest on the Bonds at any time outstanding, and grants an irrevocable and first lien for such purpose on Net Revenues and on all moneys on deposit in the Reserve Account; provided however, the first lien on Net Revenues is not exclusive if Parity Lien Obligations are issued.

This bond is issued pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Bond is issued pursuant to the Charter, Title 37, Article 45.1, C.R.S. and Title 11, Article 57, Part 2, C.R.S. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and this Bond issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value. This bond, including the interest hereon, is payable solely from and secured solely by the special funds provided in the Ordinance and shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory limitation, nor shall this bond be considered or held to be a general obligation of the Town.

THE ORDINANCE CONSTITUTES THE CONTRACT BETWEEN THE REGISTERED OWNER OF THIS BOND AND THE TOWN. THIS BOND IS ONLY EVIDENCE OF SUCH CONTRACT AND, AS SUCH, IS SUBJECT IN ALL RESPECTS TO THE TERMS OF THE ORDINANCE, WHICH SUPERSEDES ANY INCONSISTENT STATEMENT IN THIS BOND.

The Town agrees with the owner of this bond and with each and every person who may become the owner hereof, that it will keep and perform all the covenants and agreements contained in the Ordinance.

The Ordinance may be amended or supplemented from time to time with or without the consent of the registered owners of the Bonds as provided in the Ordinance.

It is hereby certified that all conditions, acts and things required by the Constitution and laws of the State of Colorado, and the ordinances of the Town, to exist, to happen and to be performed, precedent to and in the issuance of this bond, exist, have happened and have been performed, and that the Bonds do not exceed any limitations prescribed by said Constitution or laws of the State of Colorado, or the ordinances of the Town.

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

IN WITNESS WHEREOF, Town of Johnstown, Colorado, acting by and through its Water Utility Enterprise, has caused this bond to be signed in the name and on behalf of the Town with the manual or facsimile signature of the Mayor, to be sealed with the seal of the Town or a facsimile thereof and to be attested by the manual or facsimile signature of the Town Clerk.

TOWN OF JOHNSTOWN, COLORADO

By [Manual or Facsimile Signature]
Mayor

Attest:

By [Manual or Facsimile Signature]
Town Clerk

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within mentioned Ordinance.

Date of Authentication: _____.

UMB Bank, n.a., as Paying Agent

By _____
Authorized Representative

[STATEMENT OF INSURANCE]

[If the Sale Certificate provides for the purchase of a Bond Insurance Policy, the related Statement of Insurance required by the Commitment shall be set forth herein.]

CERTIFICATE OF TRANSFER

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

Dated: _____

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

Signature Guaranteed:

NOTICE: Signature must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

Transfer Fee May Be Required

PAYING AGENT AND REGISTRAR AGREEMENT

In consideration of the mutual promises and covenants and subject to the terms, conditions, and covenants hereinafter recited, **THE TOWN OF JOHNSTOWN, COLORADO**, acting by and through its Water Utility Enterprise (the “Town”), hereby appoints **UMB BANK, N.A.**, Denver, Colorado (the “Bank”), and the Bank accepts such appointment, as Paying Agent (the “Paying Agent”) for the Town’s Water Revenue Bonds, Series 2024, issued in the aggregate principal amount of \$[_____] and dated [_____] 2024 (the “Bonds”). The Town also appoints the Bank, and the Bank accepts such appointment, as the authenticating registrar (the “Registrar”) for the Bonds.

Section 1. The Bank hereby accepts all duties and responsibilities required or permitted to be performed by the Registrar and/or Paying Agent as provided in the ordinance authorizing the issuance of the Bonds (the “Ordinance”), adopted by the Town Council of the Town (the “Council”), acting in such capacity and as the governing Board of the Town’s Water Utility Enterprise, and shall be subject to the provisions and limitations thereof. Such Ordinance is incorporated herein by reference and capitalized terms used but not otherwise defined herein shall have the respective meanings provided in the Ordinance.

Section 2. The Bank understands and acknowledges that, by reason of the execution hereof, it has assumed a role of agent with respect to the disbursements of funds received from the Town for the purpose of paying the principal of and interest due on the Bonds. The Bank shall receive and disburse such funds solely in accordance with the terms and provisions hereof, and shall remit to the Town the funds not necessary for the purpose of making the aforesaid payments on the Bonds after any particular Due Date, as defined in Section 5 hereof.

Section 3. The Bank shall establish the registration books for the Bonds and thereafter maintain such books in accordance with the provisions of the Ordinance. The Town shall be permitted to review the registration books at any time during the regular business hours of the Bank and, upon written request to the Bank, shall be provided a copy of the list of registered owners of the Bonds. Upon expiration or other termination of this Agreement, in the event that the Bonds are no longer held in book-entry form, the Bank shall promptly return such registration books to the Town.

Section 4. The Bank shall establish a “Cost of Issuance” account to pay costs of issuance associated with the issuance of the Bonds. Funds shall be disbursed by the Bank from the Costs of Issuance account upon written direction from the Town in accordance with the closing memorandum prepared by the Underwriter, which shall summarize the approved costs. The Bank may rely conclusively on any such direction and shall not be required to make any independent investigation in connection therewith. Any amounts remaining in such account within 60 days of the date of this Agreement shall be transferred to the Town (to be deposited by the Town into the Bond Account pursuant to the Ordinance) at its written direction.

Section 5. The Bank shall make payments of principal and interest on the Bonds on each date established for payment thereof (each, a “Due Date”). Prior to a Due Date, the Town shall furnish funds to the Bank in amounts sufficient to pay all amounts due. Such funds shall be used by the Bank solely for the purpose of paying the principal of and interest on the Bonds in

accordance with their terms and the provisions of the Ordinance and the Sale Certificate. The Bank shall have no duty to make any payments prior to any Due Date or until funds necessary to cover all payments due on the Due Date have been deposited with it. The Bank shall not be required to advance its own funds for any payments in connection with the Bonds. The Bank shall not be required to invest or to pay interest on any funds of the Town for any period during which such funds are held by the Bank awaiting the presentation of the Bonds for payment.

Section 6. The Bank shall be entitled to payments from the Town of its fees and reasonable expenses for acting as Paying Agent and Registrar in accordance with the fee schedule attached hereto as Exhibit A, and such fees and expenses shall be paid notwithstanding that the Bonds have been refunded or otherwise refinanced at the time the payment is due. To the extent the Bank is requested or required to perform services not contemplated by this Agreement, the Town shall pay additional compensation to or reimburse the Bank for its reasonable out-of-pocket and extraordinary expenses (including reasonable legal fees and expenses), disbursements and advances incurred or made by the Bank in the performance of its duties under this Agreement.

Section 7. Within one year after the final maturity date of the Bonds, the Bank shall present a final statement and shall return any unclaimed funds to the Town. All cancelled Bonds and blank, unused certificates retained by the Bank shall be cancelled in accordance with the customary practices of the Paying Agent and applicable retention laws. In the event that the Bonds are no longer held in book-entry form, the final statement shall include a list of any unpaid Bonds and any outstanding or unclaimed interest checks.

Section 8. The Bank may resign at any time by giving prior written notice of such resignation to the Town at its last known address, and thereupon such duties as Paying Agent shall cease not sooner than 30 days following the Town's receipt of such notice. The Town shall appoint a successor agent and, upon such successor appointment, the Paying Agent shall deliver to the successor agent all its funds, documents, files and records relating to the Bonds. If a successor agent is not appointed within 90 days, the Bank may petition a court of competent jurisdiction to appoint a successor agent. The successor agent shall notify the registered owners of the Bonds of any change in agents as soon as the successor agent is appointed.

Section 9. This Agreement shall terminate upon delivery of the final statement described in Section 7 hereof or upon removal of the Paying Agent as provided in the Ordinance.

Section 10. The terms and conditions of this Agreement may be amended only by written agreement between the Town and the Bank adopted in the same manner as this Agreement. The Town shall file with the Bank certified copies of all future amendments to the Ordinance or other documents pertaining to the Bonds after the date of this Agreement.

Section 11. Any company or national banking association into which the Bank may be merged or converted or with which it may be consolidated or any company or national banking association resulting from any merger, conversion or consolidation to which it shall be a party or any company or national banking association to which the Bank may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible, shall be successor to such Bank without the execution of filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 12. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

Section 13. This Agreement shall be governed by the internal laws of the State of Colorado without regard to its choice of law analysis. Both parties hereto (i) agree that any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted exclusively in the District Court, City and County of Denver, Colorado; (ii) waive any objection to the venue of any such suit, action or proceeding and the right to assert that such forum is not a convenient forum; and (iii) irrevocably consent to the jurisdiction of the District Court, City and County of Denver, Colorado in any such suit, action or proceeding.

Section 14. Any notice or other communication to be given to the Town or the Bank under this Agreement may be given by delivering the same in writing, either electronically, by facsimile or by mail, postage prepaid, to the following:

To the Bank:

UMB Bank, n.a.
1670 Broadway
Denver, CO 80202
Attention: Corporate Trust and Escrow Services
Telephone: 303.839.2216
Facsimile: 303.764.3699
Email: Sarah.Radomicki@umb.com

To the Town:

Town of Johnstown, Colorado
450 S. Parish Ave.
Johnstown, Colorado 80534
Attention: Town Manager
Telephone: 970.587.4664
Email: notices@johnstownco.gov

Section 15. This Agreement shall be dated as of the date of the Bonds set forth above.

Section 16. The Bank shall not be under any obligation to prosecute or defend any action or suit in connection with its duties under this Agreement or in respect of the Bonds, which, in its opinion, may involve it in expense or liability, unless satisfactory security and indemnity is furnished to the Bank (except as may result from the Bank's own negligence or willful misconduct). The Town represents that it is prohibited by the Colorado Constitution, the Johnstown Home Rule Charter, the Johnstown Municipal Code and state law from entering into indemnification obligations without appropriations in its budget which it has not made for this Agreement. Accordingly, only to the extent permitted by law, the Town agrees to indemnify the Bank, its directors, officers, employees and agents for, and to hold each of them harmless against, any loss, liability or expense, incurred without negligence, bad faith or willful misconduct arising

out of or in connection with its or their performance of their duties under this Agreement, as well as the reasonable costs and expenses of defending against any claim or liability relating thereto. This indemnity shall survive payment of all of the Bonds and, if applicable, the resignation or removal of the Bank. The Bank shall not be liable for any loss or damage, including reasonable counsel fees and expenses, resulting from its actions or omissions to act hereunder, except for any loss or damage arising out of its own negligence or willful misconduct. The Bank may consult with counsel, and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection with respect to any action taken, suffered, or omitted by it hereunder in good faith and in reliance thereon.

Section 17. The Bank may pay at maturity or redemption or issue new certificates to replace certificates represented to the Bank to have been lost, destroyed, stolen or otherwise wrongfully taken, but may first require the registered owner to pay a replacement fee, to furnish an affidavit of loss, and/or furnish either an indemnity bond or other indemnification satisfactory to the Bank indemnifying the Bank.

Section 18. In order to comply with provisions of the USA PATRIOT Act of 2001, or the Foreign Account and Tax Compliance Act, either as amended from time to time, the Bank may request certain information and/or documentation to verify confirm and record identification of persons or entities who are parties to this Agreement.

[Remainder of page left intentionally blank]

[SEAL]

TOWN OF JOHNSTOWN, COLORADO, acting
by and through its Water Utility Enterprise

By _____
Mayor

Attest:

By _____
Town Clerk

UMB BANK, N.A., as Paying Agent

By _____
Authorized Officer

[Signature Page to Paying Agent and Registrar Agreement]

EXHIBIT A
to
PAYING AGENT AND REGISTRAR AGREEMENT
(Attach Bank Fee Schedule)