

**CITY OF LAFAYETTE**

**ORDINANCE NO. 20, Series 2021**

**INTRODUCED BY: COUNCILOR CHELSEA BEHANNA**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AUTHORIZING THE ISSUANCE BY THE CITY OF LAFAYETTE, COLORADO, ACTING BY AND THROUGH ITS WATER RECLAMATION FUND ENTERPRISE, OF WATER RECLAMATION REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$46,500,000; FIXING THE MAXIMUM NET EFFECTIVE INTEREST RATE ON THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE NET REVENUES OF THE CITY'S WATER RECLAMATION SYSTEM AND MAKING CERTAIN COVENANTS IN CONNECTION THEREWITH; PROVIDING FOR THE FORM AND OTHER DETAILS IN CONNECTION WITH THE BONDS; AUTHORIZING THE EXECUTION OF A REGISTRATION AND PAYING AGENCY AGREEMENT, AN OFFICIAL STATEMENT, AND A NOTICE OF SALE AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE BONDS; AND PROVIDING OTHER MATTERS RELATING THERETO.

**WHEREAS**, the City of Lafayette, Colorado (the "City"), is a home-rule city and political subdivision of the State of Colorado, duly organized and existing under the constitution of the State of Colorado and the home-rule Charter of the City (the "Charter"); and

**WHEREAS**, pursuant to Section 16.13 of the Charter (a) the City Council of the City (the "Council") has, by the adoption of Ordinance No. 1993-54 and Ordinance No. 2000-44, (i) established the City's Water Reclamation Fund Enterprise (the "Enterprise"); and (ii) authorized the Enterprise, acting by and through the Council sitting as the board of the Enterprise, to issue its own revenue bonds or other obligations (including refunding securities) on behalf of the City, which revenue bonds or other obligations shall be payable solely from the net revenue derived from the operation of the Enterprise; and (b) such revenue bonds or other obligations shall be issued by ordinance of the board of the Enterprise, adopted in the same manner as ordinances of the Council; and

**WHEREAS**, the City's water reclamation facilities and its wastewater collection system (the "System") has been, and continues to be, operated as an enterprise within the meaning of the Charter and, in addition, the Enterprise is a government-owned business, and the Enterprise is authorized to issue its own revenue bonds and receives under 10% of annual revenue in grants from all Colorado state and local governments combined, and the Enterprise is and continues to be an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution; and

**WHEREAS**, the Council, acting as the board of the Enterprise, has determined that it is necessary to make improvements to the System (the "Project") to further the health, safety and welfare of the City and its residents; and

**WHEREAS**, the Council, acting as the board of the Enterprise, deems it necessary and appropriate to authorize the issuance of Water Reclamation Revenue Bonds, Series 2021, in the aggregate principal amount not to exceed \$46,500,000 (the “Bonds”), upon the terms described herein, for the purposes of (a) financing the Project, (b) if necessary, funding, or paying the cost of a surety bond or insurance policy to fund, a debt service reserve fund, (c) if necessary, paying the cost of an insurance policy that guarantees payment of principal of and interest on the Bonds when due, and (d) paying the costs of issuance of the Bonds; and

**WHEREAS**, the Bonds, issued by the City, acting by and through the Enterprise, are permitted, under Article X, Section 20 of the Colorado Constitution, to be issued without an election; and

**WHEREAS**, the Bonds will be payable solely from and secured by a first lien on the net revenues, after the payment of operating expenses, of the System, but not necessarily an exclusive first lien; and

**WHEREAS**, none of the members of the Council, acting as the board of the Enterprise, have any financial interest or other potential conflicting interests in connection with the authorization, issuance or sale of the Bonds, or the use of the proceeds thereof; and

**WHEREAS**, Section 10.2 of the Charter provides that bonds issued by the City shall be sold by public or private sale to the best advantage of the City; and

**WHEREAS**, the City has engaged Hilltop Securities Inc., of Denver, Colorado, as municipal advisor to the City (the “Municipal Advisor”), and the City and the Municipal Advisor have determined that a public sale of the Bonds will result in the Bonds being sold to the best advantage of the City; and

**WHEREAS**, there have been made available to this meeting of the Council, acting as the board of the Enterprise: (a) the proposed form of the Preliminary Official Statement to be distributed to prospective bidders for the Bonds; (b) the proposed form of the Registration and Paying Agency Agreement; (c) the proposed form of the Continuing Disclosure Agreement; and (d) the proposed form of the Official Notice of Sale (all as defined hereinafter); and

**WHEREAS**, the City Administrator and the Finance Director of the City shall receive bids for the purchase of Bonds and, together with the Municipal Advisor, shall review such bids and determine the best bid or bids of a responsible bidder or bidders and shall be authorized to approve such bid or bids on behalf of the Council, acting as the board of the Enterprise; and

**WHEREAS**, the Council, acting as the board of the Enterprise, desires to authorize the issuance and sale of the Bonds and the execution of the foregoing documents.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:**

**Section 1. Definitions.** As used herein, the following terms shall have the respective meanings set forth below, unless the context indicates otherwise:

“*Acquisition*” means the design, construction, reconstruction, purchase, lease, gift, transfer, assignment, option to purchase, grant from the federal government or any public body or other person, endowment, bequest, devise, installation, condemnation, contract, or other acquirement or other provision, or any combination thereof, of facilities, other property, any project, or an interest therein.

“*Additional Bonds*” means one or more series of additional bonds, notes, interim securities, or other obligations issued by the City, acting by and through the Enterprise, pursuant to the Section hereof entitled “Additional Bonds,” having a lien on the Net Revenues that is on a parity with the lien of the Bonds.

“*Bond Details Certificate*” means a certificate executed by the City Administrator or Finance Director of the City, dated on or before the date of delivery of the Bonds to the Original Purchaser, setting forth (a) the rate or rates of interest on the Bonds, (b) the conditions and prices at which the Bonds may be redeemed before the maturities thereof, (c) the existence and amount of capitalized interest or reserve funds, (d) the price at which the Bonds will be sold to the Original Purchaser, (e) the total principal amount of the Bonds, (f) the amount of principal maturing in each year, (g) the dates on which principal and interest shall be paid, and (h) whether the Bonds will be secured by an Insurance Policy or a Reserve Account Credit Facility and the terms of any such Policy or Facility, as authorized by the Supplemental Act and this Ordinance, all of which shall be subject to the parameters and restrictions contained in this Ordinance.

“*Bond Account*” means the “City of Lafayette, Colorado, acting by and through its Water Reclamation Fund Enterprise, Water Reclamation Revenue Bonds, Series 2021 Bond Account” created and established by this Ordinance in the City’s Water Reclamation Fund for the purpose of paying the principal of, premium, if any, and interest on the Bonds.

“*Bond Registrar*” means U.S. Bank National Association, or its successor, which shall perform the function of bond registrar with respect to the Bonds.

“*Bonds*” means the Water Reclamation Revenue Bonds, Series 2021, issued by the City, acting by and through the Enterprise, in the maximum aggregate principal amount of \$46,500,000, as authorized by this Ordinance.

“*Business Day*” means any day other than (a) a Saturday or Sunday or (b) a day on which the Paying Agent is authorized or obligated by law or executive order to be closed for business.

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

“*Capital Improvements*” means the acquisition of land, easements, facilities and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, enlargements, betterments and extensions, for use by or in connection with the System that will become part of the System.

“*Charter*” means the home-rule Charter of the City.

“*City*” means the City of Lafayette, Colorado.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“*Combined Maximum Annual Principal and Interest Requirements*” means with regard to any two or more particular issues of bonds or other obligations, the maximum annual payment of principal of and interest on all of said issues combined (excluding redemption premiums) to become due during any one Fiscal Year while such issues are outstanding; provided that if any particular issue has a single principal payment date and is issued as interim notes or securities in anticipation of permanent financing, such principal amount shall be excluded from this computation; provided further that such computation shall assume the redemption and payment of bonds or other obligations subject to mandatory redemption, but shall be made without regard to any right of optional redemption which has not been exercised.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Undertaking, in the form attached as Appendix A to the Official Statement, executed by the City, acting by and through the Enterprise, as it may be amended from time to time in accordance with the terms thereof, comprising the undertaking that enables the Original Purchaser to comply with Rule 15c2-12 promulgated by the Securities and Exchange Commission.

“*Council*” means the City Council of the City.

“*Costs of the Project*” means all or any part of the cost of Acquisition, Improvement and Equipment of all or any part of the Project, including, without limitation, all or any property, rights, easements, privileges, agreements and franchises deemed by the City to be necessary or useful and convenient therefor or in connection therewith, interest on the Bonds, costs of issuance of the Bonds, costs of the premium for any Insurance Policy, costs of the premium for any Reserve Account Credit Facility, engineering and inspection costs and legal expenses, costs of financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses of the City or the Enterprise prior to and during such Acquisition, Improvement and Equipment and additionally during a period of not exceeding one year after the completion thereof, as may be estimated and determined by the City, and all such other expenses as may be necessary or incident to the financing, Acquisition, Improvement, Equipment, and completion of the Project or any part thereof, and the placing of the same in operation, provision of reserves for payment or security of principal of or interest on the Bonds during or after such Acquisition, Improvement or Equipment as the City may determine, and also reimbursements to

the City, the Enterprise or to any Person of any moneys theretofore expended for the purposes of the City, the Enterprise or other public body for or in connection with the Project.

“*Credit Facility Costs*” means the repayment of draws under the Reserve Account Credit Facility, if any, plus all related reasonable expenses incurred by the Credit Facility Provider, plus accrued interest thereon.

“*Credit Facility Provider*” means the Insurer or any other entity issuing a Reserve Account Credit Facility with respect to the Reserve Account, if any, for the Bonds, as set forth in the Bond Details Certificate.

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

“*Enterprise*” means the Water Reclamation Fund Enterprise of the City, formed on January 4, 1994 by Ordinance No. 1993-54.

“*Equip*” or “*Equipment*” means the design, manufacture, purchase, lease or installation or replacement of items of equipment, machinery, tools, software, hardware and related property and fixtures installed or used in the operation of the water reclamation facilities, other property, any project, or any interest therein.

“*Event of Default*” means any one or more of the events set forth in the Section hereof entitled “Events of Default.”

“*Federal Securities*” means non-callable, direct obligations of, or obligations the principal of and interest on which are timely and unconditionally guaranteed by, the United States of America.

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

“*Gross Revenues*” means all income and revenues directly or indirectly derived by the Enterprise from the operation and use of the System, or any part thereof, including without limitation, any rates, fees, cash, plant investment fees, standby charges, availability fees, tap fees, tolls and charges for the services furnished by, or the use of, the System, as the same may at any time exist to serve customers within or outside of the boundaries of the City, and all income attributable to any past or future dispositions of property or rights or related contracts, settlements or judgments held or obtained in connection with the System or its operations, and including investment income accruing from moneys held to the credit of the Revenue Fund; provided however, that there shall be excluded from Gross Revenues any moneys borrowed and used for providing Capital Improvements, any money and securities, and investment income therefrom, in any refunding fund, escrow account or similar account pledged to the payment of any bonds or other obligations, and any moneys received as grants or appropriations from the United States of America, the State of Colorado, or other sources, the use of which is limited or

restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

“*Improve*” or “*Improvement*” means the addition, extension, enlargement, betterment, replacement, reconstruction, or improvement or any combination thereof, by construction, purchase or other acquisition, of the water reclamation facilities, machinery, apparatus, fixtures, structures, buildings, other property, any project, or any interest therein.

“*Independent Accountant*” means a Certified Public Accountant practicing under the laws of the State of Colorado who is independent in fact and not an officer or employee of the City.

“*Insurance Policy*” means the municipal bond new issue insurance policy, if any, issued by the Insurer that guarantees payment of principal of and interest on the Bonds when due.

“*Insurer*” means the issuer of the Insurance Policy, if any, as set forth in the Bond Details Certificate.

“*Insurance Agreement*” means any agreement entered into between the City, acting by and through the Enterprise, and any Insurer or Credit Facility Provider.

“*Net Revenues*” means the Gross Revenues, less the Operation and Maintenance Expenses.

“*Official Statement*” means the final Official Statement, distributed by the Original Purchaser in connection with the offering and sale of the Bonds.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the City, acting by and through the Enterprise, calculated in accordance with generally accepted accounting principles, paid or accrued, for operating, maintaining, and repairing the System, including, without limitation, legal and overhead expenses directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries and administrative expenses, labor, and the cost of materials and supplies for current operation, but not including depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, the cost and expense of Capital Improvements, replacements, or extensions to the System, discretionary transfers to other funds, payments due in connection with any bonds or other obligations issued to provide or refinance Capital Improvements, or charges for the accumulation of reserves.

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

“*Original Purchaser*” means the Person or Persons submitting the best bid or bids for the purchase of the Bonds, as determined by the City Administrator and the Finance Director of the

City in accordance with the Official Notice of Sale provided by the City, acting by and through the Enterprise.

“*Owner*” means the registered owner of any Bond, as shown by the registration books maintained by the Bond Registrar.

“*Paying Agency Agreement*” means the Registration and Paying Agency Agreement, between the City, acting by and through the Enterprise, and the Paying Agent, concerning the registration, transfer, exchange and payment of the Bonds.

“*Paying Agent*” means U.S. Bank National Association, or its successor, which shall perform the function of paying agent with respect to the Bonds.

“*Permitted Investments*” means investments which comply with the requirements for legal investments for Colorado municipalities as set forth in Title 24, Article 75, Part 6, C.R.S.

“*Person*” means any individual, firm, partnership, corporation, company, association, joint stock association, limited liability company or body politic or any trustee, receiver, assignee or similar representative thereof.

“*Project*” means the Acquisition, Improvement and Equipping of the System.

“*Rebate Fund*” means the “City of Lafayette, Colorado, acting by and through its Water Reclamation Fund Enterprise, Water Reclamation Revenue Bonds, Series 2021, Rebate Fund” created and established by this Ordinance.

“*Record Date*” means the fifteenth day (whether or not a Business Day) of the calendar month next preceding an interest payment date.

“*Required Reserve*” means the least of (i) maximum annual debt service with respect to the Bonds, (ii) 125% of average annual debt service on the Bonds, or (iii) 10% of the principal amount of the Bonds, which will allow the Reserve Account to qualify as a “reasonably required reserve or replacement fund” under Section 148(d) of the Code.

“*Reserve Account*” means the “Water Reclamation Revenue Bonds, Series 2021, Reserve Account” created and established by this Ordinance in the Revenue Fund, and which may be funded as determined by the City Administrator or the Finance Director of the City in the Bond Details Certificate.

“*Reserve Account Credit Facility*” means an insurance policy, surety bond, letter or line of credit or similar instrument that may be utilized in the Reserve Account as security for the Bonds, the issuer or provider of which is rated at least as high as any rating on the Bonds.

“*Revenue Fund*” means the “City of Lafayette Water Reclamation Fund,” the establishment of which is reaffirmed by this Ordinance, into which all Gross Revenues are deposited immediately upon receipt.

“*Special Record Date*” means a record date fixed for determining the names and addresses of registered owners of the Bonds for purposes of paying defaulted interest on a special interest payment date.

“*State*” means the State of Colorado.

“*Supplemental Act*” means the Supplemental Public Securities Act, constituting part 2 of article 57 of title 11, Colorado Revised Statutes, as amended.

“*System*” means all of the City’s municipal water reclamation facilities and its wastewater collection system now owned or hereafter acquired, whether situated within or without the City boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements or additions thereof or thereto, and all real or personal property and rights therein and appurtenances thereto necessary or useful or convenient for the transmission, treatment and storage of wastewater.

“*Water Reclamation Fund*” means the fund of the City designated as the “Water Reclamation Fund.”

**Section 2. Authorization.** In accordance with Chapter X of the Charter, Section 16.13 of the Charter, the constitution of the State of Colorado, the Supplemental Act, and all other laws of the State of Colorado thereunto enabling, there shall be issued by the City, acting by and through the Enterprise, the “Water Reclamation Revenue Bonds, Series 2021,” in the maximum aggregate principal amount of \$46,500,000 for the purposes of financing the Project and, if necessary, paying the costs of a Reserve Account Credit Facility and/or an Insurance Policy, and paying the costs of issuing the Bonds.

The Council hereby determines and declares that Ordinance No. 1993-54, has not been repealed or amended, except by Ordinance No. 2000-44, that the provisions thereof are not inconsistent with the Charter, that such Ordinance No. 1993-54, remains in full force and effect and that the Council has authority to act as the governing body of the Enterprise.

**Section 3. Special Obligations.** All of the Bonds, together with the interest thereon, and any Credit Facility Costs shall be payable only out of (a) the Bond Account, into which the City, acting by and through the Enterprise, covenants to deposit the Net Revenues in amounts sufficient to pay promptly, when due, the principal of, premium if any, and interest on the Bonds and any Credit Facility Costs; and (b) if moneys in the Bond Account are not sufficient, the Reserve Account, if determined to be funded pursuant to the Bond Details Certificate. The Bonds shall constitute an irrevocable first lien upon the Net Revenues, but not necessarily an exclusive first lien, and the Net Revenues are hereby pledged to the payment of the Bonds and any Credit Facility Costs. The Owners and the Credit Facility Provider may not look to any general or other fund of the City for the payment of the principal of, premium if any, and interest on the Bonds, except the funds and accounts pledged thereto by this Ordinance, and the Bonds and any Credit Facility Costs shall not constitute a debt or an indebtedness of the City within the

meaning of any constitutional or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City.

**Section 4. Bond Details; Delegation to Determine Certain Details.** The Bonds shall be issued only as fully registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless the City, acting by and through the Enterprise, shall otherwise direct, the registered Bonds shall be numbered separately from 1 upward, with the number of each Bond preceded by “R-.”

Unless the City, acting by and through the Enterprise, shall otherwise direct, the Bonds initially shall be issued in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), as registered owner of the Bonds, and immobilized in the custody of DTC. A single certificate for each maturity date or for each interest rate for each maturity date of the Bonds will be issued and delivered to DTC. Beneficial owners of Bonds will not receive physical delivery of Bond certificates, except in the event that replacements are issued therefor as provided in the Paying Agency Agreement. All subsequent transfers of ownership interests, after immobilization of the original Bond certificates as provided above, will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring Bonds is to receive, hold or deliver any Bond certificate as long as DTC or any successor depository holds the immobilized Bond certificates. The Mayor and all other members of the Council, acting as the board of the Enterprise, and the City Administrator and the Finance Director of the City are each hereby authorized to take any and all actions as may be necessary and not inconsistent with this Ordinance in order to qualify the Bonds for DTC’s book entry system, including the execution of DTC’s Blanket Letter of Representations for the Bonds, and payments to DTC by the Paying Agent shall be made in accordance with such Letter of Representations.

The Bonds shall be dated as of the date of their authentication. Bonds authenticated prior to the first interest payment date, as determined in the Bond Details Certificate, shall bear interest from the date that the Bonds are originally issued and delivered to the Original Purchaser by the City, acting by and through the Enterprise. Bonds authenticated on the first interest payment date, as determined in the Bond Details Certificate, shall bear interest from that date, and Bonds authenticated on any later date shall bear interest from the June 1 or December 1 next preceding their date of authentication, or if authenticated on a June 1 or December 1, shall bear interest from that date; provided, however, that if interest on the Bonds shall be in default, Bonds authenticated in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Bonds surrendered. The Bonds shall bear interest until the principal amount thereof shall be paid in full, such interest being payable semiannually on June 1 and December 1 in each year commencing on the date determined in the Bond Details Certificate.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council, acting as the board of the Enterprise, hereby delegates to the City Administrator or the Finance Director of the City the authority to determine the best bid or bids by a responsible bidder or bidders for the Bonds, to accept such bid or bids for and on behalf of the City, acting by and through the Enterprise, and

to award the sale of the Bonds to the Original Purchaser, and the authority to determine the details of the Bonds identified in the definition of Bond Details Certificate in Section 1 of this Ordinance.

The Bonds shall bear interest at the rate or rates determined by the City Administrator or the Finance Director of the City in the Bond Details Certificate, calculated on the basis of a 360-day year consisting of twelve 30 day months; provided, however, that the net effective interest rate of the Bonds shall be less than 4.00%. The Bonds shall mature no later than December 1, 2051, and on December 1 in the years and in the principal amounts determined by the City Administrator or the Finance Director of the City in the Bond Details Certificate.

The principal of, premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. The principal of and premium, if any, on each Bond shall be payable upon surrender thereof at the principal operations office of the Paying Agent or at the principal operations office of any successor Paying Agent appointed by the City, acting by and through the Enterprise. Interest on each Bond shall be paid by the Paying Agent on behalf of the City, acting by and through the Enterprise, to the registered owner thereof by check or draft mailed to such registered owner at the address of such registered owner as it appears on the registration books of the City, acting by and through the Enterprise, maintained by the Paying Agent, or by wire transfer as described in the Paying Agency Agreement. In the event that the date upon which any payment of interest on or principal of the Bonds shall be due is not a Business Day (as defined in the Paying Agency Agreement) then such interest or principal (or both, as the case may be) shall be payable on the next succeeding Business Day without additional interest.

The City, acting by and through the Enterprise, shall cause, pursuant to the Paying Agency Agreement, books for the registration and for the transfer of Bonds to be kept by the Paying Agent. U.S. Bank National Association, is hereby constituted and appointed the paying agent, transfer agent and bond registrar of the City, acting by and through the Enterprise, with respect to the Bonds; however, the City, acting by and through the Enterprise, may, in its discretion, appoint any one or more successor or additional paying agents for the Bonds in accordance with the Paying Agency Agreement. The Bonds shall be subject to registration, transfer and exchange in the manner, and subject to the terms and conditions, set forth in the Paying Agency Agreement.

**Section 5. Redemption of the Bonds.** The Bonds or any portion thereof may be callable for redemption, at the option of the City, acting by and through the Enterprise, prior to the final maturity thereof, at the price or prices (expressed as a percentage of the principal amount) and on the redemption date or dates as determined by the City Administrator or the Finance Director of the City in the Bond Details Certificate. The Bonds or any portion thereof may be callable for mandatory sinking fund redemption at a price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the redemption date, as determined by the City Administrator or the Finance Director of the City in the Bond Details Certificate.

If less than all of the Bonds within a maturity are to be redeemed on any prior redemption date, the Bonds to be redeemed shall be selected by lot prior to the date fixed for redemption, in such manner as the Paying Agent shall determine. The Bonds shall be redeemed only in integral multiples of \$5,000. In the event a Bond is of a denomination larger than \$5,000, a portion of such Bond may be redeemed, but only in the principal amount of \$5,000 or any integral multiple thereof. Such Bond shall be treated for the purpose of redemption as that number of Bonds which results from dividing the principal amount of such Bond by \$5,000. In the event a portion of any Bond is redeemed, the Paying Agent shall, without charge to the registered owner of such Bond, authenticate and deliver a replacement Bond or Bonds for the unredeemed portion thereof.

**Section 6. Notice and Effect of Redemption.** Notice of any redemption of the Bonds shall be given by the Paying Agent in the name of the City, acting by and through the Enterprise, by sending a copy of the redemption notice by first class mail or by electronic means to the registered owners of the Bonds to be redeemed at the addresses of such registered owners shown on the registration books maintained by the Paying Agent pursuant to the Paying Agency Agreement, not more than 60 nor less than 30 days prior to the redemption date. Failure to send notice to the registered owner of any Bond designated for redemption, or any defect in any notice given, shall not affect the validity of any proceedings for the redemption of the Bonds as to which no such failure shall have occurred. Any notice sent as provided herein shall be conclusively presumed to have been duly given, whether or not the registered owner actually receives the notice. Each notice of redemption shall specify the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon will cease to accrue. If less than all the outstanding Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Bonds (or portions of Bonds issued in a principal amount in excess of \$5,000) to be redeemed.

On or prior to the date fixed for redemption, funds sufficient to pay the Bonds or portions of the Bonds called for redemption, together with the premium, if any, and the accrued interest to the redemption date, are to be deposited with the Paying Agent. The giving of notice and the deposit of funds for redemption shall cause interest on any Bond or portion thereof called for redemption to cease to accrue from and after the date fixed for redemption.

Any provision herein to the contrary notwithstanding, the Bonds may not be completely redeemed unless all Credit Facility Costs, if any, due and owing at the time to the Credit Facility Provider have been paid.

**Section 7. Form and Execution of the Bonds.** The Bonds shall be signed with the manual or facsimile signature of the Mayor of the City, sealed with a facsimile or manual impression of the seal of the City, and attested by the manual or facsimile signature of the City Clerk. Should any officer whose manual or facsimile signature appears on the Bonds cease to be such officer before delivery of the Bonds to the Original Purchaser, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes.

The Bonds shall be in substantially the following form:

[FORM OF BOND]

**UNITED STATES OF AMERICA**

**STATE OF COLORADO**

**COUNTY OF BOULDER**

**CITY OF LAFAYETTE  
acting by and through its  
WATER RECLAMATION FUND ENTERPRISE**

**WATER RECLAMATION REVENUE BOND  
SERIES 2021**

No. R-\_\_\_\_\_ \$\_\_\_\_\_

<b>Interest Rate</b>	<b>Maturity Date</b>	<b>Original Issue Date</b>	<b>CUSIP</b>
_____ %	December 1, _____	_____, 2021	_____

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

The City of Lafayette, Colorado (the “City”), acting by and through its Water Reclamation Fund Enterprise (the “Enterprise”), for value received, hereby promises to pay, solely out of the special funds and accounts hereinafter designated but not otherwise, to the Registered Owner (named above), or registered assigns, on the Maturity Date (stated above) or on the date of prior redemption, the Principal Amount (stated above). In like manner the City, acting by and through the Enterprise, promises to pay interest on such Principal Amount at the Interest Rate (stated above) per annum, payable semiannually on June 1 and December 1 of each year commencing \_\_\_\_\_\* until the Principal Amount is paid at maturity or upon prior redemption. Interest on this Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The principal of, premium, if any, and interest on this Bond are payable in any coin or currency which on the date of payment is legal tender for the payment of debts due to the United States of America without deduction for exchange or collection charges. The principal of and premium, if any, on this Bond are payable to the Registered Owner hereof upon maturity or prior redemption and presentation and surrender hereof at the principal operations office of U.S. Bank National Association, or its successor, as Paying Agent.

\* To be determined by the City Administrator or Finance Director.

Payment of each installment of interest hereon shall be made to the Registered Owner hereof whose name shall appear on the registration books of the City, acting by and through the Enterprise, maintained by U.S. Bank National Association, or its successor, as Bond Registrar, at the close of business on the fifteenth day of the calendar month next preceding each interest payment date (the "Record Date"), and shall be paid by check or draft of the Paying Agent mailed on the interest payment date to such Registered Owner at the address of such Registered Owner as it appears on such registration books. Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Registered Owner hereof at the close of business on the Record Date and shall be payable to the person who is the Registered owner hereof at the close of business on a Special Record Date (the "Special Record Date") established for the payment of any defaulted interest. Notice of the Special Record Date and the date fixed for the payment of defaulted interest shall be given by first class mail to the Registered Owner hereof as shown on the registration books on a date selected by the Bond Registrar.

If the date for making any payment or performing any action shall be a legal holiday or a day on which the principal operations office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed, such payment may be made without additional interest or act performed on the next succeeding day which is not a legal holiday or a day on which the principal operations office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed.

This Bond is one of a series of Water Reclamation Revenue Bonds, Series 2021, issued in the aggregate principal amount of \$\_\_\_\_\_ \* (the "Bonds"), all of like date, tenor, and effect except as to number, principal amount, interest rate, and date of maturity, issued by the City of Lafayette, Colorado, acting by and through its Water Reclamation Fund Enterprise, for the purposes of financing the acquisition, improvement and equipping of the City's water reclamation facilities and its wastewater collection system (the "System") and is issued by virtue of and in full conformity with the Constitution of the State of Colorado, the home-rule Charter of the City, the Supplemental Public Securities Act, part 2 of article 57 of title 11, C.R.S., and all other laws of the State of Colorado thereunto enabling, and pursuant to an ordinance (the "Bond Ordinance") duly adopted by the City Council of the City, acting as the board of the Enterprise. Pursuant to § 11-57-210, C.R.S., such recital shall conclusively impart full compliance with all of the provisions of said statute, and this Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value. It is hereby recited, certified and warranted that all of the requirements of law have been fully complied with by the proper officials of the City, acting by and through the Enterprise, in issuing this Bond.

The principal of, premium, if any, and interest on this Bond are payable only out of (a) a special fund of the City, acting by and through the Enterprise, designated as the "Water Reclamation Revenue Bonds, Series 2021, Bond Account," into which the City, acting by and through the Enterprise, covenants and agrees to deposit revenues derived from the operation of the System after deduction of operations and maintenance expenses (the "Net Revenues"), in amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds when the

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\* To be determined by the City Administrator or Finance Director.

same become due and payable; and (b) if funded, the “Water Reclamation Revenue Bonds, Series 2021, Reserve Account,”\* all as is more particularly set forth in the Bond Ordinance. The Bonds of this issue constitute an irrevocable first lien upon the Net Revenues, but not necessarily an exclusive first lien. Subject to expressed conditions, obligations in addition to the Bonds may be issued and made payable from the Net Revenues having a lien thereon subordinate and junior to the lien of the Bonds of this issue or, subject to additional expressed conditions, having a lien on the Net Revenues on a parity with the lien of the Bonds of this issue, in accordance with the provisions of the Bond Ordinance.

It is hereby recited, certified and warranted that for the payment of this Bond, the City, acting by and through the Enterprise, has created and will maintain the special funds and accounts referred to above, and will deposit therein out of the Net Revenues the amounts specified in the Bond Ordinance, and out of such funds, as an irrevocable charge thereon, will pay the principal of, premium, if any, and interest on this Bond in the manner provided by the Bond Ordinance.

**THIS BOND DOES NOT CONSTITUTE A DEBT OR INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION, AND SHALL NOT BE CONSIDERED OR HELD TO BE A GENERAL OBLIGATION OF THE CITY.**

Reference is hereby made to the Bond Ordinance for an additional description of the nature and extent of the security for the Bonds, the funds and revenues pledged to the payment thereof, the rights and remedies of the registered owners of the Bonds, the manner in which the Bond Ordinance may be amended, and the other terms and conditions upon which the Bonds are issued, copies of which are on file for public inspection at the office of the City Clerk.

The Bonds which mature on or before December 1, \_\_\_\* are not subject to redemption prior to their maturity. The Bonds maturing on or after December 1, \_\_\_\* are callable for redemption at the option of the City, acting by and through the Enterprise, in whole or in part, and if in part in such order of maturity as the City, acting by and through the Enterprise, shall determine and by lot within any maturity in such manner as the Paying Agent shall determine, on December 1, \_\_\*, and on any date thereafter, at the redemption price (expressed as a percentage of principal amount) of \_\_\_%, plus accrued interest to the redemption date.

The Bonds maturing on December 1, \_\_\_\_\_,\* are subject to mandatory sinking fund redemption, prior to maturity, in part, by lot in such manner as the Paying Agent shall determine, at a price (expressed as a percentage of principal amount) of 100%, plus accrued interest to the date of redemption, without premium, on the following dates and in the following principal amounts:

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\* To be determined by the City Administrator or Finance Director.

**Sinking Fund  
Redemption Date\*  
(December 1)**

**Principal Amount\***

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\*\*Maturity.

The Bonds will be redeemed only in integral multiples of \$5,000. In the event a Bond is of a denomination larger than \$5,000, a portion of such Bond may be redeemed, but only in the principal amount of \$5,000 or any integral multiple thereof. Such Bond will be treated for the purposes of redemption as that number of Bonds which results from dividing the principal amount of such Bond by \$5,000.

Notice of prior redemption shall be given by mailing a copy of the redemption notice or sending a copy of the redemption notice by electronic means, not more than 60 days and not less than 30 days prior to the date fixed for redemption, to the Registered Owner of this Bond at the address shown on the registration books maintained by the Bond Registrar, in the manner set forth in the Bond Ordinance. All Bonds called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time.

The City, acting by and through the Enterprise, and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds: (a) during a period beginning at the opening of business on the Record Date and ending at the opening of business on the first business day following the ensuing interest payment date, or (b) during the period beginning on any date of selection of Bonds to be redeemed and ending at the opening of business on the first business day following the day on which the applicable notice of redemption is sent. The Bond Registrar shall not be required to register, transfer or exchange any Bond selected or called for redemption, in whole or in part. The City, acting by and through the Enterprise, the Paying Agent, and the Bond Registrar may deem and treat the registered owner of any Bond as the absolute owner thereof for all purposes (whether or not such Bond shall be overdue) and any notice to the contrary shall not be binding upon the City, acting by and through the Enterprise, the Paying Agent, or the Bond Registrar.

This Bond may be exchanged at the principal operations office of the Bond Registrar for a like aggregate principal amount of Bonds of the same maturity and of other authorized denominations. This Bond is transferable by the Registered Owner hereof in person or by his or her attorney duly authorized in writing, at the principal operations office of the Bond Registrar,

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\* To be determined by City Administrator or Finance Director.

but only in the manner, subject to the limitations, and upon payment of the charges provided in the Registration and Paying Agency Agreement between the City, acting by and through the Enterprise, and the Paying Agent, and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds of the same series, maturity and authorized denomination or denominations, for the same aggregate principal amount and bearing interest at the rate per annum set forth in this Bond, will be issued to the transferee in exchange therefor.

IN TESTIMONY WHEREOF, the Council of the City of Lafayette, Colorado, acting as the board of the Enterprise, has caused this Bond to be signed by the manual or facsimile signature of the Mayor of the City, sealed with an impression or facsimile of the seal of the City, and attested by the manual or facsimile signature of the City Clerk, all as of the date set forth below.

[FACSIMILE SEAL]

CITY OF LAFAYETTE, COLORADO,  
ACTING BY AND THROUGH ITS WATER  
RECLAMATION FUND ENTERPRISE

By \_\_\_\_\_  
[Facsimile Signature]  
Mayor

Attested:

By \_\_\_\_\_  
[Facsimile Signature]  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

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

Date of Authentication: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION,  
as Bond Registrar

By \_\_\_\_\_  
Authorized Signatory

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

\_\_\_\_\_

**(Please print or typewrite name and address of Transferee)  
(Tax Identification or Social Security No. \_\_\_\_\_)**

the within Bond and all rights thereunder, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature guaranteed:

\_\_\_\_\_  
Signature must be guaranteed by a member of the Medallion Signature Program

**TRANSFER FEE MAY BE REQUIRED**

**[END FORM OF BOND]**

**Section 8. Authentication.** No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until a Certificate of Authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Bond Registrar, and such executed Certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Ordinance. The Bond Registrar's Certificate of Authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Bond Registrar, but it shall not be necessary that the same officer or signatory sign the Certificate of Authentication on all of the Bonds issued hereunder.

**Section 9. Delivery of Bonds.** The Bonds, when executed as provided by this Ordinance, shall be delivered by any one of the officers of the City, acting by and through the Enterprise, to the Original Purchaser, upon payment to the City, acting by and through the Enterprise, of the purchase price therefor. The proceeds derived from the sale of the Bonds shall be used exclusively for the purposes stated herein; provided, however, that any portion of the proceeds of the Bonds may be temporarily invested pending such use in securities or obligations which are lawful investments for the City, with such temporary investment to be made consistent with the covenant hereinafter made concerning arbitrage bonds and the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Neither the Original Purchaser, the Paying Agent nor any registered owner of any Bond shall be in any way responsible for application of the proceeds of the Bonds by the City, acting by and through the Enterprise, or any of its officials.

**Section 10. Execution and Delivery of Paying Agency Agreement.** The Mayor or Mayor Pro Tem is hereby authorized to execute and deliver, for and on behalf of the City, acting by and through the Enterprise, the Paying Agency Agreement in substantially the form on file with the Council, acting as the governing body of the Enterprise, at this meeting, but with such modifications thereof as are consistent with the terms and provisions of this Ordinance and which the Mayor or Mayor Pro Tem shall approve, the execution of the Paying Agency Agreement by the Mayor or Mayor Pro Tem being conclusive evidence of the approval on behalf of the City, acting by and through the Enterprise, of the terms and provisions thereof.

**Section 11. Execution and Delivery of Continuing Disclosure Agreement.** The Mayor or Mayor Pro Tem is hereby authorized to execute and deliver, for and on behalf of the City, acting by and through the Enterprise, the Continuing Disclosure Agreement in substantially the form on file with the Council, acting as the governing body of the Enterprise, at this meeting, but with such modifications thereof as are consistent with the terms and provisions of this Ordinance and which the Mayor or Mayor Pro Tem shall approve, the execution of the Continuing Disclosure Agreement by the Mayor or Mayor Pro Tem being conclusive evidence of the approval on behalf of the City, acting by and through the Enterprise, of the terms and provisions thereof.

**Section 12. Creation of Funds and Accounts.** There are hereby created and established or reaffirmed the following funds and accounts, which may be established as line

item funds and accounts and shall be maintained by the City, or by the City, acting by and through the Enterprise, in accordance with the provisions of this Ordinance:

- (a) the Project Fund;
- (b) the Revenue Fund within which there is established the Bond Account and the Reserve Account; and
- (c) the Rebate Fund.

**Section 13. Initial Credits to Funds and Accounts.** Immediately upon issuance of the Bonds and from the proceeds thereof, the City, acting by and through the Enterprise, shall make the following payments or credits:

- (a) to the Paying Agent, the amount required to pay the costs of issuing the Bonds;
- (b) to the Reserve Account, if funded from proceeds of the Bonds, the amount of the Required Reserve, and
- (c) to the Project Fund, the remaining proceeds of the Bonds.

**Section 14. Project Fund.** The proceeds of the Bonds deposited in the Project Fund shall be disbursed by the City as necessary for Costs of the Project. All amounts remaining in the Project Fund following the completion of the Project shall be deposited in the Bond Account.

**Section 15. Reserve Account.** The City, acting by and through the Enterprise, shall, upon the issuance of the Bonds, establish the Reserve Account as an account in the Revenue Fund and, if determined to be funded in the Bond Details Certificate, shall credit thereto the amount of the Required Reserve from cash, proceeds of the Bonds, the Reserve Account Credit Facility, or pursuant to the next sentence. The Reserve Account also may be funded by designating unobligated fund balance or other unobligated cash or Permitted Investments thereto or by depositing the same in a separate segregated account. Moneys in the Reserve Account shall be used only for payment of principal of, premium, if any, and interest on the Bonds.

In the event the amounts credited to the Bond Account are insufficient to pay the principal of, premium, if any, and interest on the Bonds when due, the City, acting by and through the Enterprise, shall transfer or cause to be transferred from the Reserve Account to the Bond Account an amount which, when combined with moneys in the Bond Account, will be sufficient to make such payment when due. If moneys in the Reserve Account fall below the Required Reserve, the City, acting by and through the Enterprise, shall deposit or restrict to the Reserve Account, or reimburse any Credit Facility Costs, from the Net Revenues, amounts sufficient to bring the amount credited to the Reserve Account to the Required Reserve within 12 months.

Moneys credited to the Reserve Account may be invested or deposited in securities or obligations which are lawful investments for moneys of the City. Investments purchased with funds credited to the Reserve Account shall have a term to maturity not greater than five years. Investments in the Reserve Account shall be valued by the City, acting by and through the Enterprise, annually, during the same month each year, at fair market value, exclusive of accrued interest. So long as the amount of the Reserve Account is at least equal to the Required Reserve, all interest income from the investment or reinvestment of moneys credited to the Reserve Account shall be credited to the Bond Account; provided that if the amount of the Reserve Account is less than the Required Reserve, then such interest income shall be credited to the Reserve Account.

The City, acting by and through the Enterprise, may at any time substitute a Reserve Account Credit Facility for any unobligated fund balance, unobligated cash or Permitted Investments in the Reserve Account, or any unobligated fund balance, unobligated cash or Permitted Investments for a Reserve Account Credit Facility, so long as the amount on deposit in the Reserve Account after any such substitution is at least equal to the Required Reserve. For the purpose of determining the amount on deposit in the Reserve Account, a Reserve Account Credit Facility shall be valued at the amount available to be drawn thereunder. The City shall notify each rating agency then rating the Bonds of any use or substitution of a Reserve Account Credit Facility.

**Section 16. Application of Gross Revenues; Bond Account.** For so long as any of the Bonds remain outstanding, either as to principal or interest or both, all Gross Revenues derived from the operation of the System shall be and shall continue to be credited to the Revenue Fund. For so long as any of the Bonds remain outstanding, either as to principal or interest or both, the following transfers shall be made from the Revenue Fund:

(a) FIRST, as a first charge on the Revenue Fund, there shall be credited from time to time to the “City of Lafayette Wastewater System Operation and Maintenance Account” (the “Operation and Maintenance Account”), moneys sufficient to pay the Operation and Maintenance Expenses of the System as they become due and payable, and thereupon such Operation and Maintenance Expenses shall be paid promptly. Any surplus of funds deposited to the Operation and Maintenance Account remaining on November 1 of each year and not needed for the Operation and Maintenance Expenses shall be transferred to the Revenue Fund and be used for the purposes thereof, as herein provided;

(b) SECOND, as a second charge on the Revenue Fund, the following amounts shall be deposited to the Bond Account on the first day of each month: (i) commencing on the first day of the first month following the issuance and delivery of the Bonds, an amount in substantially equal monthly installments necessary to pay the next maturing installment of interest on the Bonds and any Additional Bonds promptly when due; (ii) commencing on the first day of the first month following the issuance and delivery of the Bonds, an amount in substantially equal monthly installments necessary to

pay the next maturing installment of principal of the Bonds and any Additional Bonds promptly when due;

(c) THIRD, as a third charge on the Revenue Fund, amounts shall be deposited or restricted to the Reserve Account, if determined to be funded pursuant to Bond Details Certificate, in the event the amount therein is less than the Required Reserve, or, if a Reserve Account Credit Facility has been issued and is being held in the Reserve Account, amounts shall be paid to the Credit Facility Provider as reimbursement for any Credit Facility Costs due and owing; and

(d) After deposit of the amounts required under clauses (a), (b) and (c), if any, above, remaining Net Revenues shall remain in the Revenue Fund and be used for any lawful purpose of the City.

Moneys in the Bond Account shall be transferred to the Paying Agent on or before any interest payment date or date of redemption of the Bonds in order to pay the principal of and interest on the Bonds when due. Moneys held in the Bond Account may be invested or reinvested in one or more Permitted Investments. Any interest earnings on the amounts deposited to the Bond Account shall be credited to the Bond Account and used for the payment of the principal of, premium, if any, and interest on the Bonds.

Notwithstanding any provision of this Section to the contrary, the aggregate amount credited to the Bond Account shall not exceed the interest on, premium, if any, and principal of the Bonds becoming due and payable during any 12-month period except for a reasonable carryover amount, not to exceed the amount of one month's interest.

The creation, perfection, enforcement, and priority of the pledge of Net Revenues to secure or pay the Bonds and any Credit Facility Costs as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. Net Revenues pledged for the payment of the Bonds and any Credit Facility Costs, as received by or otherwise credited to the City, acting by and through the Enterprise, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the Net Revenues pledged for payment of the Bonds and any Credit Facility Costs and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the City, acting by and through the Enterprise, and of the City. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City, acting by and through the Enterprise, or against the City, irrespective of whether such persons have notice of such liens.

**Section 17. Lien of Bonds.** The Bonds constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Net Revenues.

**Section 18. Establishment of Rebate Fund.** The City, acting by and through the Enterprise, hereby creates and establishes the Rebate Fund as a separate fund within the funds of the City, acting by and through the Enterprise. The Rebate Fund shall be expended in

accordance with the provisions hereof and the letter of instructions provided to the City, acting by and through the Enterprise, by nationally recognized municipal bond counsel on the date of issuance of the Bonds (the “Investment Instructions”). The City, acting by and through the Enterprise, shall make deposits and disbursements from the Rebate Fund in accordance with the Investment Instructions, shall invest the Rebate Fund pursuant to the Investment Instructions and shall deposit income from said investments immediately upon receipt thereof in the Rebate Fund, all as set forth in the Investment Instructions. The City, acting by and through the Enterprise, shall employ, at its expense, a person or firm with recognized expertise in the area of rebate calculations, which person or firm shall make such calculations as may be required by the Investment Instructions. The Investment Instructions may be superseded or amended by new Investment Instructions drafted by, and accompanied by an opinion of, nationally recognized municipal bond counsel addressed to the City, acting by and through the Enterprise, to the effect that following such new Investment Instructions will not cause interest on the Bonds to become includible in gross income for the purposes of federal income taxation.

**Section 19. Rebate Deposits.** The City, acting by and through the Enterprise, shall periodically make the rebate deposit described in the Investment Instructions. If a withdrawal from the Rebate Fund is permitted as a result of the computations required by the Investment Instructions, the amounts withdrawn, unless for payment to the United States of America pursuant to Section 20 below, shall be deposited in the Bond Account or used for any other lawful purpose if the City, acting by and through the Enterprise, shall receive an opinion of nationally recognized municipal bond counsel approving such use. Record of the determinations required by this Section 19 and the Investment Instructions shall be retained by the City, acting by and through the Enterprise, until six (6) years after the final retirement of the Bonds.

**Section 20. Rebate Disbursements.** Except as may be provided in the Investment Instructions, not later than 60 days after the end of the fifth Bond Year (as defined in the Investment Instructions) and every five years thereafter, the City, acting by and through the Enterprise, shall pay to the United States of America 90% of the amount required to be on deposit in the Rebate Fund and not later than 60 days after the final retirement of the Bonds, the City, acting by and through the Enterprise, shall pay to the United States of America 100% of the amount required to be on deposit in the Rebate Fund, which shall remain in effect for such period of time as is necessary for such final payment to be made. Each payment required to be paid to the United States of America pursuant to this Section 20 shall be filed with the Internal Revenue Service Center, Ogden Submission Processing Center, Ogden, Utah 84201. Each payment shall be accompanied by a copy of the Internal Revenue Form 8038-T and a statement summarizing the determination of the amount to be paid to the United States of America.

**Section 21. Covenants Concerning Compliance with the Code.** The City, acting by and through the Enterprise, covenants that it shall not use or permit the use of any proceeds of the Bonds (and amounts treated as proceeds of the Bonds for federal income tax purposes, including moneys reasonably expected to be used to pay the principal of, premium, if any, or interest on the Bonds) or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any other action or actions, which would cause any of the Bonds to be an “arbitrage bond” within the

meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), or would otherwise cause interest on the Bonds to not be excludable from gross income for purposes of federal income taxation. The City, acting by and through the Enterprise, covenants that it shall at all times do and perform all acts and things permitted by law and which are necessary or desirable in order to assure that interest paid by the City, acting by and through the Enterprise, on the Bonds shall, for purposes of federal income taxation, be excludable from gross income under the Code or any other valid provision of law.

In particular, but without limitation, the City, acting by and through the Enterprise, further represents, warrants and covenants to comply with the following restrictions of the Code, unless the City, acting by and through the Enterprise, receives an opinion of nationally recognized municipal bond counsel substantially to the effect that noncompliance with such requirements will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on the Bonds:

(a) Facilities financed with gross proceeds of the Bonds, shall not be used in a manner which will cause the Bonds to be considered “private activity bonds” within the meaning of the Code.

(b) The Bonds are not and shall not become directly or indirectly “federally guaranteed.” A Bond will be considered to be “federally guaranteed” if the payment of principal or interest with respect to such Bond is guaranteed (in whole or in part) by the United States of America (or any agency or instrumentality thereof) or if 5% or more of the proceeds of the Bonds are used in making loans the payment of principal or interest with respect to which is guaranteed (in whole or in part) by the United States of America (or any agency or instrumentality thereof) or if invested (directly or indirectly) in federally insured deposits or accounts.

(c) The City, acting by and through the Enterprise, shall timely file Internal Revenue Form 8038-G pursuant to Section 149(e) of the Code with respect to the issuance of the Bonds.

(d) The City shall not sell any other obligations within 15 days of the sale of the Bonds pursuant to the same plan of financing with the Bonds and payable from the same source of funds or having substantially the same claim to the same source of funds used to pay the Bonds.

(e) The City, acting by and through the Enterprise, shall comply with the Investment Instructions, dealing with application and investment of proceeds of the Bonds and the rebate to the United States of America of excess investment earnings.

## **Section 22. Additional Bonds.**

(a) ***Earnings Test.*** The City, acting by and through the Enterprise, may issue Additional Bonds payable from and constituting a lien upon the Net Revenues on a parity with the lien of the Bonds if the following conditions are satisfied:

(i) the City, acting by and through the Enterprise, is, as of the date of issuance of the Additional Bonds, in substantial compliance with all of the covenants of this Ordinance, and no Event of Default shall have occurred and be continuing;

(ii) the City, acting by and through the Enterprise, is, as of the date of issuance of the Additional Bonds, current in the accumulation of all amounts required to be then accumulated in the Bond Account and the Reserve Account as required by this Ordinance;

(iii) the Net Revenues for the Fiscal Year immediately preceding the date of issuance of such Additional Bonds shall have been sufficient to pay an amount representing at least 110% of the Combined Maximum Annual Principal and Interest Requirements of the Bonds and any outstanding Additional Bonds and of the Additional Bonds proposed to be issued.

(iv) The Net Revenues (excluding non-recurring connection fees and charges) for the Fiscal Year immediately preceding the date of issuance of such Additional Bonds shall have been sufficient to pay an amount representing 100% of the Combined Maximum Annual Principal and Interest Requirements of the Bonds and any outstanding Additional Bonds and of the Additional Bonds proposed to be issued.

(b) ***Certification of Revenues.*** A written certificate by the City Administrator or Finance Director that annual Net Revenues are sufficient to satisfy the conditions in subparagraphs (iii) and (iv) above shall conclusively determine the right of the City, acting by and through the Enterprise, to issue Additional Bonds. The City Administrator or Finance Director may utilize the results of any annual audit to the extent it covers the applicable period.

(c) ***Consideration of Additional Expenses and Earnings.*** For purposes of the tests set forth in subparagraphs (iii) and (iv) above, consideration shall be given to any estimated probable increase or reduction in Operation and Maintenance Expenses that will result from the expenditure of the funds proposed to be derived from the issuance of the Additional Bonds. The Gross Revenues estimated to be derived from the System for any immediately preceding Fiscal Year shall be increased if any schedule of rate increases, fee increases, increases in availability fees, tap fees, tolls and charges shall have been adopted by the Council, acting as the board of the Enterprise, at any time prior to the issuance of such Additional Bonds, by any amount estimated to equal the difference between the Gross Revenues actually received by the City, acting by and through the Enterprise, and the Gross Revenues which the City, acting by and through the

Enterprise, would have received during said Fiscal Year if the last of any such schedule of increased rates and charges had been in effect during said entire Fiscal Year. The Gross Revenues estimated to be derived from the operation of the System for any immediately preceding Fiscal Year shall be increased by an amount estimated to equal the additional amount the City, acting by and through the Enterprise, would have derived during said Fiscal Year from the operation of any improvements and extensions, or other projects appertaining to the System, to be acquired with the proceeds of the Additional Bonds, based upon the schedule of rates and charges then in effect.

(d) ***Subordinate Obligations Permitted.*** So long as no Event of Default under this Ordinance shall have occurred and be continuing, the City, acting by and through the Enterprise, may issue bonds or other obligations having a lien on the Net Revenues that is subordinate to the lien of the Bonds.

(e) ***Superior Obligations Prohibited.*** The City, acting by and through the Enterprise, shall not issue any bonds or any other obligations having a lien on the Net Revenues prior and superior to the lien of the Bonds.

(f) ***Refunding Obligations Permitted.*** The City, acting by and through the Enterprise, may issue obligations having a lien on the Net Revenues on a parity with the lien of the Bonds in order to refund, in advance of maturity, the outstanding Bonds in part, if the debt service requirements on the refunding obligations do not exceed the payments on the Bonds being refunded on any interest payment date.

**Section 23. Protective Covenants.** The City, acting by and through the Enterprise, hereby covenants and agrees with each and every Owner that:

(a) ***Performance of Duties.*** The City, acting by and through the Council, as the board of the Enterprise, will faithfully and punctually perform or cause to be performed all duties with respect to the Net Revenues and the System required by the constitution and laws of the State and the Charter, including but not limited to the making and collection of reasonable and sufficient rates and charges for services rendered or furnished by or for the use of the System, and the proper segregation of the Net Revenues and their application from time to time to the respective funds and accounts.

(b) ***Efficient Operation and Maintenance.*** The City, acting by and through the Enterprise, will operate the System so long as any of the Bonds are outstanding, will maintain the System in efficient operating condition and will make such improvements, extensions, enlargements, repairs and betterments thereto as may be necessary or advisable to insure its economical and efficient operation at all times.

(c) ***Other Liens.*** Other than as provided by or referred to in this Ordinance, there are no liens or encumbrances of any nature whatsoever, on or against the System or the Gross Revenues derived or to be derived from the operation of the System.

(d) **Corporate Existence.** The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another body corporate and politic succeeds by operation of law to the duties, privileges, powers, liabilities, disabilities, immunities and rights of the City and is obligated by law to operate and maintain the System and to fix rates, fees, and charges and collect the Gross Revenues as herein provided without adversely affecting to any substantial degree at any time the privileges and rights of any holder of any outstanding Bond.

(e) **Competing Facilities.** As long as any of the Bonds are outstanding, the City shall not grant any franchise or license to competing facilities, nor shall it permit during such period any person, association, firm or corporation to sell wastewater service or facilities to any consumer, public or private, within the City, except as it may be legally required to do so.

(f) **Alienating Facilities.** The City, or the City, acting by and through the Enterprise, will not sell, lease, mortgage, pledge or otherwise encumber, or in any manner dispose of, or otherwise alienate, the System, or any part thereof, including any and all improvements, extensions and additions that may be made thereto, until all the Bonds shall have been paid in full, both principal and interest, or unless provision has been made therefor, except that the City, or the City, acting by and through the Enterprise, may sell any portion of such property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System, but in no manner nor to such extent as might prejudice the security for the payment of the Bonds; provided however, that in the event of any sale as aforesaid, the proceeds of such sale shall be included as a part of Gross Revenues in accordance with the provisions of the Section entitled "Application of Gross Revenues; Bond Account" herein.

(g) **Competent Management.** The City, or the City, acting by and through the Enterprise, shall employ experienced and competent management personnel for the System who shall have full control over the System and shall operate the System, subject to the reasonable control by and direction of the Council and the City Administrator.

(h) **Surety Bonds.** Each municipal official or other person having custody of any funds derived from operation of the System, or responsible for their handling, shall be fully bonded at all times, which bond shall be conditioned upon the proper application of such funds. The cost of each bond shall be considered one of the operating costs of the System.

(i) **Reasonable and Adequate Charges.** While the Bonds or any of them remain outstanding and unpaid, the rates for all services rendered by the System to the City, or the City, acting by and through the Enterprise, and its inhabitants and to all consumers within or without the boundaries of the City shall be reasonable and just, taking into account and consideration the cost and value of the System and the proper and necessary allowances for the depreciation thereof and the amounts necessary for the

retirement of all bonds and other securities or obligations payable from the Net Revenues, the accruing interest thereon, and reserves therefor.

There shall be charged against all purchasers of service, including the City, such rates and amounts as shall be adequate to meet the requirements of this and the preceding Sections hereof, and which shall be sufficient to produce Gross Revenues annually to pay the annual Operation and Maintenance Expenses and result in Net Revenues in an amount (a) at least equal to 110% of both the principal of and interest on the Bonds and any outstanding Additional Bonds, and (b) sufficient to replenish any deficiencies in the Reserve Account and/or any reserves to be maintained for any Additional Bonds.

No free service, facilities nor commodities shall be furnished by the System. Should the City, or the City, acting by and through the Enterprise, elect to use the System for municipal purposes or in any other manner use the System or any part thereof, any such use will be paid for from the City's general fund or other available revenues at the reasonable value of the use so made. All the income so derived from the City shall be deemed to be income derived from the operation of the System, to be used and accounted for in the same manner as any other income derived from the operation of the System. The City, or the City, acting by and through the Enterprise, is granted a lien upon each lot or parcel of land in the City for the rates and charges fixed by the Council for the connection and use of the System. Upon the neglect, failure or refusal by the user to pay the same, the City, or the City, acting by and through the Enterprise, expressly covenants and agrees that it will cause each such lien to be perfected in accordance with the provisions of Section 31-35-617, C.R.S. and the City, or the City, acting by and through the Enterprise, covenants and agrees that it will take all steps necessary to enforce such lien as to each piece of property for any rate or charge appertaining thereto which shall be delinquent for three months, as provided in said statute and all laws thereunto enabling.

(j) ***Billing Procedure.*** All bills for wastewater service by or through the System shall be rendered to customers on a regularly established day, either monthly, bimonthly, or quarterly in advance or not later than a regularly established day of each month or quarter next succeeding the month or quarter in which the service or facilities were rendered.

(k) ***Records.*** So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, or the City, acting by and through the Enterprise, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Gross Revenues or to the System, or both. Such books shall include (but not necessarily be limited to) records showing the number of users by classes, the revenues received from charges by classes of users, and a detailed statement of the expenses of the System. Any Owner of any of the Bonds or any Additional Bonds, or any duly authorized agent or agents of such Owner, shall have the right at all reasonable times to inspect all records, accounts, and data relating thereto, concerning the System or the Gross Revenues, or both, to make copies of such records, accounts, and data, and to inspect the System and all properties comprising the System.

(l) ***Audits and Budgets.*** The City, or the City, acting by and through the Enterprise, shall within 270 days following the close of each Fiscal Year, receive an audit of such books and accounts by an Independent Accountant, and receive an audit report showing the receipts and disbursements for each fund or account pertaining to the System or to the Net Revenues, or to both. The City, or the City, acting by and through the Enterprise, shall prepare a budget annually in accordance with State law. Such audit report and budget will be available for inspection by any Owner of any of the Bonds. The audit report shall include (but not be limited to) the following:

(i) ***Statement.*** A statement of the income and expenditures of the System for the audit period, including a statement of Gross Revenues, of the Net Revenues, and of the amount of any capital expenditures pertaining to the System, as well as a statement of the profit or loss for the audit period.

(ii) ***Balance Sheet.*** A balance sheet as of the end of such Fiscal Year, including the amounts on hand, both cash and investments, in each of the funds or accounts created by the various ordinances and other proceedings authorizing the issuance of any bonds and any other securities payable from the Net Revenues.

(iii) ***Accountant's Comment.*** The Independent Accountant's comment regarding the methods of operation and accounting practice and the manner in which the City, or the City, acting by and through the Enterprise, has carried out the requirements of this Ordinance and any other ordinance and other proceedings authorizing the issuance of any bonds or any other securities payable from the Net Revenues, and the Independent Accountant's recommendation for any change or improvement in the operation of the System, as the Independent Accountant deems appropriate.

(iv) ***Insurance List.*** A list of the insurance policies in force at the end of the audit period, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy.

(v) ***Classification of Users and Revenues.*** The number of connections, the number of customers per class of users, if there are classes of users, and revenues per class of users at the beginning and at the end of the audit period. The City, or the City, acting by and through the Enterprise, further agrees to furnish by first-class mail, postage prepaid forthwith, a copy of such report to the Owner of any of the Bonds or any other securities payable from the Net Revenues at the request of such Owner, and, without request, to the Original Purchaser.

(m) ***Insurance.*** The City, or the City, acting by and through the Enterprise, in its operation of the System will carry fire and extended coverage insurance and other types of insurance in such amounts and to such extent as is normally carried by private corporations operating public utilities of the same type. The cost of such insurance shall be considered one of the operating costs of the System. In the event of property loss or

damage, any remainder shall be treated as income of the System, and shall be subject to distribution in the manner provided hereinabove for application of Gross Revenues. Upon the occurrence of any loss or damages covered by any of the insurance policies from one or more causes, the City, or the City, acting by and through the Enterprise, will cause to be made due proof of loss and will cause to be done all things necessary to cause the insuring companies to make payment in accordance with the terms of such policy or policies.

(n) ***Extension of Interest Payments.*** The City, or the City, acting by and through the Enterprise, will not extend or be a party to the extension of the time for paying any claim for interest. Any installment of interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Ordinance except subject to the prior payment in full of the principal of all Bonds, Additional Bonds, if any, and interest thereon that have not been extended.

(o) ***Management of the System.*** If an Event of Default shall occur or if the Net Revenues in any Fiscal Year fail to equal principal, interest, and reserve requirements for all Bonds or any other securities payable from Net Revenues, the City, or the City, acting by and through the Enterprise, may retain consultants to assist the management of the System so long as such default continues or the Net Revenues are less than the amount designated.

**Section 24. Events of Default.** It is an Event of Default hereunder if:

(a) ***Non-Payment of Principal.*** Payment of principal of any Bond is not made by the City, acting by and through the Enterprise, when due at maturity or upon prior redemption.

(b) ***Non-Payment of Interest.*** Payment of interest on any Bond is not made by the City, acting by and through the Enterprise, when due.

(c) ***Default of any Other Covenant.*** The City, acting by and through the Enterprise, defaults in the performance of any other of its covenants in this Ordinance and such default continues for a period of 60 days after written notice specifying such default and requiring the same to be remedied shall have been given to the City, acting by and through the Enterprise, by the Owners of 25% in aggregate principal amount of the Bonds then outstanding.

(d) ***Bankruptcy.*** The City files a petition under the federal bankruptcy laws or other applicable bankruptcy laws seeking to adjust the obligations represented by the Bonds.

(e) ***Incapable to Perform.*** The City is not capable of fulfilling its obligations hereunder.

(f) ***Failure to Reconstruct.*** The City unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any part of the System that is destroyed or damaged, but it shall not be an Event of Default if such reconstruction is not essential to the efficient operation of the System.

(g) ***Default Under Insurance Agreement.*** An event of default by the City, acting by and through the Enterprise, shall have occurred and be continuing under any Insurance Agreement.

**Section 25. Remedies of Defaults.** Upon the occurrence and continuance of an Event of Default, the Owner of any Bond, or a trustee therefor, may protect and enforce the rights of such Owner by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenant, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief, or requiring the Council, as the board of the Enterprise, to act as if it were the trustee of an express trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all Owners. Any receiver appointed to protect the rights of Owners may take possession and operate and maintain the System in the same manner as the City or the City, acting by and through the Enterprise, itself might do. The failure of any Owner to proceed does not relieve the City, acting by and through the Enterprise, or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right and the exercise of any right by any Owner shall not be deemed a waiver of any other right. If any remedial action is discontinued or abandoned, the Owners and the City, acting by and through the Enterprise, shall be restored to their former positions.

**Section 26. Defeasance.** When all principal of, premium, if any, and interest in connection with a Bond has been duly paid, the pledge and lien and all obligations of the City, acting by and through the Enterprise, hereunder shall thereby be discharged with respect to said Bond and the Bond shall no longer be deemed to be outstanding within the meaning of this Ordinance. There shall be deemed to be such due payment when the City, acting by and through the Enterprise, has placed in escrow and in trust with a commercial bank located within or without the State, and exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be invested initially) to meet all requirements of principal, premium if any, and interest as the same become due to the final maturity of such Bond or upon a designated prior redemption date for such Bond. The Federal Securities shall become due at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule established and agreed upon between the City, acting by and through the Enterprise, and such bank at the time of the creation of the escrow, or the Federal Securities shall be subject to redemption at the option of the holder thereof to assure such availability as so needed to meet such schedule.

Any provision herein to the contrary notwithstanding, the Bonds may not be completely defeased unless all Credit Facility Costs, if any, due and owing at the time to the Credit Facility Provider have been paid.

**Section 27. Permitted Amendments to Bond Ordinance.** The City, acting by and through the Enterprise, may, without the consent of or notice to the Owners, adopt amendments or supplements to this Ordinance, which amendments or supplements shall thereafter form a part hereof, for any one or more of the following purposes:

(a) to cure any ambiguity, to cure, correct or supplement any formal defect or omission or inconsistent provision contained in this Ordinance, to make any provision necessary or desirable due to a change in law, to make any provision with respect to matters arising under this Ordinance, or to make any provision for any other purpose, if such provision is necessary or desirable and does not materially adversely affect the interests of the Owners of the Bonds;

(b) to subject to this Ordinance or pledge to the payment of the Bonds additional revenues, properties or collateral;

(c) to grant or confer upon the Owners any additional rights, remedies, powers or authority that may be lawfully granted to or conferred upon the Owners;

(d) to facilitate the designation of a substitute securities depository or to terminate the book-entry registration system for the Bonds in accordance with the section hereof entitled "Bond Details; Delegation to Determine Certain Details,"

(e) to facilitate the issuance of Additional Bonds permitted to be issued pursuant to the section hereof entitled "Additional Bonds,"

(f) to facilitate the funding of the Reserve Account or the substitution of one source of funding of the Reserve Account for another permitted source in accordance with the section hereof entitled "Reserve Account,"

(g) to maintain the then existing or to secure a higher rating of the Bonds by any nationally recognized securities rating agency;

(h) to facilitate the issuance of refunding obligations in accordance with Section 22 (f) hereof; or

(i) to make any other change that does not materially adversely affect the Owners of the Bonds.

**Section 28. Amendments Requiring Consent of Owners.** Except for amendatory or supplemental ordinances adopted pursuant to the Section hereof entitled "Permitted Amendments to Bond Ordinance," the Owners of not less than a majority in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the adoption by the City, acting by and through the Enterprise, of such ordinances amendatory or supplemental hereto as shall be deemed necessary or desirable by the City, acting by and through the Enterprise, for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance; provided however, that

without the consent of the Owners of all the Bonds affected thereby, nothing herein contained shall permit, or be construed as permitting:

- (a) a change in the terms of the maturity of any Bond, in the principal amount of any Bond or the rate of interest thereon, or in the terms of prior redemption of any Bond;
- (b) an impairment of the right of the Owners to institute suit for the enforcement of any payment of the principal of or interest on the Bonds when due;
- (c) the creation of a lien upon the Net Revenues ranking prior to the lien of the Bonds;
- (d) a privilege or priority of any Bond or any interest payment over any other Bond or interest payment; or
- (e) a reduction in the percentage in principal amount of the Bonds the consent of whose Owners is required for any such amendatory or supplemental ordinance.

If at any time the City, acting by and through the Enterprise, shall desire to adopt an amendatory or supplemental ordinance for any of the purposes of this Section, the City, acting by and through the Enterprise, shall cause notice of the proposed adoption of such amendatory or supplemental ordinance to be given by mailing such notice by certified or registered first-class mail to the Original Purchaser and to each Owner of a Bond to the address shown on the registration books of the Bond Registrar, at least 60 days prior to the proposed date of adoption of any such amendatory or supplemental ordinance. Such notice shall briefly set forth the nature of the proposed amendatory or supplemental ordinance and shall state that copies thereof are on file at the offices of the City or some other suitable location for inspection by all Owners. If, within 60 days or such longer period as shall be prescribed by the City, acting by and through the Enterprise, following the giving of such notice, the Owners of not less than the required percentage in aggregate principal amount of the Bonds then outstanding at the time of the execution of any such amendatory or supplemental ordinance shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the adoption and effectiveness thereof, or to enjoin or restrain the City, acting by and through the Enterprise, from adopting the same or from taking any action pursuant to the provisions thereof.

**Section 29. Effect of Amendment.** Upon the execution of any amendatory or supplemental ordinance pursuant to this Ordinance, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Ordinance of the City, acting by and through the Enterprise, the Bond Registrar, the Paying Agent, and all Owners of Bonds then outstanding shall thereafter be determined, exercised, and enforced hereunder, subject in all respects to such modifications and amendments.

**Section 30. Variable Rate Obligations.** For all purposes, variable rate bonds or other obligations issued as Additional Bonds shall be assumed to bear interest at the highest of: (a) the actual rate on the date of calculation, or if the obligations are not yet outstanding, the initial rate (if established and binding); and (b) if the obligations have been outstanding for at least 12 months, the average rate over the 12 months immediately preceding the date of calculation. Notwithstanding the foregoing, for purposes of any rate covenant measuring actual debt service coverage during a test period, variable rate obligations shall be deemed to bear interest at the actual rate per annum applicable during the test period.

**Section 31. Costs and Expenses.** All costs and expenses incurred in connection with the issuance and payment of the Bonds shall be paid either from the proceeds of the Bonds or from legally available moneys of the City, acting by and through the Enterprise, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

**Section 32. Official Statement.** The Preliminary Official Statement is hereby authorized and approved. The Council, acting as the board of the Enterprise, hereby authorizes the preparation and distribution of a final Official Statement in conjunction with an offering of the Bonds to the public. The Official Statement shall contain such corrections and additional or updated information so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Mayor or Mayor Pro Tem is hereby authorized to execute copies of the Official Statement on behalf of the City, acting by and through the Enterprise.

**Section 33. Further Action.** The Mayor and all other members of the Council, the City Administrator, the City Clerk, the Finance Director and all other officers and employees of the City are hereby authorized and directed to take all other action necessary or appropriate to effectuate the provisions of this Ordinance, and to comply with the requirements of law, including, without limiting the generality of the foregoing:

(a) the execution of a Tax Compliance Certificate in connection with the issuance of the Bonds;

(b) the execution of (i) such other certificates and documents as may reasonably be required by the Original Purchaser or by bond counsel in connection with the issuance of the Bonds; (ii) other contracts, agreements and certificates in connection with the investment of the proceeds of the Bonds; (iii) a commitment from an Insurer offering to guaranty the payment of the principal of and interest on the Bonds when due; (iv) a guaranty or reimbursement agreement between the City, acting by and through the Enterprise, and any Credit Facility Provider that issues a Reserve Account Credit Facility; and (v) any other related Insurance Agreement; and

(c) the making of various statements, recitals, certifications and warranties provided in the form of the Bonds set forth in this Ordinance.

### **Section 34. Rights of the Insurer.**

Notwithstanding any provision of this Ordinance to the contrary, so long as the Insurer is not in default in its payment obligations under the Insurance Policy, if any, the Insurer shall at all times be deemed the sole exclusive Owner of the Outstanding Bonds for the purposes of all approvals, consents, waivers, institution of any action, and the direction of all remedies pursuant to this Ordinance, including but not limited to approval of or consent to any amendment of or supplement to this Ordinance which requires the consent or approval of the Owners of not less than a majority of the aggregate principal amount of the Bonds then Outstanding pursuant to this Ordinance; provided, however, that the Insurer shall not have such right of approval if:

- (1) the Insurer shall be in default under the Insurance Policy;
- (2) any material provision of the Insurance Policy shall be held to be invalid by a final, non-appealable order of a court of competent jurisdiction, or the validity or enforceability thereof shall be contested by the Insurer; or
- (3) a proceeding shall be instituted in a court having jurisdiction in the premises seeking an order for relief, rehabilitation, reorganization, conservation, liquidation or dissolution with respect to the Insurer and such proceeding is not terminated for a period of 90 consecutive days or such court enters an order granting the relief sought in such proceeding.

To the extent that the Insurer makes payment of any principal of or interest on a Bond, it shall be fully subrogated to all of the Owner's rights thereunder in accordance with the terms of the Insurance Policy, if any, to the extent of such payment, including the Owner's rights to payment thereof.

In the event that the principal of or interest on a Bond shall be paid by the Insurer pursuant to the terms of the Insurance Policy, if any: (1) such Bond shall continue to be outstanding under this Ordinance, and (2) the Insurer shall be fully subrogated to all of the rights of the Owner thereof in accordance with the terms of this Ordinance and the Insurance Policy.

This Ordinance shall not be discharged unless and until all amounts due to the Insurer have been paid in full or duly provided for.

**Section 35. Holidays.** If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed.

**Section 36. Ratification and Approval of Prior Actions.** All actions heretofore taken by the officers of the City and the members of the Council, not inconsistent with the provisions

of this Ordinance, relating to the authorization, sale, issuance and delivery of the Bonds, are hereby ratified, approved and confirmed.

**Section 37. Election to Apply Provisions of the Supplemental Act.** The Council, acting as the board of the Enterprise, elects to apply all of the provisions of the Supplemental Act to the issuance of the Bonds.

**Section 38. Ordinance Irrepealable.** After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the City, acting by and through the Enterprise, and shall be and remain irrepealable until the Bonds, the premium, if any, and the interest accruing thereon shall have been fully paid, satisfied and discharged, as herein provided.

**Section 39. Repealer.** All orders, bylaws, ordinances and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

**Section 40. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

**Section 41. Recording and Authentication.** This Ordinance, immediately upon its passage, shall be recorded in the City book of ordinances kept for that purpose, shall be authenticated by the signatures of the appropriate officers of the City, and shall be published in accordance with law.

**Section 42. Effective Date.** This Ordinance shall become effective upon the 10<sup>th</sup> day following enactment. The City Clerk is hereby directed to provide for publication of this Ordinance in accordance with the requirements of the Charter prior to said effective date.

INTRODUCED AND PASSED ON FIRST READING THE \_\_\_\_ DAY OF SEPTEMBER, 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE \_\_\_\_ DAY OF OCTOBER, 2021.

CITY OF LAFAYETTE, COLORADO,  
ACTING BY AND THROUGH ITS WATER  
RECLAMATION FUND ENTERPRISE

By \_\_\_\_\_  
Jamie Harkins, Mayor

[SEAL]

Attest:

By \_\_\_\_\_  
Lynnette Beck, City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_  
Mary Lynn Macsalka, City Attorney

PUBLISHED: \_\_\_\_\_