



WESTMINSTER

COLORADO

CITY COUNCIL MEETING

JULY 08, 2024 at 7:00 PM

- B. Action Items Authorizing Debt Financing of the Drinking Water Facility Project Including: First Reading of Councillor's Bill No. 22 Authorizing the Issuance of Tax-Exempt Utility Enterprise Revenue Bonds, Authorization of Bond Counsel, and Adoption of Resolution No. 14 Permitting Reimbursement from the Proceeds of the Tax-Exempt Utility Bonds



Agenda Memorandum

Agenda Item – 10.B.

City Council Meeting
July 8, 2024

Strategic Priority 3: Community Health and Safety

Invest in innovative and collaborative approaches to provide a continuum of services that preserve, promote, and protect the health, safety, and environment of Westminster

Strategic Priority 5: Resilient Infrastructure

Maintain and invest in resilient infrastructure that creates the highest return for safety, community connectivity, enjoyment of life, and local economic success

Subject: Action Items Authorizing Debt Financing of the Drinking Water Facility Project Including: First Reading of Councillor's Bill No. 22 Authorizing the Issuance of Tax-Exempt Utility Enterprise Revenue Bonds, Authorization of Bond Counsel, and Adoption of Resolution No. 14 Permitting Reimbursement from the Proceeds of the Tax-Exempt Utility Bonds

Prepared By: Larry Dorr, Deputy City Manager & CFO
David Frankel, City Attorney

Recommended City Council Action:

1. Pass Councillor's Bill No. 22, on the first reading, authorizing the issuance of tax-exempt Utility Enterprise Revenue Bonds, Series 2024 in a par amount not to exceed \$210 million for the construction of a new Drinking Water Facility, and related Bond Cost of Issuance expenses.
2. Authorize the City Manager to execute an agreement for bond counsel services with Butler Snow, LLP for a fee not to exceed \$50,000 and with Kutak Rock, LLP for a fee not to exceed \$55,000 in connection with the anticipated issuance of tax-exempt Utility Enterprise Revenue Bonds.
3. Adopt Resolution No. 14 permitting reimbursement for costs incurred for capital expenses from the proceeds of the tax-exempt Utility Enterprise Revenue Bonds, Series 2024.

Summary Statement:

- On June 17, 2024, City Council gave Staff direction to pursue tax-exempt Utility Enterprise

Revenue Bonds (Bonds) for the construction of a new Water Treatment Facility (Project.)

- To legally issue the Bonds, City Council needs to approve a Bond Ordinance, authorizing the issuance of Utility Enterprise Revenue Bonds within certain parameters, not to exceed certain terms and interest rates and approve special legal counsel agreements in accordance with City Charter requirements.
- Federal law permits a municipal government to approve a resolution, which allows the City to finance capital projects from existing financial resources and reimburse itself from debt proceeds or other financing issues in the future. The reimbursement resolution permits reimbursement of all hard costs such as actual materials, construction costs, and land purchases incurred up to 60 days prior to the approval of the reimbursement resolution. Additionally, qualified preliminary expenditures (soft dollar expenses, such as design costs, in the amount not to exceed 20 percent of the issue price of the bond issue) with respect to a specific project may be reimbursed outside of the 60-day requirement.

Fiscal Impact:

Not to exceed \$210 million in par value

Source of Funds:

Utility Enterprise Revenue Bonds proceeds

Policy Issue(s):

Should the City issue Utility Enterprise Revenue Bonds, Series 2024 in the par amount not to exceed \$210 million to finance a New Water Treatment Facility and pay for bond issuance costs?

Should the City authorize special external legal counsel to ensure revenue bonds comply with all local, state and federal laws?

Should the City authorize the ability to reimburse the City for Project incurred costs ahead of debt financing?

Alternative(s):

1. City Council could direct Staff not to pursue Utility Enterprise Revenue Bonds and pay for the improvements with pay-as-you-go funds, This alternative is not viable. Without additional financing, the City does not have the available funds to pay for the project.
2. City Council could direct Staff to amend the Bond Ordinance to a lower par amount. This is not recommended as the total funding amount requested provides the City with the funding source to complete components of the Project. The current par amount will facilitate the ozone treatment technology to ensure purified and tasteful water in the event of a wildfire that pollutes the City's main water source.
3. City Council could not pass the reimbursement resolution. This action is not recommended as time sensitive purchases would have to be delayed, or without the reimbursement resolution, the City would not be able to recover the cost paid prior to the issuance of the Utility Enterprise Revenue Bonds. Federal law requires that a reimbursement resolution be adopted in order for

a municipality to pre-pay qualifying costs, such as design costs, and subsequently reimburse itself from financing proceeds.

Background Information:

Bond Ordinance

On April 24, 2023, City Council approved the design and construction management contracts for a new Water Treatment Facility on Westminster Boulevard. In the year that followed, Staff explored financing options for building a new Water Treatment Facility, while weighing overall cost, financial flexibility, timing, and other factors. On April 1, 2024, Staff presented those options to City Council, and City Council directed Staff to pursue the issuance of Utility Enterprise Revenue Bonds for construction of a new Water Treatment Facility.

On June 17, 2024, Staff presented estimated revenue bond terms and interest rate options to City Council. The City Council directed Staff to pursue the 30-Year financing plan to fund the project with a combination of bonds and cash accumulated in the Utility for capital projects. As presented on June 17, 2024 the estimated remaining cost of building a new Water Treatment Facility is \$240 million. Of the \$240M in total cost, \$50 million is necessary for the installation of raw and finished water lines, and \$190M for the treatment facility. The estimated 30-Year financing plan was presented as below:

Repayment Term	Interest Rate	Payment	Bond Amount	Water Rate Increase
20 Years	4.000%	\$13,900,000	\$190M	7.50%
30 Years	4.500%	\$11,600,000	\$190M	4.50%
40 Years	4.750%	\$10,660,000	\$190M	2.50%

The estimated remaining cost of the project as presented to City Council on June 17, 2024 is \$240 million, which excludes the cost to build the facility with the ozone pollution treatment technology. This added technology is estimated to cost an additional \$20 million. City Council directed Staff on June 17, 2024 to explore the possibility of increasing the borrowed funds from \$190M to \$210M so as to equip the facility with ozone pollution treatment technology. A revised 30-Year financing plan is detailed in the grid below, and reflected in the ordinance authorizing revenue bonds.

Repayment Term	Interest Rate	Payment	Bond Amount	Water Rate Increase
20 Years	4.250%	\$15,700,000	\$210M	
30 Years	4.750%	\$13,300,000	\$210M	4.50%
40 Years	5.000%	\$12,200,000	\$210M	

After careful analysis, and if interest rates remain within parameters, a par amount not to exceed \$210 million is feasible with the Utility's very strong credit ratings, and within the current and anticipated interest rate structures. The parameters set forth in the Bond Ordinance will give some flexibility to manage changes in market conditions, and as above should interest rates increase from current levels in the market.

External Legal Counsel

As with all public, tax-exempt financings, this financing requires the expertise of nationally recognized law firms regarding certain tax-related matters, general bond counsel and financial disclosure. Kim Crawford of the law firm Butler Snow, LLP has served as the City's Bond Counsel on numerous other issues and is thoroughly familiar with the City's Charter, ordinances, and outstanding bond covenants. Additionally, the City must complete certain debt issuing documents related to the financing, which requires special legal services to prepare and disseminate. Continuing Disclosure counsel ensures the City complies with the regulatory requirements to release to prospective investors in the Preliminary and Final Official Statements, which details the Project, the City's profile, and financial information providing investors critical information. Federal securities law requires the City to issue an Official Statement in connection with this financing. Tom Peltz of Kutak Rock, LLP is a recognized expert in disclosure matters under federal securities law. Kutak Rock, LLP has acted in this capacity on numerous other bond issues and financings for Westminster, and is familiar with the City's financial position, the general economic condition of the City, and other material facts related to the City's preparation of a satisfactory Official Statement in connection with this financing.

The fees quoted by Butler Snow and Kutak Rock are reasonable and in line with past financings. The familiarity of both firms with the City and its financial and legal documents is critical to a successful debt issuance. The efficiencies in retaining Butler Snow and Kutak Rock as the City's bond counsel and disclosure counsel are significant and will help assure an expeditious closing of the tax-exempt financing with reasonable costs.

Reimbursement Resolution

The City has utilized reimbursement resolutions previously when project expenditures are anticipated ahead of debt issuance. The more recent reimbursement resolutions passed were related to the issuance of the 2019 Utility Enterprise Revenue Bonds and the 2023 Certificates of Participation for the Replacement of the Municipal Court. Reimbursement resolutions are an important tool allowing for the flexible use of City funds to commence capital projects, which are subsequently reimbursed with the financing proceeds.

Current law mandates the following provisions must be included by a municipality to properly pass a Reimbursement Resolution:

- An announcement and acknowledgment that the municipality will reimburse itself from proceeds for costs pre-funded through other means, in this case through the City's Utility Enterprise Fund.
- An announcement and acknowledgment of the municipality's expectation to issue debt financing.

Qualified preliminary expenditures are defined as architectural, engineering, surveying, soil testing, and similar costs that are incurred prior to commencement of the acquisition, construction, or rehabilitation of a project and acquisition, site preparation, and similar costs incident to commencement of construction.

Financing the construction of a new Water Treatment Facility meets the Strategic Priority of Resilient Infrastructure by making a long-term investment in a facility that will provide a core service to the community for decades to come. It meets Strategic Priority of Community Health and Safety by constructing a facility that will protect the health of the residents by providing safe, clean, reliable drinking water.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mark A Freitag". The ink is dark and the signature is fluid.

Mark A. Freitag
City Manager

Attachments:

Councillor's Bill No. 22

Butler Snow Legal Services Contract

Kutak Rock Legal Services Contract

Resolution No. 14

BY AUTHORITY

ORDINANCE NO. **4256**

COUNCILLOR'S BILL NO. **22**

SERIES OF 2024

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF WESTMINSTER,
COLORADO, WATER AND WASTEWATER UTILITY ENTERPRISE, WATER AND
WASTEWATER REVENUE BONDS, SERIES 2024

THE CITY OF WESTMINSTER, COLORADO, WATER AND WASTEWATER UTILITY
ENTERPRISE ORDAINS:

Section 1. Definitions and Construction.

(A) DEFINITIONS: In this Ordinance the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Acquisition Fund shall mean the Water and Wastewater Utilities Enterprise, Water and Wastewater Revenue Bonds, Series 2024 Bonds Acquisition Fund.

Beneficial Owners shall mean those Persons having beneficial ownership interests the Bonds and registered in the name of the Securities Depository or a nominee therefor.

Bond Purchase Agreement shall mean the Bond Purchase Agreement concerning the purchase of the Bonds, between the Enterprise and the Purchaser.

Bonds shall mean the City's Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2024".

Business Day shall mean a day on which banks located in Denver, Colorado, and the cities in which are located the Principal Operations Office of each of the Paying Agent and the Registrar are not required or authorized to be closed and on which the New York Stock Exchange is not closed.

Capital Improvements shall mean the acquisition of land, water rights, easements, facilities, and equipment (other than ordinary repairs and replacements), and those property improvements or any combination of property improvements which will constitute enlargements, extensions or betterments to the System and will be incorporated into the System.

Charter shall mean the home rule Charter of the City as amended, to the date of delivery of the Bonds.

City shall mean the City of Westminster, Colorado.

Combined Maximum Annual Debt Service Requirements shall mean the largest sum of principal and interest due in any Fiscal Year on all issues of Securities for which the computation is being made for the period beginning with the Fiscal Year in which such computation is made and ending with the Fiscal Year in which any such Security last becomes due.

Commercial Bank shall mean a state or national bank or trust company in good standing located in or incorporated under the laws of any state of the United States of America which is subject to examination by federal or state authorities, which is a member of the Federal Deposit Insurance Corporation and of the Federal Reserve System and which has capital and surplus of \$75,000,000.

Continuing Disclosure Certificate shall mean the undertaking executed by officers of the Enterprise simultaneous with the delivery of the Bonds which enables the Purchaser to comply with the Rule.

Cost of the Project shall mean all costs, as designated by the Enterprise, of the Project, or any interest therein, which cost, at the option of the Enterprise (except as may be otherwise limited by law) may include all, any one or other portion of the incidental costs pertaining to the Project, including, without limitation:

(1) All preliminary expenses or other costs advanced by the Enterprise or advanced by the Federal Government, the State or by any other Person from any source, with the approval of the Council, or any combination thereof, or otherwise;

(2) The costs of making surveys and tests, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(3) The costs of contingencies;

(4) The costs of premiums on any builders' risk insurance and performance bonds during the construction, installation and other acquisition of the Project, or a reasonably allocated share thereof;

(5) The costs of appraising, printing, estimates, advice, inspection, other services of engineers, architects, accountants, financial consultants, attorneys at law, clerical help and other agents and employees;

(6) The costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the Project and the issuance of the Bonds;

(7) All costs and expenses of issuing the Bonds including, without limitation, fees of the Paying Agent, bond counsel, counsel to the Purchaser, counsel to the Enterprise, financial advisor, rating agencies and printers to the extent not defrayed as an Operation and Maintenance Expense;

(8) The costs of the filing or recording of instruments and the cost of any title insurance premiums;

(9) The costs of funding any construction loans and other temporary loans pertaining to the Project and of the incidental expenses incurred in connection with such loans;

(10) The costs of demolishing, removing, or relocating any buildings, structures, or other facilities on land acquired for the Project, and of acquiring lands to which such buildings, structures or other facilities may be moved or relocated;

(11) The costs of machinery and equipment;

(12) The costs of any properties, rights, easements or other interests in properties, or any licenses, privileges, agreements and franchises;

(13) The costs of labor, material and obligations incurred to contractors, builders and materialmen in connection with the acquisition and construction of the Project;

(14) The costs of amending any resolution or other instrument pertaining to the Bonds or otherwise to the System; and

(15) All other expenses pertaining to the Project.

Council shall mean the City Council of the City, acting as the governing body of the Enterprise.

C.R.S. shall mean the Colorado Revised Statutes, as amended to the date of delivery of the Bonds.

Debt Service Requirements shall mean the principal of, interest on, and any premium due in connection with the Bonds, the Parity Securities, or the Subordinate Securities, as the context so requires, heretofore or hereafter issued, if any, or such part of such Securities as may be designated.

Enterprise shall mean the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, which consists of the City's Water Facilities, Wastewater Facilities, and Stormwater Facilities.

Enterprise Ordinance shall mean Ordinance No. 2264, Series of 1994, of the City, as amended by Ordinance No. 3758, Series of 2014, authorizing the Enterprise to have and exercise certain powers in furtherance of its purposes.

Event of Default shall mean one of the events described in Section 10.A hereof.

Federal Securities shall mean bills, certificates of indebtedness, notes, or bonds which are direct obligations of the United States of America or are obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

Fiscal Year shall mean the twelve (12) months commencing on the first day of January of any calendar year and ending on the last day of December of such calendar year or such other twelve-month period as may from time to time be designated by the Council as the Fiscal Year of the Enterprise.

Income shall mean all income from (i) rates, fees, tolls, and charges and tap fees, or any combination thereof, but not special assessments, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from the System, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies; and (ii) all income or other gain, if any, from any investment of Pledged Revenues and of the proceeds of Securities (except income or other gain from any investment of moneys held in an escrow fund for the defeasance of Securities or any other similar fund) to the extent not required to be rebated to the federal government; but excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of Capital Improvements, 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.

Independent Auditor shall mean any certified public accountant, or any firm of such accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Enterprise or the City, who (a) is, in fact, independent and not under the domination of the City or the Enterprise, (b) does not have any substantial interest, direct or indirect, in any of the affairs of the Enterprise or the City, and (c) is not connected with the Enterprise or the City as a member, officer or employee, but who may be regularly retained to make annual or similar audits of any books or records of the Enterprise or the City.

Letter of Representations shall mean the Blanket Issuer Letter of Representations from the Enterprise to the Securities Depository.

Manager shall mean the City Manager of the City, acting as the Manager of the Enterprise.

Operation and Maintenance Expenses shall mean such reasonable and necessary current expenses of the City, paid or accrued, of operating, maintaining and repairing the System as may be determined by the City, including, except as limited by contract or otherwise limited by law, without limiting the generality of the foregoing:

(1) Engineering, auditing, legal and other overhead expenses directly related and reasonably allocable to the administration, operation and maintenance of the System;

- (2) Fidelity bond and insurance premiums appertaining to public officials or the System;
- (3) The reasonable charges of any paying agent, registrar, or depository appertaining to any Outstanding Securities;
- (4) Annual payments to pension, retirement, health and hospitalization funds appertaining to the System;
- (5) Any taxes, assessments, franchise fees or other charges or payments in lieu of the foregoing;
- (6) Ordinary and current rentals of equipment or other property;
- (7) Contractual services, professional services, salaries, administrative expenses, and costs of labor appertaining to the System, the cost of water purchased for delivery through the System, and the cost of materials and supplies used for current operation of the System;
- (8) The costs incurred in the billing and collection of all or any part of the Pledged Revenues;
- (9) Any costs of utility services furnished to the System by the City or otherwise.

Operation and Maintenance Expenses does not include:

- (1) Any allowance for depreciation;
- (2) Any costs of reconstruction, improvement, extension, or betterment;
- (3) Any accumulation of reserves for capital replacements;
- (4) Any reserves for operation, maintenance, or repair of the System;
- (5) Any allowance for the redemption of any Securities or the payment of any interest thereon;
- (6) Any liabilities incurred in the acquisition of any Water Facilities or Wastewater Facilities;
- (7) Any other ground of legal liability not based on contract.

Operation and Maintenance Fund shall mean the expense accounts within the Water and Wastewater Utility Fund used by the City for the payment of Operation and Maintenance Expenses referred to in Section 5.C hereof.

Ordinance shall mean this Ordinance of the Enterprise authorizing the issuance of the Bonds and subject to the parameters set forth herein and confirmed in the Sale Certificate.

Outstanding shall mean as of any particular date, all Bonds, the Parity Bonds or any other Securities which have been authorized, executed and delivered except the following:

- (1) Any Bond, Parity Bonds, or other such Security cancelled by the Enterprise, by the Paying Agent or otherwise on behalf of the Enterprise on or before such date, except any Bond described in the last paragraph of Section 9 hereof;
- (2) Any Bond, the Parity Bonds, or other such Security held by or on behalf of the Enterprise or the City;

(3) Any Bond, Parity Bond or other such Security for the payment or the redemption of which moneys or Federal Securities sufficient (including the known minimum yield available for such purpose from Federal Securities in which such amount wholly or in part may be initially invested) to pay all of the Debt Service Requirements of such Bond, Parity Bond or other such Security to the maturity date or specified Redemption Date thereof shall have theretofore been deposited in escrow or in trust with a Trust Bank for that purpose; and

(4) Any lost, destroyed, or wrongfully taken Bond, Parity Bond, or other such Security in lieu of or in substitution for which another Bond, Parity Bond or other Security shall have been executed and delivered.

Owner shall mean the holder of any bearer instrument or registered owner of any registered instrument.

Parity Bonds shall mean the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and any Securities hereafter issued payable from and having an irrevocable lien upon the Pledged Revenues equally or on a parity with the Bonds.

Participants shall mean underwriters, securities brokers or dealers, banks, trust companies, closing corporations or other Persons for which or whom the Securities Depository holds the Bonds.

Paying Agent shall mean U.S. Bank Trust Company, National Association, Denver, Colorado, or its successors.

Paying Agent Agreement shall mean the Paying Agent and Registrar Agreement between the Enterprise and the Paying Agent executed and delivered concurrently with the Bonds.

Permitted Investments shall mean any obligations permitted by the ordinances of the City, the Charter, and, to the extent applicable, the laws of the State.

Person shall mean any individual, firm, partnership, corporation, company, association, joint stock association or body politic or any trustee, receiver, assignee or similar representative thereof.

Pledged Revenues shall mean all Income remaining after the deduction of Operation and Maintenance Expenses.

Preliminary Official Statement shall mean the Preliminary Official Statement prepared in connection with the sale and issuance of the Bonds issued pursuant to this Ordinance.

President shall mean the Mayor of the City, acting as the President of the Enterprise.

Principal and Interest Fund shall mean the special account within the Water and Wastewater Utility Fund designated by the City as the “Water and Wastewater Utilities Enterprise, Water and Wastewater Revenue Bonds, Series 2024 Debt Service Account,” and other similar accounts hereafter established for Parity Bonds created and referred to in Section 5.D hereof.

Principal Operations Office shall mean the principal operations office of the Registrar and Paying Agent as designated in writing to the Enterprise from time to time.

Project shall mean the land, facilities and rights constructed, installed, purchased and otherwise acquired for the System, the cost of which is to be defrayed with a portion of the proceeds of the Bonds and which constitutes Capital Improvements.

Purchaser shall mean the underwriter or underwriters as so named in the Sale Certificate.

Rebate Fund shall mean the special account or accounts within the Water and Wastewater Utility Fund designated as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds Series 2024, Rebate Fund” created and referred to in Section 5.F hereof.

Redemption Date shall mean the date fixed for the redemption prior to maturity of any Securities in any notice of prior redemption given by or on behalf of the Enterprise.

Registrar shall mean U.S. Bank Trust Company, National Association, Denver, Colorado, or its successors, for the Bonds.

Regular Record Date shall mean the fifteenth day of the calendar month next preceding an interest payment date for the Bonds, whether or not a Business Day.

Reserve Fund if required, shall mean the special accounts within the Water and Wastewater Utility Fund designated by the City as the “Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2024, Reserve Account,” created and referred to in Section 5.E hereof.

Reserve Fund Requirement shall mean, if a Reserve Fund is required, the amount set forth in the Sale Certificate with respect to the issuance of the Bonds.

Rule shall mean Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended (17 CFR Part 240, § 240.15c2-12).

Sale Certificate means the sale certificate of the City relating to the Bonds issued pursuant to the Supplemental Public Securities Act and described in Section 3.D hereof.

SEC shall mean the U.S. Securities and Exchange Commission.

Security or Securities shall mean any bond, warrant, note, loan agreement, multiple fiscal year financial obligation or evidence of borrowing payable from and secured by a lien on the Pledged Revenues.

Securities Depository shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York, with respect to the Bonds.

Special Record Date shall mean the date fixed by the Paying Agent for the determination of ownership of Bonds for the purpose of paying interest not paid when due or interest accruing after maturity.

State shall mean the State of Colorado.

Stormwater Facilities shall mean any one or more of the various devices used in the collection, treatment, or disposition of storm, flood or surface drainage waters, including all manmade structures or natural watercourses for the conveyance of runoff, such as: detention areas, berms, swales, improved watercourses, channels, bridges, gulches, wetland areas, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins and street facilities; all inlets; collection, drainage, or disposal lines; intercepting sewers; disposal plants; settling basins; outfall sewers; all pumping, power and other equipment and appurtenances; all extension, improvements, remodeling, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities. ***Revenues from the Stormwater Facilities are not pledged to the payment of the Bonds.***

Subordinate Securities shall mean Securities previously or hereafter issued having a lien on the Pledged Revenues subordinate or junior to the lien thereon of the Bonds. Currently, the Enterprise has outstanding its Subordinate Water and Wastewater Revenue Bonds, Series 2005. The Subordinate Securities are currently evidenced by a loan agreement with the Colorado Water Resources and Power Development Authority.

Supplemental Act shall mean the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

Surety Bond shall mean any surety bond, insurance policy, letter of credit or similar instrument or agreement guaranteeing certain payments into the Reserve Fund as provided therein and subject to the limitations set forth therein.

System shall mean the Water Facilities and the Wastewater Facilities of the City owned and operated by the City as a single utility system.

Tax Code shall mean the Internal Revenue Code of 1986, as amended to the date of delivery of the Bonds, and any regulations promulgated thereunder.

Tax Compliance Certificate shall mean the Tax Compliance and No Arbitrage Certificate executed by the Enterprise in connection with the initial issuance and delivery of the Bonds.

Term Bonds shall mean Bonds that are payable on or before their specified maturity dates from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity dates.

2016 Bonds shall mean the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2016.

2019 Bonds shall mean the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2019.

2020 CWRPDA Loan shall mean the loan from the CWRPDA pursuant to the terms of a Loan Agreement, which loan is evidenced by a governmental agency bond, dated as of May 1, 2020, and which payments coming due under the loan are on a parity with the 2016 Bonds, the 2019 Bonds, the 2020 Bonds and the Bonds.

2020 Bonds shall mean the City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Refunding Bonds, Series 2020.

Treasurer shall mean the Chief Financial Officer of the City, or his or her successor in functions, if any, acting as treasurer for the Enterprise.

Trust Bank shall mean a Commercial Bank which is authorized to exercise and is exercising trust powers.

Wastewater Facilities shall mean any one or more of the various devices used in the collection, treatment, or disposition of sewage and industrial wastes of a liquid nature, including, without limitation, all inlets; collection, drainage, or disposal lines; intercepting sewers; wastewater disposal plants; outfall sewers; sewage lagoons; all pumping, power, and other equipment and appurtenances; all extensions, improvements, remodeling, additions and alterations thereof; any and all rights or interests for such wastewater facilities; and all other necessary, incidental, or appurtenant properties, facilities, equipment, and costs relating to the foregoing.

Water and Wastewater Utility Fund shall mean the self-balancing group of accounts heretofore created by the City as an enterprise fund to record all financial activity of the Enterprise referred to in Section 5.B hereof.

Water Facilities shall mean water rights, raw water and any one or more works and improvements used in and as a part of the collection, treatment, or distribution of water for the beneficial uses and purposes for which the water has been or may be appropriated, including, but not limited to, uses for domestic, municipal, irrigation, power, and industrial purposes and including construction, operation, and maintenance of a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gauging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, power plants, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such works and

improvements, and all other necessary, incidental, or appurtenant properties, facilities, equipment and costs relating to the foregoing.

(B) CONSTRUCTION: This Ordinance, except where the context by clear implication herein otherwise requires, shall be construed as follows:

- (1) Words in the singular include the plural, and words in the plural include the singular.
- (2) Words in the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender refer to any gender.
- (3) Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter, or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Ordinance so numbered or otherwise so designated.
- (4) The titles and headlines applied to articles, sections and subsections of this Ordinance are inserted only as a matter of convenience and ease in reference and in no way define or limit the scope or intent of any provisions of this Ordinance.

Section 2. Recitals.

(A) The City has heretofore established the Enterprise and authorized the Enterprise to have and exercise certain powers in furtherance of its purposes.

(B) Pursuant to Art. X, § 20 and Art. XX, § 6 of the State Constitution, Chapter XI, Section 11.1(a) of the Charter, and the Enterprise Ordinance, the Enterprise is authorized to issue the Bonds without voter approval in advance.

(C) The Enterprise has previously issued the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, each secured by a lien on the Pledged Revenue, and the Subordinate Securities secured by a lien upon the Pledged Revenues which is subordinate or junior to the lien of the 2016 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan and the Bonds.

(D) The Enterprise is not delinquent in the payment of the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, or the Subordinate Securities.

(E) Subject to certain conditions specified in the ordinances authorizing the issuance of the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, the Enterprise may issue indebtedness payable out of and which has a lien on the Pledged Revenues which is on a parity to the lien on the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan.

(F) Subject to certain conditions specified in the ordinance authorizing the issuance of the Subordinate Securities, the Enterprise may issue indebtedness payable out of and which has a lien on the Pledged Revenues which is superior to the lien on the Subordinate Securities.

(G) The Pledged Revenues may be pledged lawfully and irrevocably for the payment of the Bonds.

(H) The Council has determined that it is in the best interests of the City and the inhabitants thereof and the Enterprise, that water and wastewater revenue bonds in an aggregate principal amount not to exceed \$210,000,000 be issued for the purpose of completing the Project.

(I) There are on file with the Council: (i) the form of the Preliminary Official Statement for the Bonds; (ii) the form of the Paying Agent Agreement; (iii) the form of the Disclosure Certificate; (iv) the form of Bond Purchase Agreement; and (v) a form of Preliminary Official Statement.

(J) It is necessary to provide for the form of the Bonds and other provisions relating to the authorization, issuance, and sale of the Bonds.

Section 3. The Bonds.

(A) **AUTHORIZATION:** The Bonds, payable as to all Debt Service Requirements solely out of Pledged Revenues, are hereby authorized to be issued, the proceeds of the Bonds to be used solely to pay the Cost of the Project.

Section 11-57-204 of the Supplemental Act provides that a public entity, including the Enterprise, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Bonds. The Bonds are issued under the authority of this Ordinance and the Supplemental Act and shall so recite as provided in Section 3.B(11) hereof. Pursuant to Section 11-57-210, C.R.S., such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

Section 11-57-205 of the Supplemental Act provides that a public entity may delegate to any member of the issuing authority, chief executive officer, or chief financial officer of the public entity the authority to sign a contract for the purchase of the securities or to accept a binding bid for the securities, such delegation to be effective for one year after adoption of the act of issuance. The Council hereby delegates to and authorizes any of the President, the Manager or the Treasurer of the Enterprise the independent authority to execute and deliver the Bond Purchase Agreement, execute and deliver the Sale Certificate setting forth the terms on which the Bonds will be delivered, subject to the parameters and restrictions contained in this Ordinance.

(B) **BOND DETAILS:**

(1) Generally. The Bonds shall be issuable in fully registered form and shall initially be registered in the name of the Securities Depository or a nominee therefor. Purchases by Beneficial Owners shall be made in book-entry form in the principal amount of \$5,000 or any integral multiple thereof. The Beneficial Owners shall not receive certificates evidencing their interests in the Bonds. No Bond shall be issued in any denomination larger than the aggregate principal amount maturing on the maturity date of such Bond, and no Bond shall be made payable on more than one maturity date. The Bonds shall be initially issued so that a single Bond shall evidence the obligation of the Enterprise to pay all principal due on each of the maturity dates set forth herein. Interest on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months, payable semiannually on each June 1 and December 1, commencing on the date provided in the Sale Certificate. If upon presentation at maturity the principal of any Bond is not paid as provided herein, interest shall continue thereon at the same interest rate until the principal is paid in full.

The Bonds shall be issued in fully registered form (*i.e.*, registered as to payment of both principal and interest) initially registered in the name of Cede & Co., as nominee for The Depository Trust Company, and shall be dated as of their date of delivery. The Bonds shall be numbered in such manner as the Registrar determines.

The Bonds shall mature, bear interest from their dated date to maturity or prior redemption, and shall be sold, all as provided in the Sale Certificate; provided that:

(a) Redemption provisions. The Bonds shall be subject to optional redemption not later than December 1, 2034, at a redemption price not to exceed 100% of the principal amount so redeemed, as provided in the Sale Certificate.

(b) Interest rate. The maximum net effective interest rate on the Bonds shall not exceed 4.75%.

(c) Purchase price. The price at which the Bonds will be sold to the Purchaser shall not be less than 100% of the aggregate principal amount of the Bonds.

- (d) Principal amount. The aggregate principal amount of the Bonds shall not exceed \$210,000,000.
- (e) Maturity schedule. The maximum annual repayment cost and maximum total repayment cost for the Bonds shall not exceed \$13,300,000 and \$394,000,000 respectively.
- (f) Term of the bonds. The Bonds shall mature no later than December 1, 2054.

Such determinations shall be evidenced by the Sale Certificate, signed by the President, the Manager or the Treasurer dated and delivered on or prior to the Closing Date, which shall not be more than one year from the date of adoption of this Ordinance.

The Debt Service Requirements of the Bonds shall be payable in lawful money of the United States of America to the Owners of the Bonds by the Paying Agent. The principal and the final installment of interest shall be payable to the Owner of each Bond upon presentation and surrender thereof at the Principal Operations Office of the Paying Agent at maturity, by check or draft mailed or wire sent to such Owner at the address appearing on the registration books of the Enterprise maintained by the Registrar to such bank or other depository as the Owner shall designate in writing to the Paying Agent. Except as hereinbefore and hereinafter provided, the interest shall be payable to the Owner of each Bond determined as of the close of business on the Regular Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Regular Record Date and prior to such interest payment date, by check or draft or wire transfer directed to such Owner as aforesaid. Any interest not paid when due and any interest accruing after maturity shall be payable to the Owner of each Bond entitled to receive such interest determined as of the close of business on the Special Record Date, irrespective of any transfer of ownership of the Bond subsequent to the Special Record Date and prior to the date fixed by the Paying Agent for the payment of such interest, by check or draft or wire transfer directed to such Owner as aforesaid. Notice of the Special Record Date and of the date fixed for the payment of such interest shall be given by sending a copy thereof by certified or registered first class, postage prepaid mail, at least fifteen (15) days prior to the Special Record Date, to the Owner of each Bond upon which interest will be paid determined as of the close of business on the day preceding such mailing at the address appearing on the registration books of the Enterprise. If the date for making or giving any payment, determination or notice described herein is not a Business Day, such payment, determination or notice shall be made or given on the next succeeding Business Day.

So long as the Owner of any Bond is the Securities Depository or a nominee therefor, the Securities Depository shall disburse any payments received, through its Participants or otherwise, to the Beneficial Owners.

Neither the Enterprise nor the Paying Agent shall have any responsibility or obligation for the payment to any Participant, any Beneficial Owner or any other Person (except an Owner of Bonds) of the Debt Service Requirements on the Bonds.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee for the Securities Depository, all payments of Debt Service Requirements on the Bonds shall be made in the manner provided in the Letter of Representations and all notices with respect to the Bonds shall be given in the manner provided in the Letter of Representations. In the event of a conflict between the provisions of this Ordinance and the Letter of Representations, the provisions of this Ordinance shall be controlling.

(2) Optional Redemption. The Bonds are subject to redemption prior to maturity at the option of the Enterprise as described in the Sale Certificate.

(3) Mandatory redemption. The Term Bonds, if any, shall be subject to mandatory sinking fund redemption at the times, in the amounts, and at the prices set forth in the Sale Certificate.

On or before the thirtieth day prior to each sinking fund redemption date, the Registrar will proceed to call the Term Bonds (or any Term Bond or Bonds issued to replace such Term Bonds) for redemption from the sinking fund on the next December 1, and give notice to such call without further instruction or notice from the Enterprise.

At its option, to be exercised on or before the sixtieth day next preceding any sinking fund redemption date, the Enterprise may (i) deliver to the Registrar for cancellation Term Bonds subject to mandatory sinking fund redemption on such date in an aggregate principal amount desired or (ii) receive a credit in respect of its sinking fund redemption obligation for any Terms Bonds subject to mandatory sinking fund redemption on such date, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Term Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the Enterprise on such sinking fund redemption date and the principal amount of Term Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The Enterprise will, on or before the sixtieth day next preceding each sinking fund redemption date, furnish the Registrar with the Enterprise's certificate indicating whether or not and to what extent the provision of (i) and (ii) above are to be availed with respect to such sinking fund payment. Failure of the Enterprise to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided herein.

(4) Partial redemption. In the case of Bonds of a denomination larger than \$5,000, a portion of such Bond (\$5,000 or any integral multiple thereof) may be redeemed, in which case the Registrar shall, without charge to the Owner thereof, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof.

(5) Notice of redemption. Notice identifying the Bonds or portions thereof to be redeemed shall be given by the Registrar by mailing a copy of the redemption notice by first class mail, postage prepaid, not more than 60 nor less than 30 days prior to the date fixed for redemption, to the Owner of each Bond to be redeemed in whole or in part at the address shown on the registration records maintained by the Registrar. Failure to give such notice by mailing to any Owner of any Bond, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Actual receipt of mailed notice by the Owner of any Bond shall not be a condition precedent to the redemption of such Bond or any other Bond. The principal amount so redeemed will be payable upon presentation and surrender of the Bond at the Paying Agent, and accrued interest to the Redemption Date will be paid by check or draft mailed or wire sent to the Owner (or by alternative means if so agreed to by the Owner and the Paying Agent). All Bonds so called for redemption will cease to bear interest after the specified redemption date if moneys to effect the redemption are on deposit with the Paying Agent on such redemption date.

Notwithstanding the provisions of this Section, any notice of redemption may contain a statement that the redemption is conditioned upon the receipt by the Paying Agent of funds on or before the date fixed for redemption sufficient to pay the redemption price of the Bonds so called for redemption, and that if such funds are not available, such redemption shall be canceled by written notice to the Owners of the Bonds called for redemption in the same manner as the original redemption notice was mailed.

(6) Execution and authentication. The Bonds shall be executed by and on behalf of the Enterprise with the facsimile or manual signature of the President of the Enterprise, shall be attested with the facsimile or manual signature of the Secretary of the Enterprise, and shall be authenticated with the manual signature of an authorized signatory of the Registrar. Should any officer whose facsimile or manual signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Purchaser, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes. No Bond shall be valid or become obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until the certificate of authentication on such Bond shall have been duly executed by an authorized signatory of the Registrar, and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance.

(7) Registration, transfer and exchange. Upon their execution and authentication and prior to their delivery, the Bonds shall be registered for the purpose of payment of principal and interest by the Registrar. Initially, each Bond shall be registered in the name of the Securities Depository or a nominee therefor. Except as hereinafter provided, all of the Bonds shall continue to be registered in the name of the Securities Depository or a nominee therefor. There shall be no substantive change to the terms and

conditions set forth in the form of Bond, except as otherwise authorized by this Ordinance or any amendment hereto.

Neither the Enterprise nor the Registrar shall have any responsibility or obligation with respect to the accuracy of the records of the Securities Depository or a nominee therefor or any Participant regarding any ownership interest in the Bonds or the delivery to any Participant, Beneficial Owner or any other Person (except an Owner of Bonds) of any notice with respect to the Bonds.

The Bonds shall be transferable only upon the registration books of the Enterprise by the Paying Agent at the request of the Owner thereof or his, her or its duly authorized attorney in fact or legal representative. The Registrar or Paying Agent shall accept a Bond for registration or transfer only if the Owner is to be an individual, a corporation, a partnership, or a trust. A Bond may be transferred upon surrender thereof together with a written instrument of transfer duly executed by the Owner or his, her or its duly authorized attorney in fact or legal representative with guaranty of signature satisfactory to the Paying Agent, containing written instructions as to the details of the transfer, along with the social security number or federal employer identification number of the transferee and, if the transferee is a trust, the names and social security numbers of the settlors and the beneficiaries of the trust. The Owner of any Bond or Bonds may also exchange such Bond or Bonds for another Bond or Bonds of authorized denominations. The Paying Agent may require payment of a transfer fee for its services as well as a payment of a sum sufficient to defray any tax or other governmental charge that may hereafter be imposed in connection with any transfer or exchange of Bonds. No transfer of any Bond shall be effective until entered on the registration books of the Enterprise. In the case of every transfer or exchange, the Registrar shall authenticate and the Paying Agent shall deliver to the new Owner a new Bond or Bonds of the same aggregate principal amount, maturing in the same year, and bearing interest at the same per annum interest rate as the Bond or Bonds surrendered. Such Bond or Bonds shall be dated as of their date of authentication. New Bonds delivered upon any transfer or exchange shall be valid obligations of the Enterprise, evidencing the same obligations as the Bonds surrendered, shall be secured by this Ordinance, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered. The Enterprise may deem and treat the Person in whose name any Bond is last registered upon the books of the Enterprise as the absolute Owner thereof for the purpose of receiving payment of the principal of and interest on such Bond and for all other purposes, and all such payments so made to such Person or upon his, her or its order shall be valid and effective to satisfy and discharge the liability of the Enterprise upon such Bond to the extent of the sum or sums so paid, and the Enterprise shall not be affected by any notice to the contrary.

Neither the Enterprise nor the Paying Agent shall have any responsibility or obligation with respect to the accuracy of the records the Securities Depository or its Participants regarding any ownership interest in the Bonds or transfers thereof.

(8) Resignation or removal of agents. If the Paying Agent, Registrar or Paying Agent shall resign as such, or if the Enterprise shall reasonably determine that the Paying Agent, Registrar or Paying Agent has breached or become incapable of fulfilling its duties hereunder, the Enterprise may, upon notice mailed to each Owner of Bonds at the addresses last shown on the registration books of the Enterprise, accept the resignation of the Paying Agent, Registrar or Paying Agent or remove the Paying Agent, Registrar or Paying Agent and appoint a successor paying agent or registrar. It shall not be required that the same institution serve as paying agent and registrar hereunder, but the Enterprise shall have the right to have the same institution serve as paying agent and registrar hereunder. Any such resignation or removal shall become effective only on the appointment of a successor and acceptance by the successor of its duties hereunder.

(9) Resignation or removal of securities depository. The Enterprise may remove the Securities Depository and the Securities Depository may resign by giving sixty (60) days' written notice to the other of such removal or resignation. Additionally, the Securities Depository shall be removed sixty (60) days after receipt by the Enterprise of written notice from the Securities Depository to the effect that the Securities Depository has received written notice from Participants having interests, as shown in the records of the Securities Depository, in an aggregate principal amount of not less than fifty percent (50%) of the aggregate principal amount of the then Outstanding Bonds to the effect that the Securities Depository is

unable or unwilling to discharge its responsibilities or a continuation of the requirement that all of the Outstanding Bonds be registered in the name of the Securities Depository or a nominee therefor is not in the best interests of the Beneficial Owners. Upon the removal or resignation of the Securities Depository, the Securities Depository shall take such action as may be necessary to assure the orderly transfer of the computerized book-entry system with respect to the Bonds to a successor securities depository or, if no successor securities depository is appointed as herein provided, the transfer of the Bonds in certificate form to the Beneficial Owners or their designees. Upon the giving of notice by the Enterprise of the removal of the Securities Depository, the giving of notice by the Securities Depository of its resignation or the receipt by the Enterprise of notice with respect to the written notice of Participants referred to herein, the Enterprise may, within sixty (60) days after the giving of such notice, appoint a successor securities depository upon such terms and conditions as the Enterprise shall impose. Any such successor securities depository shall at all times be a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation, and in good standing thereunder. If the Enterprise fails to appoint a successor securities depository within such time period, the Bonds shall no longer be restricted to being registered in the name of the Securities Depository or a nominee therefor, but may be registered in whatever name or names Owners transferring or exchanging Bonds shall designate.

(10) Replacement of Bonds. If any Bond shall have been lost, destroyed or wrongfully taken, the Enterprise shall provide for the replacement thereof upon the Owner's furnishing to the Enterprise: (a) proof of ownership, (b) proof of loss, destruction or theft, (c) a surety bond in the amount of all principal and interest remaining unpaid on the Bond, and (d) payment of the cost of preparing and issuing the new Bond.

(11) Recitals in Bonds. Each Bond shall recite in substance that the Bond is a special and limited obligation of the Enterprise payable solely out of and secured by an irrevocable pledge of a lien (but not necessarily an exclusive lien) upon the Pledged Revenues, which is on a parity with the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and at all times senior and superior to the lien thereon of the Subordinate Securities, that the Bond does not constitute a debt or an indebtedness of the Enterprise or the City within the meaning of any constitutional, Charter or statutory provision or limitation, that the Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City or the Enterprise except the Pledged Revenues, and that the full faith and credit of the City is not pledged for the payment of the principal of or interest on the Bond. Each Bond shall further recite that it is issued under the authority of the State Constitution, the Supplemental Act, the Charter, the Enterprise Ordinance, Title 37, Article 45.1, C.R.S., and in full conformity therewith and this Ordinance. Pursuant to Section 11-57-210 of the Supplemental Act, such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

(12) Form of Bonds. Subject to the provisions of this ordinance, each Bond shall be in substantially the form attached hereto as Exhibit A with such omissions, insertions, endorsements and variations as to any recitals of fact or other provisions as may be required by the circumstances, be required or permitted by this ordinance, be consistent with this ordinance or be necessary or appropriate to conform to the rules and requirements of any governmental authority or any usage or requirement of law with respect thereto.

(C) **BONDS EQUALLY SECURED:** The covenants and agreements herein set forth shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds, all of which, regardless of the time or times of their maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as otherwise expressly provided in or pursuant to this Ordinance.

(D) **SPECIAL OBLIGATIONS:** All of the Debt Service Requirements of the Bonds shall be payable solely out of the Pledged Revenues. The Owners of the Bonds may not look to the general fund or any other revenue or fund of the City for the payment of the Debt Service Requirements thereof, except the special funds pledged therefor. The Bonds shall not constitute a debt or indebtedness of the Enterprise or the City within the meaning of any constitutional, Charter or statutory provision or limitation, and the Bonds shall not be considered or held to be general obligations of the City but shall constitute special and limited obligations of the Enterprise. The Bonds are not payable in whole or in part from the proceeds of general

property taxes or any other funds of the City or the Enterprise except the Pledged Revenues, and the full faith and credit of the City is not pledged for payment of the Bonds.

Section 4. Sale of Bonds.

(A) APPROVAL OF BOND PURCHASE AGREEMENT: The contract for the purchase of the Bonds is hereby awarded to the Purchaser at the price specified in the Bond Purchase Agreement and Sale Certificate with respect to the Bonds, and upon the terms set forth in this Ordinance. The President, the Manager or the Treasurer are each hereby independently authorized to execute the Bond Purchase Agreement and Sale Certificate on behalf of the Enterprise subject to the parameters set forth herein.

(B) APPROVAL OF PRELIMINARY OFFICIAL STATEMENT: The Council hereby approves the Preliminary Official Statement, in substantially the form of the Official Statement relating the sale of the 2020 Bonds, and ratifies the use and distribution thereof by the Purchaser in marketing the Bonds. The President, the Manager and the Treasurer are hereby independently authorized to approve, on behalf of the Enterprise, the Official Statement, in substantially the form of the Preliminary Official Statement, with such modifications, changes and updates as are hereafter approved by the President, the Manager or the Treasurer. The execution of the Official Statement by the President shall be conclusively deemed to evidence the approval of the form and contents thereof by the Enterprise. The designation of the Preliminary Official Statement by the President, the Manager or the Treasurer as a “deemed final Official Statement” for purposes of Rule 15c2-12 of the Securities and Exchange Commission is hereby authorized and confirmed

(C) DELIVERY: After the Bonds have been duly executed, authenticated and registered as provided herein, the Treasurer of the Enterprise shall cause the Bonds to be delivered to the Purchaser (through the Securities Depository) upon receipt of the agreed purchase price.

Section 5. Disposition of Bond Proceeds and Income; Funds Adopted or Created by Ordinance; Security for the Bonds.

The proceeds of the Bonds and the Income therefrom shall be deposited by the Enterprise in the funds described in this Section 5, to be accounted for in the manner and priority set forth in this Section 5.

Neither the Purchaser nor any subsequent Owner of any Bonds shall be in any manner responsible for the application or disposal by the Enterprise or the City or by any of their officers, agents and employees of the moneys derived from the sale of the Bonds or of any other moneys designated in this Section 5.

The Pledged Revenues and all moneys and securities paid or to be paid to or held or to be held in any fund hereunder are hereby pledged to secure the payment of the Debt Service Requirements of the Bonds subject to the provisions hereof relating to the Rebate Fund. This pledge shall be valid and binding from and after the date of the first delivery of the Bonds, and the moneys, as received and hereby pledged, shall immediately be subject to the lien of this pledge without any physical delivery thereof, any filing, or further act. The lien of this pledge and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Enterprise or the City (except as herein otherwise expressly provided), and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Enterprise or the City (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof. The creation, perfection, enforcement and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance.

(A) ACQUISITION FUND: The Enterprise shall deposit, upon receipt from the Purchaser, the proceeds of the Bonds as provided in this Section after making the deposit required by Section 5.E of this Ordinance.

That portion of the proceeds of the Bonds as specified in the Sale Certificate shall be accounted for in a special account hereby created to be known as the “City of Westminster, Colorado, Water and Wastewater

Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2024, Acquisition Fund”. Except as otherwise provided herein, the moneys in the Acquisition Fund shall be used solely for the purpose of paying the Costs of the Project and for the purposes set forth herein.

(B) **WATER AND WASTEWATER UTILITY FUND:** Except as otherwise provided herein, the entire Income, upon receipt thereof from time to time, shall be deposited immediately in the Water and Wastewater Utility Fund. Operation and Maintenance Expenses shall be paid as provided in Section 5.C hereof. The Pledged Revenues on deposit in the Water and Wastewater Utility Fund shall be applied in the following order of priority:

(1) First, to the Principal and Interest Fund for the Bonds and any Parity Bonds in the manner set forth in Section 5.D hereof;

(2) Second, to the Reserve Fund for the Bonds or any Parity Bonds as provided in Section 5.E hereof;

(3) Third, to the Rebate Fund in accordance with Section 5.F hereof;

(4) Fourth, to the payment of any termination payment due and owing under any interest rate exchange agreement or swap entered into by the Enterprise;

(5) Fifth, to the payment of the Debt Service Requirements of Subordinate Securities in accordance with Section 5.G hereof; and

(6) Sixth, to be used in accordance with Section 5.H hereof.

(C) **OPERATION AND MAINTENANCE FUND:** As a first charge on the Water and Wastewater Utility Fund there shall be paid from the Operation and Maintenance Fund the Operation and Maintenance Expenses of the System as they become due and payable.

(D) **PRINCIPAL AND INTEREST FUND:** There is hereby created the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise Water and Wastewater Revenue Bonds, Series 2024, Debt Service Account,” into which shall be deposited from the Pledged Revenues, after making any deposits required for the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan pursuant to the ordinances authorizing the issuance of the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and concurrently with any amounts required by an ordinance authorizing the issuance of Parity Bonds, the following amounts:

(1) Interest payments. Monthly, commencing on the first day of the first month following the date of delivery of the Bonds, or commencing on the first day of the month six months next prior to the first interest payment date of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding, and monthly thereafter, commencing on each interest payment date, one-sixth of the amount necessary, together with any other moneys from time to time available therefor and on deposit therein from whatever source, to pay the next maturing installment of interest on the Bonds then Outstanding.

(2) Principal payments. Monthly, commencing on the first day of the first month following the date of delivery of the Bonds, or commencing on the first day of the month one year next prior to the first principal payment date of the Bonds, whichever commencement date is later, an amount in equal monthly installments necessary, together with any other moneys from time to time available therefor from whatever source, to pay the next installment of principal of the Bonds coming due at maturity, and monthly thereafter, commencing on each principal payment date, one-twelfth of the amount necessary, together with any other moneys from time to time available therefor and on deposit therein from whatever source, to pay the next installment of principal of the Bonds coming due at maturity.

If prior to any interest payment date or maturity date there has been accumulated in the Principal and Interest Fund the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraph (1) or (2) (whichever is applicable) of this paragraph, may be appropriately reduced; but the required monthly amounts again shall be so credited to such account commencing on such interest payment date or maturity date.

The moneys deposited in the Principal and Interest Fund shall be used to pay the Debt Service Requirements of the Bonds, as the same shall become due, except as otherwise provided in this Ordinance. The Principal and Interest Fund shall be maintained as a sinking fund for the mandatory redemption of any Term Bonds. Any mandatory sinking fund redemption shall be treated as an installment of principal for purposes of this Section 5.D.

(E) RESERVE FUND: There is hereby created the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2024, Reserve Fund”. The Reserve Fund shall be funded, if at all, as provided in the Sale Certificate.

The Reserve Fund shall be maintained after it has been established as a continuing reserve for the payment of the Debt Service Requirements of the Bonds. In the event that the amount on deposit in the Reserve Fund falls below the Reserve Fund Requirement, there shall be deposited in the Reserve Fund such Pledged Revenues as may be needed to accumulate or reaccumulate the amount therein so that at all times the amount of the Reserve Fund equals the Reserve Fund Requirement. The moneys in the Reserve Fund shall be set aside, accumulated, and, if necessary, reaccumulated as provided herein, from time to time, and maintained as a continuing reserve to be used only to prevent deficiencies in the Principal and Interest Fund resulting from failure to deposit therein sums sufficient to pay such Debt Service Requirements of each separate series of Bonds as the same become due.

If at any time there shall not be deposited for any reason in the Principal and Interest Fund the full amount above stipulated, then there shall be deposited in the Principal and Interest Fund at such time from the Reserve Fund an amount equal to the difference between that paid from the Pledged Revenues and the full amount so stipulated. The money so used shall be replaced to the Reserve Fund from the first Pledged Revenues on a pro-rata basis thereafter received and not required to be otherwise applied by Section 5.D hereof.

Nothing in this Ordinance shall be construed as limiting the right of the Enterprise to substitute for any cash deposit which may be required to be maintained hereunder a Surety Bond to ensure that cash in the amount otherwise required to be maintained hereunder will be available to the Enterprise as needed, provided that any such substitution shall not cause the then current ratings of the Bonds to be adversely affected. Any such Surety Bond shall be deposited with the Paying Agent, which shall ascertain the necessity for a claim against or draw upon the Surety Bond and provide notice to the issuer thereof in accordance with its terms prior to each interest payment date. The Paying Agent and the Enterprise shall use all cash in the Reserve Fund before drawing on a Surety Bond. If there is more than one Surety Bond on deposit in the Reserve Fund, the Paying Agent shall draw on them on a pro rata basis, based upon the amount available to be drawn on each. Notwithstanding the foregoing, no Surety Bond shall be deposited by the City in the Reserve Fund for such substitution unless the City has received an opinion of bond counsel to the effect that such substitution and the intended use by the City of the cash or Permitted Investments to be released from the Reserve Fund will not adversely affect the exclusion from gross income for federal income tax purposes of interest on Bonds.

The Reserve Fund shall be replenished in the following priority: first, principal and interest on any Surety Bonds on deposit therein shall be paid on a pro-rata basis from first available Pledged Revenues; second, after all such amounts are paid in full, amounts necessary to fund each separate Reserve Fund in an amount equal to the Reserve Fund Requirement on a pro-rata basis, after taking into account the amounts available under any Surety Bond or Surety Bonds, shall be deposited from next available Pledged Revenues. Unless otherwise provided in the Sale Certificate, the Reserve Fund Requirement shall be re-calculated upon (i) any principal payment, whether at stated maturity or upon redemption, or (ii) the defeasance of all or a portion of the Bonds.

(F) REBATE FUND: There is hereby created “City of Westminster, Colorado Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2024, Rebate Fund”, into which there shall be deposited, concurrently with each other and any payments required to be made pursuant to any ordinance authorizing the issuance of Parity Bonds and subject to the payments required by Section 5.D and 5.E hereof, Pledged Revenues in the amount of required arbitrage rebate, if any, due to the federal government under Sections 103 and 148(f)(2) of the Tax Code. The Treasurer of the Enterprise shall determine the required arbitrage rebate amount in the manner required by said Sections and related regulations and shall pay such amount from the Rebate Fund, provided, however, that required arbitrage rebate payments shall be made to the federal government from legally available funds regardless of whether there are any Pledged Revenues, remaining proceeds or other funds attributable to the Bonds that are available for the purpose.

All amounts in the Rebate Fund, including income earned from investment thereof, shall be held by the Treasurer free and clear of any lien created by this Ordinance, to the extent such amounts are required to be paid over to the federal government. The Treasurer shall pay over to the federal government from time to time such amounts as the Treasurer shall determine, provided that the Treasurer shall so pay over to the federal government not less frequently than once each five (5) years after the date of issuance of the Bonds, an amount equal to ninety percent (90%) of the required arbitrage rebate amount earned during such period (and not theretofore paid to the federal government) and not later than sixty (60) days after the redemption of the last Bond, one hundred percent (100%) of the required arbitrage rebate amount.

(G) PAYMENT OF SUBORDINATE SECURITIES: Subject to the payments required by Sections 5.D and 5.E hereof, any remaining Pledged Revenues may be used for the payment of Debt Service Requirements on the Subordinate Securities, including reasonable reserves for such Subordinate Securities; but the lien of such Subordinate Securities on the Pledged Revenues and the pledge thereof for the payment of such Subordinate Securities shall be subordinate to the lien and pledge of the Bonds, 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and any Parity Bonds as herein provided.

(H) USE OF REMAINING REVENUES: Subject to the payments required or permitted by Sections 5.D through 5.G hereof, any remaining Pledged Revenues may be used for any one or any combination of lawful purposes.

(I) TERMINATION OF DEPOSITS: No payment need be made into the Principal and Interest Fund or the Reserve Fund if the amount of cash and Permitted Investments in the Principal and Interest Fund and the Reserve Fund is at least equal to the entire amount of the Outstanding Bonds as to all Debt Service Requirements, to their respective maturity dates or to any Redemption Dates on which the Enterprise shall have exercised or shall have obligated itself to exercise its option to redeem, prior to their respective maturity dates, any Bonds, the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, any Parity Bonds then Outstanding and thereafter maturing (provided that, solely for the purpose of this Section 5.I, there shall be deemed to be a credit to the Principal and Interest Fund moneys, any cash or Permitted Investments accounted for in any other fund and restricted solely for the purpose of paying the Debt Service Requirements of the Bonds), in which case cash or Permitted Investments in the Principal and Interest Fund in an amount, except for any known interest or other gain to accrue from any investment or deposit of moneys pursuant to Section 6.B hereof from the time of any such investment or deposit to the time or respective times the proceeds of any such investment or deposit shall be needed for such payment, at least equal to such Debt Service Requirements, shall be used together with any such gain from such investments and deposits solely to pay such Debt Service Requirements as the same become due.

(J) BUDGET AND APPROPRIATION OF SUMS: The sums required to make the payments specified in this Section 5 are hereby appropriated for said purposes. Said amounts for each year shall be included in the annual budget and the appropriation ordinance or measures to be adopted or passed in each year respectively while the Bonds, either as to principal or interest, are Outstanding and unpaid.

(K) COMPLETION OF PROJECT: When the Project is completed in accordance with the relevant plans and specifications and all amounts due therefor, including all proper incidental expenses and all

administrative costs of the Project, are paid, or for which full provision is made, the Treasurer, to the extent permitted by the Tax Compliance Certificate, shall cause all surplus moneys remaining in the Acquisition Fund, if any, except for any moneys designated in the certificate to be retained to pay any unpaid accrued costs or contingent obligations, to be transferred as follows: to the Rebate Fund so as to enable the Enterprise to comply with the requirements of the Tax Compliance Certificate, (b) to the Reserve Fund to such extent as shall not cause the amount in the Reserve Fund to exceed the Reserve Fund Requirement and (c) to the Principal and Interest Fund to the extent of any remaining balance of such moneys to be applied against the next principal payment or payments coming due on the Bonds. Nothing herein prevents the transfer from the Acquisition Fund to the Principal and Interest Fund, at any time prior to the termination of the Acquisition Fund, of any moneys which the Treasurer by certificate determines will not be necessary for the Project and will not be designated to be transferred to the Rebate Fund.

Section 6. General Administration of Funds.

(A) PLACES AND TIMES OF DEPOSITS: Except as otherwise provided herein, each of the special funds or accounts described in this Ordinance shall be maintained as a book account and kept separate from all other accounts as a trust account solely for the purposes herein designated therefor. The moneys accounted for in such special book accounts may be in one or more bank accounts in one or more Commercial Banks. Each such bank account shall be continuously secured to the fullest extent required or permitted by the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes. Each periodic payment shall be credited to the proper book account not later than the date therefor herein designated, except that when any such date shall not be a Business Day, then such payment shall be made on or before the next preceding Business Day. Moneys shall be deposited with the Paying Agent for the Bonds pursuant to the terms of the Paying Agent Agreement at such times and in such amounts as is sufficient to pay the Debt Service Requirements then becoming due on the Outstanding Bonds.

(B) INVESTMENT OF FUNDS: Any moneys in the Acquisition Fund, Income Fund, Bond Fund, Reserve Fund, and Rebate Fund and not needed for immediate use shall be invested or reinvested by the Treasurer in Permitted Investments. Any of such funds may be held by the Enterprise or may be deposited and held by the Paying Agent at the direction of the Enterprise. All such investments shall (a) either be subject to redemption at any time at a fixed value by the holder thereof at the option of such holder, or (b) mature not later than the estimated date or respective dates on which the proceeds are to be expended as estimated by the Treasurer at the time of such investment or reinvestment; provided that (1) Permitted Investments credited to the Reserve Fund shall not mature later than ten years from the date of such investment or reinvestment and (2) collateral securities of any Permitted Investments may have a maturity of more than five years from the date of purchase thereof. For the purpose of any such investment or reinvestment, Permitted Investments shall be deemed to mature at the earliest date on which the obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligations.

The Enterprise acknowledges that to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the account, the Enterprise waives receipt of such confirmations, to the extent permitted by law. The Paying Agent shall furnish a statement of security transactions on its regular monthly reports.

(C) NO LIABILITY FOR LOSSES INCURRED IN PERFORMING TERMS OF ORDINANCE: Neither the Enterprise nor the City nor any officer thereof shall be liable or responsible for any loss resulting from any investment or reinvestment made in accordance with this Ordinance.

(D) CHARACTER OF FUNDS: Except as provided in Section 5.E hereof, the moneys in any fund herein authorized shall consist of lawful money of the United States of America or Permitted Investments or both such money and Permitted Investments. Moneys deposited in a demand or time deposit account in a Commercial Bank or other depository, appropriately secured according to the ordinances of the City and, to the extent applicable, the laws of the State, shall be deemed lawful money of the United States of America.

(E) **ACCELERATED PAYMENTS OPTIONAL:** Nothing contained herein prevents the accumulation in any fund herein designated of any monetary requirements at a faster rate than the rate or minimum rate, as the case may be, provided therefor, but no payment shall be so accelerated if such acceleration shall cause a default in the payment of any obligation of the Enterprise pertaining to the Income.

Section 7. Priorities; Liens; Issuance of Parity Bonds.

(A) **LIENS ON PLEDGED REVENUES; EQUALITY OF BONDS, PARITY BONDS:** The Pledged Revenues shall be and hereby are irrevocably pledged and set aside to pay the Debt Service Requirements of the Bonds.

The Bonds constitute an irrevocable lien (but not necessarily an exclusive lien) upon the Pledged Revenues which is on a parity with the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan and at all times senior and superior to the lien thereon of the Subordinate Securities pursuant to the terms of this Ordinance.

The Bonds, 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and any Parity Bonds authorized to be issued and from time to time Outstanding are equitably and ratably secured by a lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance thereof, it being the intention of the Enterprise that there shall be no priority among the Bonds, 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and Parity Bonds, regardless of the fact that they may be actually issued and delivered at different times.

(B) **ISSUANCE OF PARITY BONDS:** Nothing herein, subject to the limitations stated in Section 7.F hereof, prevents the issuance by the Enterprise or the City of Parity Bonds; but before any such Parity Bonds are authorized or actually issued, the following conditions shall be satisfied:

(1) Absence of default. At the time of the adoption of the supplemental ordinance or other instrument authorizing the issuance of the Parity Bonds as provided in Section 7.F hereof, the Enterprise shall not be in default in making any payments required by Section 5 hereof and there shall not have occurred and be continuing any Event of Default.

(2) Historic revenues tests. Except as hereinafter provided in the case of Parity Bonds issued for the purpose of refunding all or any part of the Bonds, the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and other Parity Bonds then Outstanding, the Pledged Revenues for the last complete Fiscal Year prior to the issuance of the proposed Parity Bonds, as certified by the Treasurer, must have been equal to at least the sum of one hundred twenty percent (120%) of the Combined Maximum Annual Debt Service Requirements of the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, the Bonds then Outstanding, any Parity Bonds then Outstanding, and the Parity Bonds proposed to be issued. If any adjustment in water or wastewater rates, fees, tolls or charges or tap fees, or any combination thereof, is approved by the City Council during such Fiscal Year, the Treasurer shall adjust the calculation of the Pledged Revenues to reflect the amount thereof that would have been received if such adjustment had been in effect throughout such Fiscal Year.

At such time as the 2016 Bonds, the 2019 Bonds, and the 2020 Bonds are no longer Outstanding, additional Parity Obligations may be issued so long as the Pledged Revenues derived in any consecutive 12 month period within the 18 months immediately preceding the date of issuance of the additional Parity Obligations shall be not less than 120% of the Combined Maximum Annual Debt Service Requirements of any Outstanding Parity Bonds and the Parity Bonds proposed to be issued and 100% of any Subordinate Securities then due and owing, if any, except as hereinafter otherwise expressly provided, and the preceding test shall no longer apply.

For purposes of this Section 7.B(2), when computing the Combined Maximum Annual Debt Service Requirements for any issue of Parity Bonds or Subordinate Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed

that any such Parity Bonds or Subordinate Securities Outstanding at the time of the computation will bear interest during any period at the highest of (a) the actual rate on the date of calculation, or if the Parity Bonds or Subordinate Securities are not yet outstanding, the initial rate (if established and binding), (b) if the Parity Bonds or Subordinate Securities have been outstanding for at least twelve (12) months, the average rate over the twelve (12) months immediately preceding the date of calculation, and (c) (i) if interest on the Parity Bonds or Subordinate Securities is excludable from gross income under the applicable provisions of the Tax Code, the most recently published Bond Buyer 25 Bond Revenue Index (or comparable index if no longer published) plus fifty (50) basis points, or (ii) if interest is not so excludable, the interest rate on direct Federal Securities with comparable maturities plus fifty (50) basis points. It shall further be assumed that any such Parity Bonds or Subordinate Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated maturity dates or mandatory Redemption Dates. The Enterprise or the City shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Parity Bonds or Subordinate Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Parity Bonds or Subordinate Securities. In the case of Parity Bonds issued for the purpose of refunding all or any part of the Bonds or other Parity Bonds then Outstanding, compliance with this Section 7.B(2) shall not be required so long as the Debt Service Requirements payable on all Bonds and other Parity Bonds Outstanding after the issuance of such proposed Parity Bonds on each interest payment date does not exceed the Debt Service Requirements payable on all Bonds and other Parity Bonds Outstanding prior to the issuance of such proposed Parity Bonds on such interest payment dates.

(C) CERTIFICATION OF HISTORIC REVENUES: Where certifications of historic revenues are required by this Ordinance, the specified and required written certifications of the Treasurer that revenues are sufficient to pay the required amounts shall be conclusively presumed to be accurate in determining the right of the Enterprise to authorize, issue, sell and deliver Parity Bonds.

(D) SUBORDINATE SECURITIES PERMITTED: Nothing herein, except the limitations stated in Section 7.F hereof, prevents the Enterprise or the City from issuing Subordinate Securities for any lawful purpose.

(E) SUPERIOR SECURITIES PROHIBITED: Neither the Enterprise nor the City shall issue any bonds with a lien on the Pledged Revenue which is senior or superior to the lien on the Bonds.

(F) SUPPLEMENTAL ORDINANCES: Parity Bonds or Subordinate Securities shall be issued only after authorization thereof by ordinance, supplemental ordinance or other instrument in substantially the same form as this Ordinance, stating the purpose or purposes of the issuance of such additional Securities, directing the application of the proceeds thereof to such purpose or purposes, directing the execution thereof, and fixing and determining the date, series designation, principal amount, maturity or maturities, maximum rate or rates of interest, and prior redemption privileges with respect thereto, and providing for payments to and from the Water and Wastewater Utility Fund in accordance with this Ordinance. All additional Securities shall bear such date, shall be payable as to principal and interest on such dates and shall be subject to redemption prior to maturity on such terms and conditions, as may be provided, and shall bear interest at such rate or rates as may be fixed by ordinance, instrument or other document.

Section 8. Covenants.

The Enterprise hereby particularly covenants and agrees with the Owners of the Bonds from time to time, and makes provisions which shall be a part of the contract with such Owners, which covenants and provisions shall be kept by the Enterprise or the City continuously until all of the Bonds have been fully paid and discharged:

(A) RATE MAINTENANCE: The City shall prescribe, revise, and collect water and wastewater rates, fees, tolls, and charges and tap fees or any combination thereof, which shall produce Income sufficient, together with any other moneys legally available therefor and deposited in the Water and Wastewater Utility Fund, to make the payments and accumulations required by this Ordinance and which shall produce Pledged Revenues in each Fiscal Year sufficient, together with all other moneys legally available therefor and

deposited in the Water and Wastewater Utility Fund after payment of Operation and Maintenance Expenses, to pay an amount at least equal to one hundred ten percent (110%) of the actual Debt Service Requirements due in such Fiscal Year for the Outstanding 2016 Bonds, the Outstanding 2019 Bonds, the Outstanding 2020 Bonds, the 2020 CWRPDA Loan, the Outstanding Bonds and any Outstanding Parity Bonds, 100% of the Debt Service Requirements of the Subordinate Securities, plus any amounts required to meet then existing deficiencies pertaining to any fund relating to the Pledged Revenues or any Securities payable therefrom, including, without limitation, any reserve funds. For purposes of this Section 8.A, when computing the actual Debt Service Requirements for any issue of Parity Bonds or Subordinate Securities bearing interest at a variable, adjustable, convertible or other similar rate which is not fixed for the entire term thereof, it shall be assumed that any such Parity Bonds or Subordinate Securities Outstanding at the time of the computation will bear interest during any period at the actual rate applicable during said period. It shall further be assumed that any such Parity Bonds or Subordinate Securities which may be tendered prior to maturity for purchase at the option of the Owner thereof will mature on their stated maturity dates or mandatory Redemption Dates. The Enterprise shall be permitted to treat any fixed rate payable on an interest rate exchange agreement or "swap" contract as the interest rate on any such issue of Parity Bonds or Subordinate Securities if the counterparty to such agreement or contract has unconditionally agreed to pay all interest due on such Parity Bonds or Subordinate Securities.

In the event that such rates, fees, tolls, and charges and tap fees at any time should not be sufficient to make all of the payments and accumulations required by this Ordinance, the City shall increase its rates, fees, tolls, and charges and tap fees to such extent as to insure the payments and accumulations required by the provisions of this Ordinance.

(B) **COLLECTION OF CHARGES:** The City shall cause all water and wastewater rates, fees, tolls, and charges and tap fees to be billed promptly and collected as soon as reasonable, shall prescribe and enforce rules and regulations or impose contractual obligations for the payment thereof, to the end that the Pledged Revenues shall be adequate to meet the requirements of this Ordinance and any other ordinance or instrument supplemental thereto. The rates, fees, tolls, and charges and tap fees due shall be collected in any lawful manner.

(C) **COMPETENT MANAGEMENT:** The City shall employ experienced and competent management personnel for each component of the System. If the Enterprise shall fail to pay the Debt Service Requirements of the Bonds promptly as the same become due, or if the Enterprise or the City shall fail to keep any of the covenants herein contained, and if such default shall continue for a period of sixty (60) days, or if the Pledged Revenues in any Fiscal Year, together with other legally available moneys deposited in the Water and Wastewater Utility Fund, shall fail to equal at least the amount of the Debt Service Requirements of the Outstanding Bonds and other Outstanding Securities due in the same Fiscal Year, the City shall retain a firm of competent management Persons skilled in the operation of water and wastewater facilities to assist in the management of the System so long as such default continues or the said revenues, proceeds and income are less than the amount hereinabove designated.

(D) **PERFORMANCE OF DUTIES:** The City, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Income and the System required by the Constitution and laws of the State and the ordinances, resolutions and contracts of the Enterprise or the City, including, without limitation, the proper segregation of the proceeds of the Bonds and the Income and their application from time to time to the respective funds provided therefor.

(E) **COSTS OF BONDS AND OF PERFORMANCE:** Except as otherwise specifically provided herein, all costs and expenses incurred in connection with the issuance of the Bonds, payment of the Debt Service Requirements thereof or the performance of or compliance with any covenant or agreement contained in this Ordinance shall be paid exclusively (but only from the appropriate special fund in the manner authorized herein) from the proceeds of the Bonds, from the Pledged Revenues, or from other legally available moneys, and in no event shall any of such costs or expenses be required to be paid out of or charged to the general fund of the City.

(F) **CONTRACTUAL OBLIGATIONS:** The Enterprise shall perform all contractual obligations undertaken by it under the Bond Purchase Agreement, and the Enterprise or the City shall perform all contractual obligations undertaken by it under any other agreements relating to the Bonds, the Income, the Project, or the System.

(G) **FURTHER ASSURANCES:** At any and all times the Enterprise or the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver, and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Pledged Revenues and other funds hereby pledged, or intended so to be, or which the Enterprise or the City may hereafter become bound to pledge, or as may be reasonable and required to carry out the purposes of this Ordinance. The Enterprise, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other funds pledged hereunder and all the rights of every Owner of any of the Bonds against all claims and demands of all Persons whomsoever.

(H) **CONDITIONS PRECEDENT:** Upon the date of issuance of the Bonds, all conditions, acts and things required by the Constitution or laws of the United States of America, the Constitution or laws of the State, the Charter, the Supplemental Act, Title 37, Article 45.1, the Enterprise Ordinance, and this Ordinance to exist, to have happened, and to have been performed precedent to or in the issuance of the Bonds shall exist, have happened and have been performed, and the Bonds, together with all other obligations of the Enterprise or the City, shall not contravene any debt or other limitation prescribed by the Constitution or laws of the United States of America or the Constitution or laws of the State, the Charter or the Enterprise Ordinance.

(I) **EFFICIENT OPERATION AND MAINTENANCE:** The City shall at all times operate the System properly and in a sound and economical manner. The City shall maintain, preserve and keep the System properly or cause the same so to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof in good repair, working order and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the maintenance of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the City in connection with the repair, maintenance and operation of the System shall be fair and reasonable.

(J) **RECORDS AND ACCOUNTS:** The City shall keep proper books of record and account showing complete and correct entries of all transactions relating to the funds referred to herein.

(K) **RULES, REGULATIONS AND OTHER DETAILS:** The City, acting by and through its officers, shall establish and enforce reasonable rules and regulations governing the construction, operation, care, repair, maintenance, management, control, use, commodities, and services of the System. The City shall observe and perform all of the terms and conditions contained in this Ordinance and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, executive, administrative or judicial body applicable to the System or the City.

(L) **PAYMENT OF GOVERNMENTAL CHARGES:** The Enterprise shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any portion of the Income, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System, or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The Enterprise shall not create or suffer to be created any lien or charge upon the System, or any part thereof, or upon the Income, except the pledge and lien created by this Ordinance for the payment of the Debt Service Requirements due in connection with the Bonds and except as herein otherwise permitted. The Enterprise shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within ninety (90) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if

unpaid, might by law become a lien upon the System, or any part thereof, or the Income, but nothing herein requires the Enterprise to pay or to cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

(M) **PROTECTION OF SECURITY:** The Enterprise and the City and their officers, agents and employees shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Debt Service Requirements of the Bonds according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Owner of any Bonds might be prejudicially and materially impaired or diminished.

(N) **ACCUMULATION OF INTEREST CLAIMS:** In order to prevent any accumulation of claims for interest after maturity, the Enterprise shall not directly or indirectly extend or assent to the extension of the time for the payment of any claim for interest on any of the Bonds; and the Enterprise shall not directly or indirectly be a party to or approve any arrangements for any such extension or for the purpose of keeping alive any of such claims for interest. If the time for the payment of any such installment of interest is extended in contravention of the foregoing provisions, such installment or installments of interest after such extension or arrangement shall not be entitled in case of default hereunder to the benefit or the security of this Ordinance, except upon the prior payment in full of the principal of all of the Bonds.

(O) **PROMPT PAYMENT OF BONDS:** The Enterprise shall promptly pay the Debt Service Requirements of every Bond on the dates and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

(P) **USE OF FUNDS:** The funds described herein shall be used solely and only, and the moneys deposited in such funds are hereby pledged, for the purposes described herein, subject to Section 9 hereof.

(Q) **ADDITIONAL SECURITIES:** Neither the Enterprise nor the City shall hereafter issue any Securities, other than the Bonds, without compliance with the requirements with respect to the issuance of Parity Bonds set forth herein to the extent applicable.

(R) **OTHER LIENS:** Other than the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan, and the Subordinate Securities issued by the Enterprise in 2005, there are no liens or encumbrances of any nature whatsoever on or against the System, or any part thereof, or on or against the Pledged Revenues.

(S) **DISPOSAL OF SYSTEM PROHIBITED:** Subject to Section 8.V hereof, except for the use of the System and the sale of commodities or services pertaining thereto in the normal course of business, neither all nor a substantial part of the System shall be sold, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until all of the Bonds have been paid in full, as to all Debt Service Requirements thereof, or unless provision has been made therefor, or until the Bonds have otherwise been redeemed, including, without limitation, the termination of the pledge as herein authorized. Subject to Section 8.V hereof, the City shall not dispose of its title to the System or to any useful part thereof, including any property necessary to the operation and use of the System and the lands and interests in lands comprising the System.

(T) **FIDELITY BONDS OR INSURANCE:** Each official or other person having custody of any Pledged Revenues or responsible for their handling shall be fully bonded or insured at all times, which bond or insurance shall be conditioned upon the proper application of said moneys. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

(U) **TAX COVENANT:** The Enterprise and the City covenant for the benefit of the registered owners of the Bonds that it will not take any action or omit to take any action with respect to the Bonds, the proceeds of the Bonds, any other funds of the Enterprise or the facilities financed or refinanced with the proceeds of such Bonds if such action or omission (i) would cause the interest on the Bonds to lose its excludability from gross income for federal income tax purposes under Section 103 of the Tax Code, in effect on the date

of delivery of the Bonds, (ii) would cause interest on the Bonds to become a specific preference item for purposes of federal alternative minimum tax under the Code, except as such interest is taken into account in determining the annual adjusted financial statement income of applicable corporations (as defined in Section 59(k) of the Code) for the purpose of computing the alternative minimum tax imposed on corporations, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present Colorado law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the Enterprise and the City in fulfilling the above covenant under the Tax Code and Colorado law have been met.

(V) **DISPOSAL OF PROPERTY:** No part of the System shall be sold, leased, mortgaged, pledged, encumbered or otherwise disposed of or otherwise alienated, until all of the Bonds have been paid in full, or unless provision has been made therefor, or until the Bonds have otherwise been redeemed; provided, however, that the City may sell, exchange, lease or dispose of at any time and from time to time any property or facilities constituting part of the System and not needed or useful in the construction, reconstruction or operation thereof as determined by the City in its reasonable discretion but any proceeds of any such sale or exchange received and not used to replace such property so sold or exchanged and any proceeds of any such lease received shall be deposited in the Water and Wastewater Utility Fund as Income.

(W) **LOSS FROM CONDEMNATION:** If any part of the System is taken by the exercise of a power of eminent domain, the amount of any award received by the City as a result of such taking shall be expended upon the improvement of the System or shall be applied to the redemption of the Outstanding Bonds and any other Outstanding Securities in accordance with the provisions hereof and of any other ordinance authorizing the issuance of any such Securities at maturity or upon prior redemption if the authorizing ordinances authorize the prior redemption of such Securities.

(X) **INSPECTION OF RECORDS AND SYSTEM:** Any Owner of any of the Bonds, any duly authorized agent or agents of such Owner, and the Purchaser shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, concerning the Bonds, the System or the Income, to make copies of such records, accounts and data at their own expense, and to inspect the System and properties comprising the same.

(Y) **AUDITS REQUIRED:** The City, annually following the close of each Fiscal Year, shall order an audit for the Fiscal Year of the books and accounts pertaining to the Enterprise to be made forthwith by an Independent Auditor and order an audit report for each fund pertaining to the Income.

(Z) **INSURANCE AND RECONSTRUCTION:** The City shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the City as is customarily maintained with respect to water and wastewater facilities of like character against loss of or damage to the System and against public and other liability to the extent at least reasonably necessary to protect the interest of the City and of each Owner of Bonds, except as herein otherwise provided. If any useful part of the System shall be damaged or destroyed, the City shall, as expeditiously as possible, commence and diligently proceed with the repair or replacement of the damaged or destroyed property so as to restore the same to use. The proceeds of any insurance appertaining to the System shall be payable to the City and (except for proceeds of use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement, and to the extent not so applied shall (together with the proceeds of any such use and occupancy insurance) be deposited in the Water and Wastewater Utility Fund as Income. If the costs of such repair and replacement of the damaged or destroyed property exceed the proceeds of such property insurance available for payment of the same, moneys in the Water and Wastewater Utility Fund shall be used to the extent necessary for such purpose. Nothing herein shall be construed to prohibit the City from providing any insurance required hereunder by an actuarially sound self-insurance plan or program.

(AA) **CONTINUING DISCLOSURE:** The City shall comply with the provisions of the Continuing Disclosure Certificate. Any failure by the City to perform in accordance with this Section shall not constitute an Event of Default under this ordinance, and the rights and remedies provided by this ordinance

upon the occurrence of an Event of Default shall not apply to any such failure. Neither the Registrar nor the Paying Agent shall have any power or duty to enforce this Section. No Owner of a Bond shall be entitled to damages for the City's non-compliance with its obligations under this Section; however, the Owners of the Bonds may enforce specific performance of the obligations contained in this Section by any judicial proceeding available.

Section 9. Defeasance.

If, when the Bonds shall be paid in accordance with their terms (or payment of the Bonds has been provided for in the manner set forth in the following paragraph), then this ordinance and all rights granted hereunder shall thereupon cease, terminate and become void and be discharged and satisfied.

Payment of any Outstanding Bond shall prior to the maturity or redemption date thereof be deemed to have been provided for within the meaning and with the effect expressed in this Section if (a) in case said Bond is to be redeemed on any date prior to its maturity, the City shall have given to the Paying Agent in form satisfactory to it irrevocable instructions to give on a date in accordance with the provisions of Section 3.B(5) hereof notice of redemption of such Bond on said redemption date, such notice to be given in accordance with the provisions of Section 3.B(5) hereof, (b) there shall have been deposited with the Paying Agent or a commercial bank exercising trust powers either moneys in an amount which shall be sufficient, or Federal Securities which shall not contain provisions permitting the redemption thereof at the option of the issuer, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Paying Agent or other commercial bank exercising trust powers at the same time, shall be sufficient to pay when due the Debt Service Requirements due and to become due on said Bond on and prior to the redemption date or maturity date thereof, as the case may be, and (c) in the event said Bond is not by its terms subject to redemption within the next sixty days, the City shall have given the Paying Agent in form satisfactory to it irrevocable instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 3.B(5) hereof, a notice to the Owner of such Bond that the deposit required by (b) above has been made with the Paying Agent or other a commercial bank exercising trust powers and that payment of said Bond has been provided for in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the Debt Service Requirements of said Bond. Neither such securities nor moneys deposited with the Paying Agent or other commercial bank exercising trust powers pursuant to this Section or principal or interest payments on any such Federal Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the Debt Service Requirements of said Bond; provided any cash received from such principal or interest payments on such Federal Securities deposited with the Paying Agent or other Trust Bank, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities of the type described in (b) of this paragraph maturing at times and in amounts sufficient to pay when due the Bond Requirements to become due on said Bond on or prior to such redemption date or maturity date thereof, as the case may be. At such time as payment of a Bond has been provided for as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this ordinance, except for the purpose of any payment from such moneys or securities deposited with the Paying Agent or other Trust Bank.

The release of the obligations of the City under this Section shall be without prejudice to the right of the Paying Agent to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements incurred on or about the administration of and performance of its powers and duties hereunder.

Upon compliance with the foregoing provisions of this Section with respect to all Bonds then Outstanding, this ordinance may be discharged in accordance with the provisions of this Section but the liability of the City in respect of the Bonds shall continue; provided that the Owners thereof shall thereafter be entitled to payment only out of the moneys or Federal Securities deposited with the Paying Agent or other commercial bank exercising trust powers as provided in this Section.

Section 10. Default Provisions and Remedies of Bond Owners.

(A) EVENTS OF DEFAULT: Each of the following events is hereby declared to be and to constitute an Event of Default by the Enterprise:

(1) Nonpayment of principal or premium. Payment of the principal of any of the Bonds is not made when the same becomes due and payable;

(2) Nonpayment of interest. Payment of any interest on any of the Bonds is not made when the same becomes due and payable;

(3) Incapacity to perform. The Enterprise or the City for any reason becomes incapable of fulfilling its obligations hereunder;

(4) Nonperformance of duties. The Enterprise or the City shall have failed to carry out and to perform (or in good faith to begin the performance of) all acts and things lawfully required to be carried out or to be performed by it under any contract relating to the Income or to the System, including, without limitation, this Ordinance, and such failure shall continue for sixty (60) days after receipt of notice from the Owners of twenty five percent (25%) in aggregate principal amount of the Bonds then Outstanding; provided that if such failure cannot be cured within such sixty (60) days and if during that period corrective action has commenced to remedy such failure and subsequently is diligently pursued by the Enterprise or the City to the completion of such performance, an Event of Default shall not be deemed to have occurred;

(5) Failure to reconstruct. The City discontinues or unreasonably delays or fails to carry out with reasonable dispatch the reconstruction or replacement of any revenue producing part of the System which is condemned, destroyed or damaged and is not promptly repaired or replaced (whether such failure to repair the same is due to impracticality of such repair or replacement, or is due to a lack of moneys therefor, or for other reason);

(6) Appointment of receiver. An order or decree is entered by a court of competent jurisdiction, with the consent or acquiescence of the City, appointing a receiver or receivers for the System or for the Income and any other moneys subject to the lien to secure the payment of the Bonds, or if any order or decree, having been entered without the consent or acquiescence of the City, is not vacated or discharged or stayed on appeal within sixty (60) days after entry;

(7) Default of any provision. The Enterprise or the City makes any default in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bonds or in this Ordinance on its part to be performed, other than those delineated in Section 8.BB hereof, and if such default continues for sixty (60) days after written notice, specifying such default and requiring the same to be remedied, is given to the Enterprise or the City by the Owners of twenty five percent (25%) in aggregate principal amount of the Bonds then Outstanding; provided that if such default cannot be cured within such sixty (60) days and if during that period corrective action has commenced to remedy such default and subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred; and

(8) Payment default on parity bonds. The Enterprise fails to pay when due any Debt Service Requirements of any Parity Bonds.

(B) REMEDIES FOR DEFAULTS: The Owner or Owners of not less than twenty five percent (25%) in aggregate principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the Enterprise or the City and their agents, officers and employees to protect and to enforce the rights of any Owner of such Bonds under this Ordinance by mandatory injunction or by other suit, action, or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or an operating trustee or for the specific performance of any covenant or agreement contained herein or for any proper legal or equitable remedy as such Owner or Owners may deem most effectual to protect and to enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of any Owner of any such Bond, or to require the Enterprise to act as if it were the trustee of an expressed trust, or any combination of such remedies, or

as otherwise may be authorized by any statute or other provision of law. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Bonds or any Parity Bonds then Outstanding. Any receiver or operating trustee appointed in any proceedings to protect the rights of such Owners hereunder may collect, receive and apply all Income arising after the appointment of such receiver or operating trustee in the same manner as the City itself might do. The consent to any such appointment is hereby expressly granted by the City. Notwithstanding the foregoing or any other applicable provision of law, no Event of Default shall result in acceleration of any obligation of the Enterprise represented by the Bonds.

(C) **RIGHTS AND PRIVILEGES CUMULATIVE:** The failure of any Owner of any Outstanding Bond to proceed in any manner herein provided shall not relieve the Enterprise or the City or any of its officers, agents or employees of any liability for failure to perform to carry out any duty, obligation or other commitment. 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 or by statute, except as provided in Sections 12.A and 12.B hereof, and subject to the applicable provisions concerning the Income and the proceeds of the Bonds. Nothing herein affects or impairs the right of any Owner of any Bond to enforce the payment of the Debt Service Requirements due in connection with this Bond or the obligation of the Enterprise to pay the Debt Service Requirements of each Bond to the Owner thereof at the time and the place expressed in such Bond.

(D) **DUTIES UPON DEFAULT:** Upon the happening of any of the Events of Default as provided in Section 10.A hereof, the Enterprise or the City, in addition, will do and perform all proper acts on behalf of and for the Owners of the Outstanding Bonds to protect and to preserve the security created for the payment of their Bonds and to insure the payment of the Debt Service Requirements of the Bonds promptly as the same become due. If the Enterprise or the City fails or refuses to proceed as in this Section 10.D provided, the Owner or Owners of not less than twenty five percent (25%) in aggregate 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 hereinabove provided; and to that end any such Owners of Outstanding Bonds shall be subrogated to all rights of the Enterprise or the City under any agreement or contract involving the Pledged Revenues entered into prior to the effective date of this Ordinance or thereafter while any of the Bonds are Outstanding. Nothing herein requires the Enterprise or the City to proceed as provided herein if it determines in good faith and without any abuse of its discretion that if it so proceeds it is more likely than not to incur a net loss rather than a net gain or such action is likely to affect materially and prejudicially the Owners of the Outstanding Bonds and any Outstanding Parity Bonds.

(E) **EVIDENCE OF BOND OWNERS:** Any request, consent or other instrument which this Ordinance may require or may permit to be signed and to be executed by the Owner of any Bonds may be in one instrument or more than one instrument of similar tenor and shall be signed or may be executed by each Owner in person or by his attorney appointed in writing. Proof of the execution of any such instrument or of any instrument appointing any such attorney, or the ownership by any Person of the Bonds, shall be sufficient for any purpose of this Ordinance (except as otherwise herein expressly provided) if made in the following manner:

(1) **Proof of execution.** The fact and the date of the execution by any Owner of any Bonds or his, her or its attorney of such instrument may be proved by the certificate, which need not be acknowledged or verified, of any officer of a bank or trust company satisfactory to the Secretary of the Enterprise or of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act, that the individual signing such request or other instrument acknowledged to him the execution, duly sworn to before such notary public or other officer; the authority of the individual or individuals executing any such instrument on behalf of a corporate Owner of any Bonds may be established without further proof if such instrument is signed by an individual purporting to be the president or vice president of such corporation with the corporate seal affixed and attested by an individual purporting to be its secretary or an assistant secretary; and the authority of any Person or Persons executing any such instrument in any fiduciary or representative capacity may be established without further proof if such

instrument is signed by a Person or Persons purporting to act in such fiduciary or representative capacity; and

(2) Proof of ownership. The amount of Bonds owned by any Person executing any instrument as an Owner of Bonds, and the numbers, date and other identification thereof, together with the date of his, her or its ownership of the Bonds, shall be determined from the registration books of the Enterprise. The amount of other Bonds, if applicable, owned by any Person executing any instrument as an owner of such Bonds, and the numbers, date and other identification thereof, together with the date of his, her or its ownership, if in bearer form, may be proved by a certificate which need not be acknowledged or verified, in form satisfactory to the Secretary of the Enterprise, executed by a member of a financial firm or by an officer of a bank or trust company, insurance company or financial corporation or other depository satisfactory to the Secretary of the Enterprise, or by any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act, showing at the date therein mentioned that such Person exhibited to such member, officer, notary public or other officer so authorized to take acknowledgments of deeds or had on deposit with such depository the Bonds described in such certificate or, if in registered form shall be determined from the related registration books; but the Secretary of the Enterprise may nevertheless in his or her discretion require further or other proof in cases where he or she deems the same advisable.

(F) **WARRANTY UPON ISSUANCE OF BONDS:** Any of the Bonds as herein provided, when duly executed and registered for the purposes provided for in this Ordinance, shall constitute a warranty by and on behalf of the Enterprise for the benefit of each and every future Owner of any of the Bonds that the Bonds have been issued for a valuable consideration in full conformity with law.

(G) **IMMUNITIES OF PURCHASER:** The Purchaser and any associate thereof are under no obligation to any Owner of the Bonds for any action that they may not take or in respect of anything that they may or may not do by reason of any information contained in any reports or other documents received by them under the provisions of this Ordinance. The immunities and exemption from liability of the Purchaser and any associate thereof hereunder extend to their officers, directors, successors, assigns, employees and agents.

Section 11. Amendment of Ordinance.

(A) **AMENDMENT OF ORDINANCE NOT REQUIRING CONSENT OF BOND OWNERS:** The Enterprise may, without the consent of, or (except as otherwise provided herein) notice to, the Owners of the Bonds, adopt such ordinances supplemental hereto (which amendments shall thereafter form a part hereof) for any one or more or all of the following purposes:

(1) To cure or correct any formal defect, ambiguity or inconsistent provision contained in this Ordinance;

(2) To appoint successors to the Paying Agent and Registrar as provided in Section 3.B(7) hereof;

(3) To designate a trustee for the Owners of the Bonds, to transfer custody and control of the Income to such trustee, and to provide for the rights and obligations of such trustee;

(4) To add to the covenants and agreements of the Enterprise or the City or the limitations and restrictions on the Enterprise or the City set forth herein;

(5) To pledge additional revenues, properties or collateral to the payment of the Bonds;

(6) To cause this Ordinance to comply with the Trust Indenture Act of 1939, as amended from time to time;

(7) To preserve or protect the excludability from gross income for federal income tax purposes of the interest allocable to the Bonds; or

(8) To effect any such other changes hereto which do not in the opinion of nationally recognized bond counsel materially adversely affect the interests of the Owners of the Bonds.

(B) **AMENDMENT OF ORDINANCE REQUIRING CONSENT OF BOND OWNERS:** Exclusive of the amendatory ordinances covered by Section 11.A hereof, this Ordinance may be amended or modified by ordinances or other instruments duly adopted by the Enterprise, without receipt by it of any additional consideration, but with the written consent of the Owners of a majority in aggregate principal amount of the Bonds Outstanding at the time of the adoption of such amendatory ordinance, provided that no such amendatory ordinance shall permit:

(1) Changing payment. A change in the maturity or in the terms of redemption of the principal of the Outstanding Bond or any installment of interest thereon; or

(2) Reducing return. A reduction in the principal amount of the Bond or the rate of interest thereon without the consent of the Owner of such Bond; or

(3) Prior lien. The creation of a lien upon or a pledge of revenues ranking prior to the lien or to the pledge created by this Ordinance; or

(4) Modifying amendment terms. A reduction of the principal amount or percentages of the Bonds, or any modification otherwise affecting the description of such Bonds, otherwise changing the consent of the Owners of such Bonds, which may be required herein for any amendment hereto; or

(5) Priorities among bonds or parity bonds. The establishment of priorities as among Bonds issued and Outstanding under the provisions of this Ordinance or as among Bonds and other Parity Bonds; or

(6) Partial modification. Any modifications otherwise materially and prejudicially affecting the rights or privileges of the Owners of less than all of the Bonds then Outstanding.

Whenever the Enterprise proposes to supplement or amend this Ordinance under the provisions of this Section 11.B, it shall give notice of the proposed supplement or amendment by mailing such notice to the Purchaser or to any successor thereof known to the Secretary of the Enterprise, to all Owners of Bonds at the addresses appearing on the registration books of the Enterprise. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy of the proposed amendatory ordinance or other instrument is on file in the office of the Secretary of the Enterprise for public inspection.

(C) **TIME FOR AND CONSENT TO AMENDMENT:** Whenever at any time within one (1) year from the date of the completion of the notice required to be given by Section 11.B hereof there shall be filed in the office of the Secretary of the Enterprise an instrument or instruments executed by the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed amendatory ordinance or other instrument described in such notice and shall specifically consent to and approve the adoption of such ordinance or other instrument, thereupon, but not otherwise, the Council may adopt such amendatory ordinance or instrument and such ordinance or instrument shall become effective. If the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, at the time of the adoption of such amendatory ordinance or instrument, or the predecessors in title of such Owners, shall have consented to and approved the adoption thereof as herein provided, no Owner of any Bond whether or not such Owner shall have consented to or shall have revoked any consent as herein provided shall have any right or interest to object to the adoption of such amendatory ordinance or other instrument or to object to any of the terms or provisions therein contained or to the operation thereof or to enjoin or restrain the Enterprise from taking any action pursuant to the provisions thereof. Any consent given by the Owner of a Bond pursuant to the provisions thereof shall be irrevocable for a period of six (6) months from the date of the completion of the notice above provided for and shall be

conclusive and binding upon all future Owners of the same Bond during such period. Such consent may be revoked at any time after six (6) months from the completion of such notice, by the Owner who gave such consent or by a successor in title, by filing notice of such revocation with the Secretary of the Enterprise, but such revocation shall not be effective if the Owners of at least a majority in aggregate principal amount of the Bonds Outstanding as herein provided, prior to the attempted revocation, shall have consented to and approved the amendatory instrument referred to in such revocation.

(D) UNANIMOUS CONSENT: Notwithstanding anything in the foregoing provisions contained, the terms and the provisions of this Ordinance, or of any ordinance or instrument amendatory thereof, and the rights and the obligations of the Enterprise and the City and of the Owners of the Bonds may be modified or amended in any respect (except as would adversely affect the rights of the Owners of any Parity Bonds) upon the adoption by the Enterprise and upon the filing with the Secretary of the Enterprise of an instrument to that effect and with the consent of the Owners of all the then Outstanding Bonds, such consent to be given in the manner provided in Section 11.C hereof; and no notice to Owners of Bonds shall be required as provided in Section 11.B hereof, nor shall the time of consent be limited except as may be provided in such consent.

(E) EXCLUSION OF BONDS: At the time of any consent or of other action taken hereunder the Registrar shall furnish to the Secretary of the Enterprise a certificate, upon which the Secretary of the Enterprise may rely, describing all Bonds to be excluded for the purpose of consent or of other action or of any calculation of Outstanding Bonds provided for hereunder, and, with respect to such excluded Bonds, the Enterprise shall not be entitled or required with respect to such Bonds to give or obtain any consent or to take any other action provided for hereunder.

(F) NOTATION ON BONDS: Any of the Bonds delivered after the effective date of any action taken as provided in Section 11.B hereof, or Bonds Outstanding at the effective date of such action, may bear a notation thereon by endorsement or otherwise in form approved by the Council as to such action; and if any such Bonds so executed and delivered after such date does not bear such notation, then upon demand of the Owner of any Bond Outstanding at such effective date and upon presentation of his, her or its Bond for such purpose at the principal office of the Enterprise, suitable notation shall be made on such Bond by the Secretary of the Enterprise as to any such action. If the Council so determines, new Bonds so modified as in the opinion of the Council to conform to such action shall be prepared, executed and delivered; and upon demand of the Owner of any Bond then Outstanding, shall be exchanged without cost to such Owner for Bonds then Outstanding upon surrender of such Outstanding Bonds.

(G) PROOF OF INSTRUMENTS AND BONDS: The fact and date of execution of any instrument under the provisions of this Section 11, the amount and number of the Bonds owned by any Person executing such instrument, and the date of his registering the same may be proved as provided by Section 10.E hereof.

Section 12. Miscellaneous.

(A) CHARACTER OF AGREEMENT: None of the covenants, agreements, representations, or warranties contained herein or in the Bonds shall ever impose or shall be construed as imposing any liability, obligation, or charge against the City or against the credit of the City payable out of the general fund or any other fund of the City (except the special funds pledged therefor).

Pursuant to the Enterprise Ordinance the Enterprise is authorized to make covenants on behalf of the City and to bind the City to perform any obligation relating to the System other than any multiple-fiscal year direct or indirect debt or other financial obligation of the City without adequate present cash reserves pledged irrevocably and held for payments in future years. Notwithstanding anything in this Ordinance to the contrary, no such covenant of the Enterprise on behalf of the City that would constitute such a direct or indirect debt or other financial obligation of the City may be enforced against the City.

(B) NO PLEDGE OF PROPERTY: The payment of the Bonds is not secured by an encumbrance, mortgage or other pledge of property of the City or the Enterprise except for the Pledged Revenues. No property of the City or the Enterprise, subject to such exception with respect to the Pledged Revenues, pledged for the payment of the Bonds, shall be liable to be forfeited or taken in payment of the Bonds.

(C) STATUTE OF LIMITATIONS: No action or suit based upon any Bond or other obligation of the Enterprise or the City shall be commenced after it is barred by any statute of limitations pertaining thereto. Any trust or fiduciary relationship between the Enterprise and the Owner of any Bond or the obligee regarding any such obligation shall be conclusively presumed to have been repudiated on the maturity date or other due date thereof unless the Bond is presented for payment or demand for payment of such other obligation is otherwise made before the expiration of the applicable limitation period. Any moneys from whatever source derived remaining in any fund or account reserved, pledged or otherwise held for the payment of any such obligation, action or suit, the collection of which has been barred, shall revert to the Water and Wastewater Utility Fund, unless the Council shall otherwise provide by ordinance. Nothing herein prevents the payment of any such Bond or other obligation after an action or suit for its collection has been barred if the Council deems it in the best interests of the Enterprise or the public so to do and orders such payment to be made.

(D) DELEGATED DUTIES: The officers of the Enterprise are hereby authorized and directed to enter into such agreements and take all action necessary or appropriate to effectuate the provisions of this Ordinance and to comply with the requirements of law, including, without limitation:

(1) Execution, registration and delivery of bonds. The execution and registration of the Bonds and the delivery of the Bonds to the Purchaser pursuant to the provisions of this Ordinance and the Bond Purchase Agreement;

(2) Information. The assembly and dissemination of financial and other information concerning the Enterprise, the City and the Bonds including, without limitation, the information required by the Continuing Disclosure Certificate;

(3) Official statement. The preparation of the Official Statement for the use of buyers of the Bonds, including, without limitation, the Purchaser; and

(4) Documents and closing certificates. The execution of the Commitment, if any, the Paying Agent Agreement, the Bond Purchase Agreement, the Continuing Disclosure Certificate and such certificates as may be reasonably required by the Purchaser, relating, inter alia, to:

- (a) The signing of the Bonds;
- (b) The tenure and identity of the officials of the Enterprise;
- (c) If in accordance with fact, the absence of litigation, pending or threatened, affecting the validity of the Bonds;
- (d) The tax treatment of interest on the Bonds under federal and State income tax laws;
- (e) The delivery of the Bonds and the receipt of the Bond purchase price;
- (f) The accuracy and completeness of information provided in the Official Statement.

The form, terms and provisions of the Paying Agent Agreement, the Continuing Disclosure Certificate, and the Bond Purchase Agreement, are hereby approved, and the Enterprise shall enter into and perform its obligations thereunder in substantially the forms of such documents presented to the Council at this meeting, with such changes as may be approved by the Treasurer or the Manager of the Enterprise, subject to the parameters and restrictions contained in this Ordinance; and the officers of the Enterprise and the City are hereby authorized and directed to execute and deliver such documents as required hereby.

(E) SUCCESSORS: Whenever herein the Enterprise or the City is named or is referred to, such provision shall be deemed to include any successors of the Enterprise or the City, whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of and other provisions

for the benefit of the Enterprise or the City contained herein shall bind and inure to the benefit of any officer, board, district, commission, authority, agency, instrumentality or other Person or Persons to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Enterprise or the City or of its respective successors, if any, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

(F) **RIGHTS AND IMMUNITIES:** Except as herein otherwise expressly provided, nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon or to give or grant to any Person, other than the Enterprise and the City, the Paying Agent and Registrar, and the Owners of the Bonds, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof. All the covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the Enterprise or the City shall be for the sole and exclusive benefit of the Enterprise or the City, the Paying Agent and Registrar, and any Owners of the Bonds.

No civil recourse shall be available for the payment of the Debt Service Requirements of the Bonds or for any claim based thereon or otherwise upon this Ordinance authorizing their issuance or any other ordinance or instrument pertaining thereto, against any individual member of the Council, or any officer or other agent of the Enterprise past, present or future, either directly or indirectly through the Council, the Enterprise, or otherwise, whether by virtue of any constitution, statute or rule of law or by the enforcement of any penalty or otherwise, all such recourse, if any, being by the acceptance of the Bonds and as a part of the consideration of their issuance specially waived and released, as provided by Section 11-57-209 of the Supplemental Act.

(G) **FACSIMILE SIGNATURES:** Pursuant to the Uniform Facsimile Signature of Public Officials Act, part 1 of article 55 of title 11, C.R.S., the President, the Secretary and the Treasurer shall forthwith, and in any event prior to the time the Bonds are delivered to the Purchaser, file with the Colorado Secretary of State their manual signatures certified by them under oath.

(H) **ORDINANCE IRREPEALABLE:** This Ordinance is, and shall constitute, a legislative measure of the Enterprise and after any of the Bonds are issued, this Ordinance shall constitute an irrevocable contract between the Enterprise and the Owner or Owners of the Bonds; and this Ordinance, subject to the provisions of Sections 9 and 11 hereof, shall be and shall remain irrevocable until the Bonds, as to all Debt Service Requirements, shall be fully paid, cancelled or discharged.

(I) **NO RECOURSE AGAINST OFFICERS AND AGENTS:** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bonds. Such recourse shall not be available either directly or indirectly through the Board or the Enterprise, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

(J) **CONCLUSIVE RECITAL:** Pursuant to Section 11-57-210 of the Supplemental Act, the Bonds shall contain a recital that they are issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

(K) **LIMITATION ON ACTIONS:** Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the Enterprise in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the authorization of the Bonds.

(L) **HOLIDAY:** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this resolution, shall be a legal holiday or a day on which banking institutions in the city in which is located the principal office of the Registrar and Paying Agent are authorized or required by law to remain closed, such payment may be made or act performed or right

exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized or required by law to remain closed, with the same force and effect as if done on the nominal date provided in this resolution, and no interest shall accrue for the period after such nominal date.

(M) RATIFICATION: All action not inconsistent with the provisions of this Ordinance heretofore taken by the Enterprise or its officers, and otherwise by the Enterprise directed toward the issuance of the Bonds is hereby ratified, approved and confirmed.

(N) REPEALER: All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

(O) SEVERABILITY: If any Section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

Section 13. Effective Date.

This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

Section 14. Electronic Signatures; Electronic Transactions.

The President, the Manager, the Treasurer, the Secretary and all other employees and officials of the Enterprise that are authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the "Authorized Documents") are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. It is hereby determined 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.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ARE ORDERED PUBLISHED THIS 8th day of JULY, 2024.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 22nd day of JULY, 2024.

CITY OF WESTMINSTER, COLORADO,
WATER AND WASTEWATER UTILITY
ENTERPRISE

By: _____
President

ATTEST:

APPROVED AS TO LEGAL FORM:

Secretary

City Attorney

EXHIBIT A

[Form of Bond]

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Enterprise or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTIES OF ADAMS AND JEFFERSON

**CITY OF WESTMINSTER
WATER AND WASTEWATER UTILITY ENTERPRISE
WATER AND WASTEWATER REVENUE BOND
SERIES 2024**

No. R-_____ \$ _____

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>CUSIP</u>
____%	December 1, 20__	[DATE OF DELIVERY]	960686 __ _

REGISTERED OWNER: Cede & Co.

PRINCIPAL SUM: _____ DOLLARS

The City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the "Enterprise"), for value received, hereby promises to pay in lawful money of the United States of America, to the Registered Owner (specified above), or registered assigns, solely from the special funds provided therefor, as hereinafter set forth, the Principal Sum (specified above), on the maturity date (specified above), with interest thereon at the per annum Interest Rate (specified above), payable semiannually on June 1 and December 1 of each year, commencing on _____ 1, 20[] from the Original Date (specified above) or the interest payment date to which interest has been paid next preceding the date hereof, whichever is later, to the maturity date. If upon presentation at maturity, payment of the Principal Sum is not made as provided herein, interest continues at the Interest Rate until the Principal Sum is paid in full.

This Bond is a special and limited obligation of the Enterprise payable solely out of and secured by an irrevocable pledge of and lien (but not necessarily an exclusive lien) upon

certain net revenues (the “Pledged Revenues”) derived from the water and wastewater facilities of the City of Westminster, Colorado (the “City”), as defined and as more specifically provided in the ordinance duly adopted by the governing body of the Enterprise authorizing the issuance of this Bond (the “Ordinance”), which is on a parity with the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan (as defined in the Ordinance) and at all times senior and superior to the lien thereon of the Subordinate Securities pursuant to the terms of the Ordinance. This Bond does not constitute a debt or an indebtedness of the Enterprise or the City within the meaning of any applicable constitutional, charter or statutory provision or limitation. This Bond is not payable in whole or in part from the proceeds of general property taxes or any other funds of the City or the Enterprise except the Pledged Revenues, and the full faith and credit of the City is not pledged for the payment of principal of and interest on this Bond.

This Bond is one of a series of bonds issued pursuant to the Ordinance designated as the “City of Westminster, Colorado, Water and Wastewater Utility Enterprise, Water and Wastewater Revenue Bonds, Series 2024 (the “Bonds”) in the aggregate principal amount of \$_____. The Bonds have been duly authorized for the purpose of providing moneys to defray a portion of the cost of extending, bettering or otherwise improving and equipping the System, (the “System”).

This Bond is authorized and issued under the authority of and in full conformity with the Constitution of the State of Colorado, Title 11, Article 57, Part 2, C.R.S., Title 37, Article 45.1, C.R.S., the City Charter, the Enterprise Ordinance, the Ordinance, and all other laws of the State of Colorado thereunto enabling. Pursuant to Section 11-57-210, C.R.S., this recital shall be conclusive evidence of the validity and the regularity of the issuance of this Bond after its delivery for value. To the extent not defined herein, terms used in this Bond shall have the same meanings as set forth in the Ordinance.

[INSERT REDEMPTION PROVISIONS]

The principal of and interest on this Bond are payable to the Registered Owner by U.S. Bank Trust Company, National Association, Denver, Colorado, or its successors, as Paying Agent. The principal and final installment of interest are payable to the Registered Owner upon presentation and surrender of this Bond at maturity. As provided in the Ordinance, the interest is payable to the Registered Owner determined as of the close of business on the regular record date, which is the fifteenth day of the calendar month next preceding the interest payment date, irrespective of any transfer of ownership of this Bond subsequent to the regular record date and prior to such interest payment date. Any interest hereon not paid when due and any interest hereon accruing after maturity is payable to the Registered Owner determined as of the close of business on the special record date, which is to be fixed by the Paying Agent for such purpose, irrespective of any transfer of ownership of this Bond subsequent to the special record date and prior to the date fixed by the Paying Agent for the payment of such interest. Notice of the special record date and of the date fixed for the payment of such interest is to be given to the registered owner of each Bond upon which interest will be paid determined as of the close of business on the day preceding such mailing at the address appearing on the registration books of the Enterprise. If the date for making or giving any payment, determination or notice described herein or in the Ordinance is not a Business Day, such payment, determination or notice is to be made or given on the next succeeding Business Day.

This Bond is transferable only upon the registration books of the Enterprise by U.S. Bank Trust Company, National Association, Denver, Colorado, or its successors, as Paying Agent, at the request of the Registered Owner or his, her or its duly authorized attorney in fact or legal representative, upon surrender hereof together with a duly executed written instrument of transfer containing instructions as to the details of the transfer, along with the social security number or federal employer identification number of the transferee and, if the transferee is a trust, the names and social security numbers of the settlors and beneficiaries of the trust. The Registered Owner may also exchange this Bond for another Bond or Bonds of authorized denominations. The Paying Agent may charge a fee for transfers and exchanges, and in addition, the Paying Agent may require payment of a sum sufficient to defray any tax or other governmental charge that may hereafter be imposed in connection with any transfer or exchange of Bonds. No transfer of this Bond is to be effective until entered on the registration books of the Enterprise. In the case of every transfer or exchange, the Registrar is to authenticate and the Paying Agent is to deliver to the new registered owner a new Bond or Bonds of the same aggregate principal amount, maturing in the same year, and bearing interest at the same per annum rate as the Bond or Bonds surrendered. Such Bond or Bonds are to be dated as of their date of authentication. The Enterprise may deem and treat the person or entity in whose name this Bond is last registered upon the books of the Enterprise as the absolute owner hereof for the purpose of receiving payment of the principal of and interest on this Bond and for all other purposes, and all such payments so made to such person or entity or upon his, her or its order will be valid and effective to satisfy and discharge the liability of the Enterprise upon this Bond to the extent of the sum or sums so paid, and the Enterprise will not be affected by any notice to the contrary.

The Bonds are equitably and ratably secured by a lien on the Pledged Revenues, and such Bonds constitute an irrevocable lien (but not necessarily an exclusive lien) upon the Pledged Revenues which is on a parity with the 2016 Bonds, the 2019 Bonds, the 2020 Bonds, the 2020 CWRPDA Loan and which is at all times senior and superior to the lien thereon of the Subordinate Securities pursuant to the terms of the Ordinance. Subordinate Securities, subject to expressed conditions, may be issued or, Parity Bonds, subject to additional expressed conditions, may be issued, all in accordance with the provisions of the Ordinance. The pledge of revenues and other obligations of the Enterprise under the Ordinance may be discharged at or prior to the maturity of the Bonds upon the making of provision for the payment of the Bonds on the terms and conditions set forth in the Ordinance.

Reference is hereby made to the Ordinance and to any and all modifications and amendments thereof for a complete description of the provisions, terms and conditions upon which the Bonds of this issue are issued and secured, including, without limitation, the nature and extent of the security for the Bonds, provisions with respect to the custody and application of the proceeds of the Bonds, the collection and disposition of the revenues and moneys charged with and pledged to the payment of the principal of and interest on the Bonds, a description of the special funds referred to above and the nature and extent of the security and pledge afforded thereby for the payment of the principal of and interest on the Bonds, and the manner of enforcement of said pledge, the payment of the Bonds, the provisions for modifying or amending the Ordinance, as well as the rights, duties, immunities and obligations of the Enterprise and the City, the rights and remedies of the registered owners of the Bonds, as well as the duties and obligations of the Securities Depository and the removal or resignation and subsequent replacement thereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been signed by the Registrar.

IN WITNESS WHEREOF, the Enterprise has caused this Bond to be executed in its name and on its behalf with the facsimile or manual signature of the President of the Enterprise, to be attested with the facsimile or manual signature of the Secretary of the Enterprise.

CITY OF WESTMINSTER, COLORADO,
WATER AND WASTEWATER UTILITY
ENTERPRISE

By: (Facsimile or Manual Signature)
President

ATTEST:

(Facsimile or Manual Signature)
Secretary

(Form of Registrar's Certificate of Authentication)

This is one of the Bonds described in the within-mentioned Resolution, and this Bond has been duly registered on the registration books kept by the undersigned as Registrar for such Bonds.

Date of Authentication and Registration: _____.

**U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION,
Denver, Colorado, as Registrar**

By _____
Title: _____

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, _____ hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder and hereby irrevocably constitutes and appoints _____ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

(Signature must be guaranteed by
a member of the Medallion Signature Program)

Address of transferee:

Social Security Number or other Tax
Identification Number of Transferee:

NOTE: The signature to this Assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

EXCHANGE OR TRANSFER FEES MAY BE CHARGED

(End of Form of Assignment)

[End of Form of Bond]

STATE OF COLORADO)
)
COUNTIES OF ADAMS) SS.
AND JEFFERSON)

CITY OF WESTMINSTER)

I, Abby Fitch, the duly qualified and acting City Clerk of the City of Westminster, Colorado (the “City”) and Secretary of the City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the “Enterprise”) do hereby certify that:

1. The foregoing pages are a true, correct, and complete copy of an ordinance (the “Ordinance”) passed and adopted by the City Council (the “Council”) of the City, acting as the governing body of the Enterprise, at a meeting of the Enterprise held concurrently with a regular meeting of the Council at the City Hall on July 8, 2024.

2. The passage of the Ordinance on first reading on July 8, 2024, was duly moved and seconded, and the Ordinance was adopted by a vote of ____ of ____ of the members of the City Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally, Mayor				
Sarah Nurmela, Mayor Pro Tem				
Claire Carmelia				
David DeMott				
Obi Ezeadi				
Amber Hott				
Kristine Ireland				

3. The passage of the Ordinance on second and final reading was moved and seconded at a regular meeting of the Council on July 22, 2024, and the Ordinance was approved on second and final reading by a vote of ____ of ____ of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally, Mayor				
Sarah Nurmela, Mayor Pro Tem				
Claire Carmelia				
David DeMott				
Obi Ezeadi				
Amber Hott				
Kristine Ireland				

4. The members of the Council were present at such meetings and voted on the passage of the Ordinance as set forth above.

5. The Ordinance has been signed by the Mayor, as President of the Enterprise, attested by me, as Secretary of the Enterprise, and duly recorded in the books of the Enterprise and the City; and the same remains of record in the book of records of the Enterprise and the City.

6. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance as an emergency.

7. Notice of the meetings of July 8, 2024, and July 22, 2024, in the forms attached hereto as Schedule A, was duly given to the Council members and was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

8. The Ordinance was published by title after first reading and published in full after adoption on second reading in the Westminster Window, a newspaper of general circulation within the City on _____, 2024. The affidavits of publication are attached hereto as Schedule B.

9. The Ordinance has not been repealed, rescinded, amended or otherwise modified and is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2024.

City Clerk and
Secretary of the Enterprise

SCHEDULE A
(Attach Notice of Meetings)

SCHEDULE B
(Attach Affidavits of Publication)

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made this 8th day of July, 2024, by and between **BUTLER SNOW LLP** (the "Firm") and the CITY OF WESMTINSTER, a Colorado home rule municipality.

RECITALS

The City is desirous of contracting with the Firm for legal services; and

The Firm and its attorneys are authorized to practice law in the State of Colorado.

AGREEMENT

1. The Firm shall furnish special legal services to the City (the "Services": The Firm shall act as Bond Counsel to the City in connection with the anticipated issuance of tax-exempt Utility Enterprise Revenue Bonds).

2. **Kim Crawford** of the Firm shall be principally responsible for the Services.

3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.

4. The City shall pay for the Services an estimated fee of \$50,000 to be paid from the proceeds of the financing.

5. This Agreement may be terminated by the City with or without cause.

6. Payments under this Agreement have been approved by the City Council, and this Agreement was approved by Council on **July 8, 2024**.

7. Payments pursuant to this Agreement shall not exceed fifty thousand dollars (\$50,000) without further written authorization by the City.

CITY OF WESTMINSTER

BUTLER SNOW LLP

By: _____
City Manager

By: _____
Kim Crawford

APPROVED AS TO FORM:

City Attorney's Office

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made this 8th day of July, 2024, by and between **KUTAK ROCK LLP** (the "Firm") and the CITY OF WESTMINSTER, a Colorado home rule municipality.

RECITALS

The City is desirous of contracting with the Firm for legal services; and

The Firm and its attorneys are authorized to practice law in the State of Colorado.

AGREEMENT

1. The Firm shall furnish special legal services to the City (the "Services": The Firm shall act as Continuing Disclosure Counsel to the City in connection with the anticipated issuance of tax-exempt Utility Enterprise Revenue Bonds).

2. **Thomas M. Peltz** of the Firm shall be principally responsible for the Services.

3. The Firm is acting as an independent contractor; therefore, the City will not be responsible for FICA taxes, health or life insurance, vacation, or other employment benefits.

4. The City shall pay for the Services an estimated fee of \$55,000 to be paid from the proceeds of the financing.

5. This Agreement may be terminated by the City with or without cause.

6. Payments under this Agreement have been approved by the City Council, and this Agreement was approved by Council on **July 8, 2024**.

7. Payments pursuant to this Agreement shall not exceed fifty five thousand dollars (\$55,000) without further written authorization by the City.

CITY OF WESTMINSTER

[KUTAK ROCK LLP]

By: _____
City Manager

By: _____
[Thomas M. Peltz]

APPROVED AS TO FORM:

City Attorney's Office

RESOLUTION

RESOLUTION NO. **14**

INTRODUCED BY COUNCILLORS

SERIES OF 2024

**A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF
WESTMINSTER TO BE REIMBURSED FOR CERTAIN CAPITAL
EXPENDITURES RELATING TO WATER AND WASTEWATER
IMPROVEMENTS OF THE CITY**

WHEREAS, the City of Westminster, Colorado (the “City”) is a legal and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the Charter; and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected and qualified; and

WHEREAS, the Council has heretofore determined that the municipal water, wastewater system and stormwater system (collectively, the “System”) constitutes an enterprise within the meaning of Article X, Section 20, of the Colorado Constitution and has heretofore created the City of Westminster, Colorado, Water and Wastewater Utility Enterprise (the “Enterprise”); and

WHEREAS, it is the current intent of the City, acting by and through its Enterprise, to make certain capital expenditures for the construction of certain water and wastewater improvements for the benefit of the City and its residents (the “Project”); and

WHEREAS, the Council has determined that it is in the best interest of the City to finance the Project through one or more of the following: (i) by the issuance of bonds payable from the revenues of the water and wastewater systems; (ii) by the execution and delivery of a loan agreement and governmental agency bond with the Colorado Water Resources and Power Development Authority; or (iii) by any other means legally available to the City, including the execution and delivery of a lease purchase agreement (the “Financing”); and

WHEREAS, the Council has determined that it is necessary to make capital expenditures in connection with the Project prior to the time that the City arranges for the Financing; and

WHEREAS, it is the Council’s reasonable expectation that when such Financing is completed, certain capital expenditures will be reimbursed with the proceeds of the Financing; and

WHEREAS, in order to comply with the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), it is the Council’s desire that this resolution shall constitute the “official intent” of the Council to reimburse such capital expenditures within the meaning of Treasury Regulation §1.150-2.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WESTMINSTER, COLORADO:

1. All action (not inconsistent with the provisions of this resolution) heretofore taken by the Council and the officers, employees and agents of the City directed toward the issuance of the Financing is hereby ratified, approved and confirmed.

2. The City intends to finance approximately \$210,000,000 to pay the costs of the Project, including the reimbursement of certain costs incurred by the City prior to the receipt of any proceeds of the Financing, upon terms acceptable to the City, as authorized in an ordinance to be hereafter adopted and to take all further action which is necessary or desirable in connection therewith.

3. The officers, employees and agents of the City shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby and shall take all action necessary or desirable to finance the Project and to otherwise carry out the transactions contemplated by the resolution.

4. The City shall not use reimbursed moneys for purposes prohibited by Treasury Regulation §1.150-2(h).

5. This resolution is intended to be a declaration of “official intent” to reimburse expenditures within the meaning of Treasury Regulation §1.150-2

6. If any section, paragraph, clause or provision of this resolution shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

7. All acts, orders and resolutions of the Council, and parts thereof, inconsistent with this resolution be, and the same hereby are, repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

PASSED AND ADOPTED this 8th day of July, 2024.

Mayor

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney