

ORDINANCE NO. 774 -1997

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISES, AUTHORIZING THE ISSUANCE OF WATER REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,910,000, AND WASTEWATER REVENUE BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$2,895,000, FOR THE PURPOSE OF FINANCING CAPITAL IMPROVEMENTS FOR THE RESPECTIVE ENTERPRISES; PRESCRIBING THE FORM OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS FROM THE OPERATION OF THE UTILITY SYSTEMS COMPRISING THE RESPECTIVE ENTERPRISES FOR WHICH SAID BONDS WERE ISSUED, AND MAKING CERTAIN COVENANTS IN CONNECTION THEREWITH; AND PROVIDING OTHER DETAILS AND APPROVING OTHER DOCUMENTS IN CONNECTION WITH THE BONDS.

WHEREAS, the Town of Berthoud, Larimer and Weld Counties, Colorado (the "Town"), is a statutory town and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State of Colorado; and

WHEREAS, the Town is the owner and operator of a water utility enterprise (the "Water Enterprise") consisting of a public water system (the "Water System") and of a wastewater utility enterprise (the "Wastewater Enterprise") consisting of a public wastewater system (the "Wastewater System"), both of which have historically been operated on a self-supporting basis by the Town and are considered to be government-owned businesses (the Water Enterprise and the Wastewater Enterprise collectively referred to as the "Water Activity Enterprises"); and

WHEREAS, pursuant to Resolution No. 9-93, Resolution No. 7-94 and Resolution No. 11-94 of the Town (the "Enterprise Resolutions"), the Board of Trustees of the Town (the "Board") has heretofore identified the sources of revenue for the funds comprising the Water Activity Enterprises as well as the identification of the appropriate expenditures from said funds comprising the Water Activity Enterprises; and

WHEREAS, the Board has determined that it is necessary and in the best interests of the Town and its residents to acquire and construct various capital improvements for its Water Activity Enterprises, certain of which will be financed, in part, from appropriate funds of the Water Activity Enterprises and the balance of which will be financed through the issuance of revenue bonds which are not a general obligation of the Town and which are not payable from any tax of the Town; and

WHEREAS, the respective revenue bonds issued to finance the capital improvements will be payable solely from the operating fund of the Water Activity Enterprise for which each improvement was financed in conformity with the Board's policy of fiscal predictability and responsibility with respect to the funds comprising the Water Activity Enterprises; and

WHEREAS, the capital improvements financed from proceeds of the respective revenue bonds would be properly chargeable to the capital fund of the Water Activity Enterprise for which such improvements were financed and therefore certain plant investment fees will be pledged to support the payment of the bonds in conformity with the Enterprise Resolutions establishing legitimate expenditures for the funds comprising the Water Activity Enterprises; and

WHEREAS, the respective Water Activity Enterprises have been and continue to be operated as "water activity enterprises" within the meaning of Title 37, Article 45.1, C.R.S. and Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the revenue bonds of the respective Water Activity Enterprises shall be paid from the user fees, charges and revenues for the services furnished by, or the use of, the Water System and the Wastewater System, respectively, as more specifically set forth herein, and are permitted to be issued under Article X, Section 20 of the Colorado Constitution without voter approval in advance; and

WHEREAS, the Board has been presented with a proposal from Bigelow & Company, of Denver, Colorado, to purchase the revenue bonds upon specified terms and conditions; and

WHEREAS, after consideration, the Board has determined that the sale of the revenue bonds to Bigelow & Company is in the best interests of the Town and the residents thereof, and is to the best advantage of the Town; and

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

WHEREAS, there has been presented to this meeting of the Board, among other things, the Preliminary Official Statement and the Bond Purchase Agreement (all as defined hereafter); and

WHEREAS, the Board desires to authorize the issuance and sale of the Bonds and the execution of the necessary and appropriate documents; and

WHEREAS, the Town is acting hereunder by and through its Water Activity Enterprises.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO, AS THE GOVERNING BODY OF THE TOWN OF BERTHOUD WATER ACTIVITY ENTERPRISES:

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

"*Beneficial Owner*" means any person for which a Participant acquires an interest in the Bonds.

"*Board*" means the Board of Trustees of the Town acting as the governing body of the Town of Berthoud Water Activity Enterprises.

"*Bond Counsel*" means (i) as of the date of issuance of the Bonds, Kutak Rock, and (ii) as of any other date, Kutak Rock or such other attorneys selected by the Town with nationally recognized expertise in the issuance of municipal bonds.

"*Bond Insurance Policy*" means that certain municipal bond insurance policy issued by the Bond Insurer guaranteeing the scheduled payment of the principal of and interest on the Bonds when due.

"*Bond Insurer*" means Financial Security Assurance Inc., a New York stock insurance company, or any successor thereto or assignee thereof.

"*Bond Purchase Agreement*" means the Bond Purchase Agreement between the Town and the Underwriter concerning the purchase of the Bonds by the Underwriter.

"*Bonds*" means the Water Bonds and the Wastewater Bonds, collectively, unless the context indicates otherwise.

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

"*Cede*" means Cede & Co., the nominee of DTC as record owner of the Bonds, or any successor nominee of DTC with respect to the Bonds.

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

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

"*DTC*" means the Depository Trust Company, New York, New York, and its successors and assigns, which shall act as the initial securities depository of the Bonds.

"*DTC Blanket Letter of Representations*" means the agreement between the Town and DTC whereby the Town agrees to comply with DTC's operational requirements.

"*Event of Default*" means any of the events specified in the section hereof entitled "Events of Default."

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

"*Gross Wastewater Revenue*" means all user fees, charges and revenues directly or indirectly derived by the Town for the services furnished by, or use of, the Wastewater System, or any part thereof, including all income attributable to any future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the Wastewater System or its operations, and including investment income accruing from moneys held to the credit of the Wastewater Operations Fund; provided however, that there shall be excluded from Gross Wastewater Revenue (i) any wastewater plant investment fees, tap fees, or similar equity contribution other than Pledged Wastewater Capital Revenues, (ii) moneys borrowed and used for providing Wastewater Capital Improvements, (iii) 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, (iv) and any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Wastewater 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 Wastewater System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

"*Gross Water Revenue*" means all user fees, charges and revenues directly or indirectly derived by the Town for the services furnished by, or use of, the Water System, or any part thereof, including all income attributable to any future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the Water System or its operations, and including investment income accruing from moneys held to the credit of the Water Operations Fund; provided however, that there shall be excluded from Gross Water Revenue (i) any water plant investment fees, tap fees, or similar equity contribution other than Pledged Water Capital Revenues, (ii) any raw water contribution fees imposed for the purpose of purchasing and delivering raw water to the treatment plant, (iii) moneys borrowed and used for providing Water Capital Improvements, (iv) 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 (v) any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Water 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 Water System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

"*Letter of Instructions*" means the Letter of Instructions, dated the date of issuance of the Bonds, delivered by Bond Counsel to the Town, as it may be superseded or amended in accordance with its terms.

"*Net Pledged Wastewater Revenue*" means Gross Wastewater Revenue after deducting Wastewater Operation and Maintenance Expenses.

"*Net Pledged Water Revenues*" means Net Water Revenue after deducting the monthly payments, when due, and deficiencies if any, on the Superior Lien Loan which are not otherwise paid from the Water Capital Fund.

"*Net Water Revenue*" means Gross Water Revenue after deducting Water Operation and Maintenance Expenses.

"*Official Statement*" means the final version of the Preliminary Official Statement.

"*Ordinance*" means this ordinance which authorizes the issuance of the Bonds, including any amendments properly made hereto.

"*Outstanding*" means as of any date, all Bonds, except the following:

(a) Any Bond cancelled by the Town or the Paying Agent, or otherwise on the Town's behalf, at or before such date;

(b) Any Bond for the payment or the redemption of which moneys or Federal Securities sufficient to meet all of the payment requirements of the principal of, interest on, and any premium due in connection with the redemption of such Bond to the date of maturity or any redemption date thereof, shall have theretofore been deposited in trust for such purpose in accordance with the section hereof entitled "Defeasance;" and

(c) Any lost, apparently destroyed, or wrongfully taken Bond in lieu of or in substitution for which another bond or other security shall have been executed and delivered.

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

"*Participant*" means any broker-dealer, bank, or other financial institution from time to time for which DTC or another substitute securities depository holds the Bonds.

"*Parity Lien Bonds*" means, with respect to the Water Bonds or Wastewater Bonds, as applicable, any bonds or other obligations permitted to be issued pursuant to the section hereof entitled "Conditions to Issuance of Parity Lien Bonds," with a lien that is equal and on a parity

with (i) the lien of the Water Bonds on the Net Pledged Water Revenues or (ii) the lien of the Wastewater Bonds on the Net Pledged Wastewater Revenues, as the context indicates.

"*Paying Agent*" means The Bank of Cherry Creek, N.A., in Denver, Colorado, and its successors in interest or assigns approved by the Town, which shall act as paying agent, bond registrar, and authenticating agent for the Bonds.

"*Permitted Investments*" which shall not include corporate debt other than commercial paper rated in the highest category by the rating agencies, means any of the following to the extent permitted by applicable law:

- (a)
 - (1) Direct obligations (other than an obligation subject to variation in principal repayment) of the United States of America ("United States Treasury Obligations");
 - (2) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by the United States of America;
 - (3) obligations fully and unconditionally guaranteed as to timely payment of principal and interest by any agency or instrumentality of the United States of America when such obligations are backed by the full faith and credit of the United States of America; or
 - (4) evidences of ownership of proportionate interests in future interests and principal payments on obligations described above held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying government obligations are not available to any person claiming through the custodian or to whom the custodian may be obligated.
- (b) Federal Housing Administration debentures.
- (c) The listed obligations of government-sponsored agencies which are *not* backed by the full faith and credit of the United States of America:
 - Federal Home Loan Mortgage Corporation (FHLMC)
 - Participation certificates (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
 - Senior Debt obligations
 - Farm Credit Banks (formerly: Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives)
 - Consolidated systemwide bonds and notes
 - Federal Home Loan Banks (FHL Banks)
 - Consolidated debt obligations

- Federal National Mortgage Association (FNMA)
 - Senior debt obligations
 - Mortgage-backed securities (excluded are stripped mortgage securities which are purchased at prices exceeding their principal amounts)
- Student Loan Marketing Association (SLMA)
 - Senior debt obligations (excluded are securities that do not have a fixed par value and/or whose terms do not promise a fixed dollar amount at maturity or call date)
- Financing Corporation (FICO)
 - Debt obligations
- Resolution Funding Corporation (REFCORP)
 - Debt obligations

- (d) Unsecured certificates of deposit, time deposits, and bankers' acceptances (having maturities of not more than 30 days) of any bank the short-term obligations of which are rated "A-1" or better by S&P.
- (e) Deposits the aggregate amount of which are fully insured by the Federal Deposit Insurance Corporation (FDIC), in banks which have capital and surplus of at least \$5 million.
- (f) Commercial paper (having original maturities of not more than 270 days) rated "A-1+" by S&P and "Prime-1" by Moody's.
- (g) Money market funds rated "AAm" or "AAm-G" by S&P, or better.
- (h) "State Obligations," which means:
 - (1) Direct general obligations of any state of the United States of America or any subdivision or agency thereof to which is pledged the full faith and credit of a state the unsecured general obligation debt of which is rated "A3" by Moody's *and* "A" by S&P, or better, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured general obligation debt is so rated.
 - (2) Direct general short-term obligations of any state agency or subdivision or agency thereof described in (A) above and rated "A-1+" by S&P and "Prime-1" by Moody's.
 - (3) Special Revenue Bonds (as defined in the United States Bankruptcy Code) of any state, state agency or subdivision described in (A) above and rated "AA" or better by S&P and "Aa" or better by Moody's.

- (i) Pre-refunded municipal obligations rated "AAA" by S&P and "Aaa" by Moody's meeting the following requirements:

(1) The municipal obligations are (i) not subject to redemption prior to maturity or (ii) the trustee for the municipal obligations has been given irrevocable instructions concerning their call and redemption and the issuer of the municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions;

(2) the municipal obligations are secured by cash or United States Treasury Obligations which may be applied only to payment of the principal of, interest and premium on such municipal obligations;

(3) the principal of and interest on the United States Treasury Obligations (plus any cash in the escrow) has been verified by the report of independent certified public accountants to be sufficient to pay in full all principal of, interest, and premium, if any, due and to become due on the municipal obligations ("Verification");

(4) the cash or United States Treasury Obligations serving as security for the municipal obligations are held by an escrow agent or Paying Agent in trust for owners of the municipal obligations;

(5) no substitution of a United States Treasury Obligation shall be permitted except with another United States Treasury Obligation and upon delivery of a new Verification; and

(6) the cash or United States Treasury Obligations are not available to satisfy any other claims, including those by or against the Paying Agent or escrow agent.

- (j) Repurchase agreements:

With (1) any domestic bank, or domestic branch of a foreign bank, the long term debt of which is rated at least "A" by S&P and Moody's; or (2) any broker-dealer with "retail customers" or a related affiliate thereof which broker-dealer has, or the parent company (which guarantees the provider) of which has, long-term debt rated at least "A" by S&P and Moody's, which broker-dealer falls under the jurisdiction of the Securities Investors Protection Corporation; or (3) any other entity rated "A" or better by S&P and Moody's and acceptable to the Bond Insurer, provided that:

- (i) The market value of the collateral is maintained at levels and upon such conditions as would be acceptable to S&P and Moody's to maintain

an "A" rated in an "A" rated structured financing (with a market value approach);

(ii) The Town, the Paying Agent or a third party acting solely as agent therefor or for the Town (the "Holder of the Collateral") has possession of the collateral or the collateral has been transferred to the Holder of the Collateral in accordance with applicable state and federal laws (other than by means of entries on the transferor's books);

(iii) The repurchase agreement shall state and an opinion of counsel shall be rendered at the time such collateral is delivered that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(iv) All other requirements of S&P in respect of repurchase agreements shall be met; and

(v) The repurchase agreement shall provide that if during its term the provider's rating by either Moody's or S&P is withdrawn or suspended or falls below "A-" by S&P or "A3" by Moody's, as appropriate, the provider must, at the direction of the Town or the Paying Agent (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, repurchase all collateral and terminate the agreement, with no penalty or premium to the Town or Paying Agent.

Notwithstanding the above, if a repurchase agreement has a term of 270 days or less (with no evergreen provision), collateral levels need not be as specified in (a) above, so long as such collateral levels are 103% or better and the provider is rated at least "A" by S&P and Moody's, respectively.

(k) Investment agreements with a domestic or foreign bank or corporation (other than a life or property casualty insurance company) the long-term debt of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated at least "AA" by S&P and "Aa" by Moody's; provided that, by the terms of the investment agreement:

(1) interest payments are to be made to the Paying Agent at times and in amounts as necessary to pay debt service (or, if the investment agreement is for the construction fund, construction draws) on the Bonds;

(2) the invested funds are available for withdrawal without penalty or premium, at any time upon not more than seven days' prior notice; the Town and the Paying Agent hereby agree to give or cause to be given notice in accordance with the terms of the investment agreement so as to receive funds thereunder with no penalty or premium paid;

(3) the investment agreement shall state that it is the unconditional and general obligation of, and is not subordinated to any other obligation of, the provider thereof or, if the provider is a bank, the agreement or the opinion of counsel shall state that the obligation of the provider to make payments thereunder ranks pari passu with the obligations of the provider to its other depositors and its other unsecured and unsubordinated creditors;

(4) the Town or the Paying Agent receives the opinion of domestic counsel (which opinion shall be addressed to the Town and the Bond Insurer) that such investment agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and of foreign counsel (if applicable) in form and substance acceptable, and addressed to, the Bond Insurer;

(5) the investment agreement shall provide that if during its term

(i) the provider's rating by either S&P or Moody's falls below "AA-" or "Aa3", respectively, the provider shall, at its option, within 10 days of receipt of publication of such downgrade, either (A) collateralize the investment agreement by delivering or transferring in accordance with applicable state and federal laws (other than by means of entries on the provider's books) to the Town, the Paying Agent or a third party acting solely as agent therefor (the "Holder of the Collateral") collateral free and clear of any third-party liens or claims the market value of which collateral is maintained at levels and upon such conditions as would be acceptable to S&P and Moody's to maintain an "A" rating in an "A" rated structured financing (with a market value approach); or (B) repay the principal of and accrued but unpaid interest on the investment, and

(ii) the provider's rating by either S&P or Moody's is withdrawn or suspended or falls below "A-" or "A3", respectively, the provider must, at the direction of the Town or the Paying Agent (who shall give such direction if so directed by the Bond Insurer), within 10 days of receipt of such direction, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium to the Town of Paying Agent; and

(6) The investment agreement shall state and an opinion of counsel shall be rendered, in the event collateral is required to be pledged by the provider under

the terms of the investment agreement, at the time such collateral is delivered, that the Holder of the Collateral has a perfected first priority security interest in the collateral, any substituted collateral and all proceeds thereof (in the case of bearer securities, this means the Holder of the Collateral is in possession);

(7) the investment agreement must provide that if during its term

(i) the provider shall default in its payment obligations, the provider's obligations under the investment agreement shall, at the direction of the Town or the Paying Agent (who shall give such direction if so directed by the Bond Insurer), be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Town or Paying Agent, as appropriate, and

(ii) the provider shall become insolvent, not pay its debts as they become due, be declared or petition to be declared bankrupt, etc. ("event of insolvency"), the provider's obligations shall automatically be accelerated and amounts invested and accrued but unpaid interest thereon shall be repaid to the Town or Paying Agent, as appropriate.

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

"*Pledged Wastewater Capital Revenues*" means the plant investment fees, tap fees, or similar equity contribution derived by the Town for the right to connect to the Wastewater System, in the annual amount, if any such revenues are collected during the calendar year, of \$200,000 or such greater amount as determined by the Board.

"*Pledged Water Capital Revenues*" means the plant investment fees, tap fees, or similar equity contribution derived by the Town for the right to connect to the Water System, in the annual amount, if any such revenues are collected during the calendar year, of \$200,000 or such greater amount as determined by the Board.

"*Preliminary Official Statement*" means the Preliminary Official Statement dated August 22, 1997, concerning the Bonds and the Town.

"*Project Costs*" means the Town's costs properly attributable to the Water Project or Wastewater Project, or any parts thereof, and permitted by the provisions of §31-35-403(2), C.R.S., including without limitation: the costs of insurance premiums, indemnity and fidelity bonds, financing charges, bank fees, taxes, or other municipal or governmental charges lawfully levied or assessed; the costs of reimbursing funds advanced by the Town in anticipation of reimbursement from Bond proceeds, including any intrafund or interfund loan; the costs of

contingencies or reserves; and the costs of issuing the Bonds; and all other lawful costs as determined by the Board.

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

"*Rating Agency*" means Fitch Investors Service, Inc. ("Fitch"), Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. ("S&P").

"*Record Date*" means the last day of the calendar month next preceding each interest payment date.

"*Reserve Account Contract*" means a surety bond, insurance policy, letter of credit, investment agreement, investment contract or similar instrument.

"*Reserve Account Requirement*" means, as of any date on which it is calculated, the least of (i) 10% of the principal amount of the applicable Outstanding Bonds, (ii) the maximum annual debt service in any calendar year on the applicable Outstanding Bonds or (iii) 125% of the average annual debt service on the applicable Outstanding Bonds; provided, however, that the Reserve Account Requirement may be reduced if, in the opinion of Bond Counsel, the funding or maintenance of it at the level otherwise determined pursuant to this definition will adversely affect the exclusion from gross income tax for federal income tax purposes of interest on any of the Bonds.

"*Special Record Date*" means the record date for determining Bond ownership for purposes of paying defaulted interest, as such date may be determined pursuant to this Ordinance.

"*State*" means the State of Colorado.

"*Superior Lien Loan*" means that certain loan commencing April 1, 1994, between the Town acting by and through its water utility enterprise and the Colorado Water Resources and Power Development Authority, represented by a Governmental Agency Bond originally issued in the principal amount of \$1,100,000.

"*Town*" means the Town of Berthoud, Larimer and Weld Counties, Colorado.

"*Underwriter*" means Bigelow & Company, of Denver, Colorado, the original purchasers of the Bonds.

"*Wastewater Bond Account*" means the "Wastewater Revenue Bond Account" created in the section hereof entitled "Creation of Accounts."

"*Wastewater Bonds*" means the Wastewater Revenue Bonds, Series 1997, dated September 15, 1997, authorized hereby.

"*Wastewater Capital Fund*" means the Wastewater Capital Improvement Fund of the Wastewater Enterprise Fund as established in Resolution No. 11-94 of the Town.

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

"*Wastewater Enterprise Fund*" means that certain fund created by Resolution No. 9-93 of the Town to account for the Town's wastewater enterprise operations.

"*Wastewater Operation and Maintenance Expenses*" means all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining, and repairing the Wastewater System which are appropriate expenses of the Wastewater Operations Fund; provided however, that there shall be excluded from Wastewater Operation and Maintenance Expenses any allowance or transfers for depreciation, repayment of any interfund loans or loans from one division or fund of the Wastewater Enterprise Fund to another, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Wastewater Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Wastewater Capital Improvements, and charges for the accumulation of reserves.

"*Wastewater Operations Fund*" means the Wastewater Operations Fund (also known as the Wastewater Operation and Maintenance Fund) of the Wastewater Enterprise Fund as established in Resolution No. 11-94 of the Town.

"*Wastewater Project*" means the acquisition, construction, reconstruction, improvement, betterment, or extension of Wastewater Capital Improvements, including but not limited to a sludge treatment facility and a lift station and force main.

"*Wastewater Project Account*" means the Wastewater Project Account created in the section hereof entitled "Creation of Accounts."

"*Wastewater Reserve Account*" means the "Wastewater Revenue Bond Reserve Account" created in the section hereof entitled "Creation of Accounts."

"*Wastewater Rate Stabilization Account*" means the "Wastewater Rate Stabilization Account" created in the section hereof entitled "Creation of Accounts."

"*Wastewater System*" means all of the Town's wastewater facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto; provided however, that portion of the Town's wastewater facilities and properties previously owned and operated by the South Loveland Sanitation District shall not be considered a part of the Wastewater System for purposes of this Ordinance.

"*Water Activity Enterprises*" means the Town's water activity enterprises which have been established pursuant to the provisions of the Water Activity Law, the operations of which are accounted for in the Water Enterprise Fund and the Wastewater Enterprise Fund.

"*Water Activity Law*" means Title 37, Article 45.1, C.R.S.

"*Water Bond Account*" means the "Water Revenue Bond Account" created in the section hereof entitled "Creation of Accounts."

"*Water Bonds*" means the Water Revenue Bonds, Series 1997, dated September 15, 1997, authorized hereby.

"*Water Capital Fund*" means the Water Capital Improvement Fund of the Water Enterprise Fund as established in Resolution No. 7-94 of the Town.

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

"*Water Enterprise Fund*" means of the Town to account for the Town's water enterprise operations.

"*Water Operation and Maintenance Expenses*" means all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining, and repairing the Water System which are appropriate expenses of the Water Operations Fund; provided however, that there shall be excluded from Water Operation and Maintenance Expenses any allowance or transfers for depreciation, repayment of any interfund loans or loans from one division of the Water Enterprise Fund to another, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Water Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Water Capital Improvements, and charges for the accumulation of reserves.

"*Water Operations Fund*" means the Water Operations Fund (also know as the Water Treatment and Delivery Division) of the Water Enterprise Fund as established in Resolution No. 7-94 of the Town.

"*Water Project*" means the acquisition, construction, reconstruction, improvement, betterment, or extension of Water Capital Improvements, including but not limited to a raw water line from Carter Lake and water treatment plant expansion.

"*Water Project Account*" means the Water Project Account created in the section hereof entitled "Creation of Accounts."

"*Water Reserve Account*" means the "Water Revenue Bond Reserve Account" created in the section hereof entitled "Creation of Accounts."

"*Water Rate Stabilization Account*" means the "Water Rate Stabilization Account" created in the section hereof entitled "Creation of Accounts."

"*Water System*" means all of the Town's water facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto.

Section 2. *Authorization and Purpose of the Bonds.* Pursuant to and in accordance with the Constitution of the State of Colorado; Title 31, Article 35, Part 4, C.R.S.; the Water Activity Law; and all other laws of the State of Colorado thereunto enabling, there shall be issued by the Town, acting by and through the Town's Water Activity Enterprises, the "Water Revenue Bonds, Series 1997", in the aggregate principal amount of \$2,910,000, for the purpose of paying the Project Costs attributable to the Water Project, and the "Wastewater Revenue Bonds, Series 1997", in the aggregate principal amount of \$2,895,000, for the purpose of paying the Project Costs attributable to the Wastewater Project. The accomplishment of the Water Project and the Wastewater Project is hereby authorized, approved, and ordered.

Section 3. *Bond Details.*

(a) *Registered Form, Denominations, Original Dated Date and Numbering.* The Bonds shall be issued as fully registered bonds in denominations of \$5,000 or any integral multiple thereof, shall be dated as of an original dated date of September 15, 1997, shall be consecutively numbered in the manner determined by the Paying Agent and shall be registered in the names of the Persons identified in the registration books of the Town maintained by the Paying Agent.

(b) *Maturity Dates, Principal Amounts and Interest Rates.* The Water Bonds shall mature on October 15 of the years and in the principal amounts, and shall bear

interest at the rates per annum (calculated based on a 360-day year of twelve 30-day months), set forth below:

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1998	\$ 90,000	3.85 %
1999	95,000	4.10
2000	100,000	4.20
2001	105,000	4.30
2002	110,000	4.40
2003	110,000	4.50
2004	115,000	4.60
2005	125,000	4.70
2006	130,000	4.80
2007	135,000	4.85
2008	140,000	4.90
2009	150,000	5.00
2012	500,000	5.20
2017	1,005,000	5.45

The maximum net effective interest rate authorized on the Water Bonds is hereby specified to be 5.75 %.

The Wastewater Bonds shall mature on October 15 of the years and in the principal amounts, and shall bear interest at the rates per annum (calculated based on a 360-day year of twelve 30-day months), set forth below:

<u>Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
1998	\$ 90,000	3.85 %
1999	95,000	4.10
2000	100,000	4.20
2001	105,000	4.30
2002	105,000	4.40
2003	110,000	4.50
2004	115,000	4.60
2005	125,000	4.70
2006	135,000	4.80
2007	135,000	4.85
2008	140,000	4.90
2009	150,000	5.00
2010	155,000	5.10
2013	515,000	5.20
2017	820,000	5.45

The maximum net effective interest rate authorized on the Wastewater Bonds is hereby specified to be 5.75 %.

(c) *Accrual and Dates of Payment of Interest.* Interest on the Bonds shall accrue at the rates set forth above from the later of the original dated date or the latest interest payment date (or in the case of defaulted interest, the latest date) to which interest has been paid in full and shall be payable on April 15 and October 15 of each year, commencing April 15, 1998.

(d) *Manner and Form of Payment.* Principal of, premium, if any, and the final installment of interest on each Bond shall be payable to the Owner thereof upon presentation and surrender of such bond at the principal operations office of the Paying Agent or at such other location as identified by the Paying Agent. Interest (other than the final installment of interest) on each Bond shall be payable by check or draft of the Paying Agent mailed on the interest payment date to the Owner thereof as of the Record Date. All payments of the principal of, premium, if any, and interest on the Bonds shall be made in lawful money of the United States of America.

(e) *Book-Entry Registration.* The Bonds shall be initially issued in the form of a single, certificated, fully registered Bond for each maturity. Upon initial issuance, the ownership of each such Bond shall be registered in the registration books kept by the Bond Registrar in the name of Cede, and principal of, premium if any, and interest on the Bonds shall be paid to DTC in accordance with the DTC Blanket Letter of Representations; provided, however, if at any time the Paying Agent determines, and

notifies the Town of its determination, that DTC is no longer able to act as, or is no longer satisfactorily performing its duties as, securities depository for the Bonds, the Town may, at its sole and absolute discretion, either (A) designate a substitute securities depository for DTC and reregister the Bonds as directed by such substitute securities depository or (B) terminate the book-entry registration system and reregister the Bonds in the names of the Beneficial Owners thereof. Neither the Town nor the Paying Agent shall have any liability to DTC, Cede, any substitute securities depository, any Beneficial Owner, any Person in whose name the Bonds are reregistered at the direction of any substitute securities depository, or any other Person for any action taken to implement the Town's discretionary determination set forth above that is taken pursuant to any direction of or in reliance on any information provided by DTC, Cede, any substitute securities depository, any Beneficial Owner, or any Person in whose name the Bonds are reregistered.

Section 4. *Form of the Bonds.* The Bonds shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Town executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). Although attached as an appendix for the convenience of the reader, Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

Section 5. *Execution, Authentication and Delivery of the Bonds.*

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

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

(c) *Delivery.* Upon the authentication of the Bonds, the Paying Agent shall deliver the same to DTC in accordance with the provisions of the DTC Blanket Letter of Representations. Upon receipt of the agreed purchase price of the Bonds from the

Underwriter and issuance of the approving opinion of Bond Counsel, DTC shall be directed to release the Bonds to the Beneficial Owners.

Section 6. *Registration, Transfer and Exchange of the Bonds.*

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

(b) *Transfer and Exchange.* The Bonds may be transferred or exchanged, at the principal office of the Paying Agent at the location identified in the definition of Paying Agent in the section hereof entitled "Definitions," for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the Town shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond.

(c) *Limitations on Transfer.* The Town and Paying Agent shall not be required to issue or transfer any Bonds: (i) during a period beginning at the close of business on the Record Date and ending at the opening of business on the first Business Day following the ensuing interest payment date, or (ii) during the period beginning at the opening of business on a date forty-five (45) days prior to the date of any redemption of Bonds and ending at the opening of business on the first Business Day following the day on which the applicable notice of redemption is mailed. The Paying Agent shall not be required to transfer any Bonds selected or called for redemption.

Section 7. *Replacement of Lost, Destroyed or Stolen Bonds.* If any Bond shall become lost, apparently destroyed, stolen or wrongfully taken, it may be replaced in the form and tenor of the lost, destroyed, stolen or taken bond and the Town shall execute and the Paying Agent shall authenticate and deliver a replacement Bond upon the Owner furnishing, to the satisfaction of the Paying Agent: (i) proof of ownership (which shall be shown by the registration books of the Paying Agent), (ii) proof of loss, destruction or theft, (iii) an indemnity to the Town and the Paying Agent with respect to the Bond lost, destroyed or taken, and (iv) payment of the cost of preparing and executing the new bond or bonds.

Section 8. *Redemption of Bonds Prior to Maturity.*

(a) *Optional Redemption.* The Bonds maturing on and before October 15, 2007 are not subject to redemption prior to their respective maturity dates. The Bonds maturing on and after October 15, 2008 are subject to redemption prior to maturity at the option of the Town, in whole or in part in integral multiples of \$5,000, and if in part in such order of maturities as the Town shall determine and by lot within a maturity, on October 15, 2007 and on any date thereafter, at a redemption price equal to the par amount thereof (with no redemption premium):

(b) *Mandatory Sinking Fund Redemption.* The Water Bonds maturing on October 15, 2012 are subject to mandatory sinking fund redemption by lot on October 15 of the years and in the principal amounts specified below, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date:

<u>Years</u>	<u>Principal Amount</u>
2010	\$160,000
2011	165,000
2012 (final maturity)	175,000

The Water Bonds maturing on October 15, 2017 are subject to mandatory sinking fund redemption by lot on October 15 of the years and in the principal amounts specified below, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date:

<u>Years</u>	<u>Principal Amount</u>
2013	\$180,000
2014	190,000
2015	200,000
2016	215,000
2017 (final maturity)	220,000

The Wastewater Bonds maturing on October 15, 2013 are subject to mandatory sinking fund redemption by lot on October 15 of the years and in the principal amounts specified below, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date:

<u>Years</u>	<u>Principal Amount</u>
2011	\$165,000
2012	170,000
2013 (final maturity)	180,000

The Wastewater Bonds maturing on October 15, 2017 are subject to mandatory sinking fund redemption by lot on October 15 of the years and in the principal amounts specified below, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date:

<u>Years</u>	<u>Principal Amount</u>
2014	\$190,000
2015	200,000
2016	210,000
2017 (final maturity)	220,000

At its option, to be exercised on or before the forty fifth day next preceding each sinking fund redemption date, the Town may (i) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption and (ii) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof to the obligation of the Town on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

(c) *Redemption Procedures.* Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the Town by sending a copy of such notice by first-class, postage prepaid mail, not less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

Section 9. *Reaffirmation of Funds; Creation of Accounts.*

(a) *Reaffirmation of Funds.* There is hereby reaffirmed the following funds: the Water Enterprise Fund, within which are, among other funds, the Water Operations Fund and the Water Capital Fund; and the Wastewater Enterprise Fund, within which

is, among other funds, the Wastewater Operations Fund and the Wastewater Capital Fund.

(b) *Creation of Accounts in Water Operations Fund.* There are hereby created and established within the Water Operations Fund, the following accounts:

- (i) the Water Bond Account;
- (ii) the Water Reserve Account;
- (iii) the Water Rate Stabilization Account; and
- (iv) the Water Project Account.

(c) *Creation of Accounts in Wastewater Operations Fund.* There are hereby created and established within the Wastewater Operations Fund, the following accounts:

- (i) the Wastewater Bond Account;
- (ii) the Wastewater Reserve Account;
- (iii) the Wastewater Rate Stabilization Account; and
- (iv) the Wastewater Project Account.

Section 10. *Application of Proceeds of the Bonds; Funding of Reserve Accounts.*

(a) *Application of Water Bond Proceeds.* Upon payment to the Town of the purchase price of the Water Bonds in accordance with the Bond Purchase Agreement, the proceeds received by the Town from the sale of the Water Bonds shall be applied as a supplemental appropriation of the Town as follows:

- (i) accrued interest on the Water Bonds from the dated date thereof to the date of issuance shall be deposited into the Water Bond Account;
- (ii) proceeds in the amount of the Reserve Account Requirement shall be deposited in the Water Reserve Account; and
- (iii) all remaining proceeds shall be deposited into the Water Project Account.

(b) *Application of Wastewater Bond Proceeds.* Upon payment to the Town of the purchase price of the Wastewater Bonds in accordance with the Bond Purchase

Agreement, the proceeds received by the Town from the sale of the Wastewater Bonds shall be applied as a supplemental appropriation of the Town as follows:

- (i) accrued interest on the Wastewater Bonds from the dated date thereof to the date of issuance shall be deposited into the Wastewater Bond Account;
- (ii) proceeds in the amount of the Reserve Account Requirement shall be deposited in the Wastewater Reserve Account; and
- (iii) all remaining proceeds shall be deposited into the Wastewater Project Account.

Section 11. *Deposit of Gross Revenues.*

(a) *Gross Water Revenues.* The Town shall deposit to the Water Operations Fund all Gross Water Revenue immediately upon receipt; provided however, the Pledged Water Capital Revenues shall first be deposited to the Water Capital Fund and, prior to any expenditure thereof, transferred to the Water Operations Fund. Any moneys transferred from the Water Capital Fund to the Water Operations Fund shall be considered Pledged Water Capital Revenues unless otherwise documented by the Town at the time of such transfer. The Town shall pay from the Water Operations Fund all Water Operation and Maintenance Expenses as they become due and payable; provided however, the Pledged Water Capital Revenues shall not be used for the purpose of paying Water Operation and Maintenance Expenses. After such payment the Town shall apply the Net Water Revenue to the payment, when due, of the Superior Lien Loan. After such payment or allocation of Net Water Revenue to such payment, the Town shall apply the Net Pledged Water Revenue in the following order of priority:

FIRST: To the credit of the Water Bond Account, the amounts required by the section hereof entitled "Bond Accounts;"

SECOND: To the credit of the Water Reserve Account, the amounts required by the section hereof entitled "Reserve Accounts;"

THIRD: To the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on subordinate lien obligations as described in paragraph (c) of the section hereof entitled "Pledge and Lien for Payment of Bonds", including any sinking fund, reserve fund, or similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of said subordinate lien obligations; and

FOURTH: To the credit of any other fund or account as may be designated by the Town, to be used for any lawful purpose, any moneys remaining in the Water Operations Fund after the payments and accumulations set forth in FIRST through THIRD hereof.

(b) *Gross Wastewater Revenues.* The Town shall deposit to the Wastewater Operations Fund all Gross Wastewater Revenue immediately upon receipt; provided however, the Pledged Wastewater Capital Revenues shall first be deposited to the Wastewater Capital Fund and, prior to any expenditure thereof, transferred to the Wastewater Operations Fund. Any moneys transferred from the Wastewater Capital Fund to the Wastewater Operations Fund shall be considered Pledged Wastewater Capital Revenues unless otherwise documented by the Town at the time of such transfer. The Town shall pay from the Wastewater Operations Fund all Wastewater Operation and Maintenance Expenses as they become due and payable; provided however, the Pledged Wastewater Capital Revenues shall not be used for the purpose of paying Wastewater Operation and Maintenance Expenses. After such payment the Town shall apply the Net Pledged Wastewater Revenue in the following order of priority:

FIRST: To the credit of the Wastewater Bond Account, the amounts required by the section hereof entitled "Bond Accounts;"

SECOND: To the credit of the Wastewater Reserve Account, the amounts required by the section hereof entitled "Reserve Accounts;"

THIRD: To the credit of any other fund or account hereafter established for the payment of the principal of, premium if any, and interest on subordinate lien obligations as described in paragraph (c) of the section hereof entitled "Pledge and Lien for Payment of Bonds", including any sinking fund, reserve fund, or similar fund or account established therefor, the amounts required by the ordinance or other enactment authorizing issuance of said subordinate lien obligations; and

FOURTH: To the credit of any other fund or account as may be designated by the Town, to be used for any lawful purpose, any moneys remaining in the Wastewater Operations Fund after the payments and accumulations set forth in FIRST through THIRD hereof.

Section 12. *Bond Accounts.*

(a) *Use of Moneys in Bond Accounts.* Moneys deposited in the Water Bond Account shall be used solely for the purpose of paying the principal of, premium if any, and interest on the Water Bonds and any Parity Lien Bonds. Moneys deposited in the Wastewater Bond Account shall be used solely for the purpose of paying the principal of, premium if any, and interest on the Wastewater Bonds and any Parity Lien Bonds. Nothing herein shall be construed to prevent the Town from creating separate principal and interest accounts for the Bonds and any Parity Lien Bonds and accounting separately

for any deposits made thereto on account of the Bonds and any Parity Lien Bonds, if such action is deemed by the Town to be necessary or desirable, provided that any such separate accounts shall have claims to the Net Pledged Water Revenues or Net Pledged Wastewater Revenues, as applicable, equal to and on a parity with those of the other such accounts.

(b) *Deposits to Water Bond Account.* On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the Town shall deposit to the Water Bond Account from the Net Pledged Water Revenues, an amount equal to the Pro Rata Portion of the interest and principal to come due on the Water Bonds and any Parity Lien Bonds on the next succeeding interest payment date.

(c) *Deposits to Wastewater Bond Account.* On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the Town shall deposit to the Wastewater Bond Account from the Net Pledged Wastewater Revenues, an amount equal to the Pro Rata Portion of the interest and principal to come due on the Wastewater Bonds and any Parity Lien Bonds on the next succeeding interest payment date.

(d) *Investments.* Moneys deposited in the Water Bond Account and the Wastewater Bond Account may be invested or deposited in securities or obligations which are Permitted Investments. The investment of moneys deposited in the Water Bond Account and the Wastewater Bond Account shall, however, be subject to the covenants and provisions of the section hereof entitled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes."

Section 13. *Reserve Accounts.*

(a) *Use of Moneys in Reserve Accounts.* Moneys in the Water Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, and interest on the Water Bonds and any Parity Lien Bonds when due. Moneys on deposit in the Water Reserve Account, proceeds of the liquidation of Permitted Investments on deposit in the Water Reserve Account or moneys available from a Reserve Account Contract shall be transferred to the Water Bond Account on any date on which a payment of principal of, premium, if any, or interest on the Water Bonds and any Parity Lien Bonds is due to the extent the amount on deposit in the Water Bond Account is insufficient to make such payment. Moneys in the Wastewater Reserve Account shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, and interest on the Wastewater Bonds and any Parity Lien Bonds when due. Moneys on deposit in the Wastewater Reserve Account, proceeds of the liquidation of Permitted Investments on deposit in the Wastewater Reserve Account or moneys available from a Reserve Account Contract shall be transferred to the Wastewater Bond Account on any date on which a payment of principal of, premium, if any, or interest on the Wastewater Bonds and any Parity Lien Bonds is due to the

extent the amount on deposit in the Wastewater Bond Account is insufficient to make such payment.

(b) *Funding and Maintenance of Reserve Account Requirement.* The Reserve Account Requirement shall be funded and maintained by any one of or any combination of (i) cash; (ii) Permitted Investments; and (iii) a Reserve Account Contract which provides for payments when and as required for purposes of the applicable reserve account and is issued by an obligor whose obligations such as the Reserve Account Contract are either (A) rated by a Rating Agency as investment grade or (B) if a rating has been obtained on the Bonds or any Parity Lien Bonds whose obligations are rated by each Rating Agency that then maintains a rating on the Bonds or any Parity Lien Bonds in a category (or comparable classification) equal to or higher than the category, if any, in which the Bonds or any Parity Lien Bonds are rated. To the extent that the Reserve Account Requirement is funded from Permitted Investments, such investments shall have a aggregate weighted term to maturity not greater than five years.

(c) *Valuation of Deposits.* Cash shall satisfy the Reserve Account Requirement by the amount of cash on deposit. Permitted Investments shall satisfy the Reserve Account Requirement by the value of such investments. The value of each Permitted Investment on deposit in the Water Reserve Account and Wastewater Reserve Account shall be (i) its purchase price from the date of purchase until the first date thereafter on which the Reserve Account Requirement is calculated pursuant to paragraph (d) of this section and (ii) following each date on which the Reserve Account Requirement is calculated pursuant to paragraph (d) of this section until the next date on which the Reserve Account Requirement is so calculated, its fair market value determined as of such calculation date. A Reserve Account Contract shall satisfy the Reserve Account Requirement by the amount payable to the Town pursuant to such contract.

(d) *Calculation of Reserve Account Requirement and Transfers Resulting from Calculation.* The Reserve Account Requirement shall be calculated as of (i) the date of issuance of the Bonds, (ii) the date of issuance of each series of Parity Lien Bonds and (iii) not less than every five years. If at any time the calculated amounts of the Water Reserve Account and Wastewater Reserve Account are less than the Reserve Account Requirement or transfers are made from the Water Reserve Account or Wastewater Reserve Account as provided in paragraph (a) hereof, then the Town shall deposit to the Water Reserve Account from the Net Pledged Water Revenues or Wastewater Reserve Account from the Net Pledged Wastewater Revenues, amounts sufficient to bring the amounts deposited in the Water Reserve Account and Wastewater Reserve Account to the Reserve Account Requirement. If at any time the calculated amounts of the Water Reserve Account or Wastewater Reserve Account are more than the Reserve Account Requirement, then the Town shall transfer from the Water Reserve Account to the Water Bond Account and from the Wastewater Reserve Account to the Wastewater Bond Account any amounts which are in excess of the Reserve Account Requirement. Such

deposits shall be made as soon as possible after such use or calculation, but in accordance with and subject to the limitations of the section hereof entitled "Deposit of Net Pledged Revenues."

(e) *Transfer of Interest Income to Bond Account.* The investment of moneys deposited in the Water Reserve Account and Wastewater Reserve Account shall be subject to the covenants and provisions of the section hereof entitled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." Except to the extent otherwise required by such section, interest income from the investment or reinvestment of moneys deposited in the Water Reserve Account shall be transferred to the Water Bond Account and interest income from the investment or reinvestment of moneys deposited in the Wastewater Reserve Account shall be transferred to the Wastewater Bond Account.

Section 14. *Project Accounts.*

(a) *Use of Moneys in Water Project Account.* All moneys deposited in the Water Project Account shall be applied solely to the payment of the Project Costs for the Water Project. Upon the determination of the Board that all Project Costs have been paid or are determinable, any balance remaining in the Water Project Account (less any amounts necessary to pay Project Costs not then due and owing) shall be transferred to the Water Bond Account.

(b) *Use of Moneys in Wastewater Project Account.* All moneys deposited in the Wastewater Project Account shall be applied solely to the payment of the Project Costs for the Wastewater Project. Upon the determination of the Board that all Project Costs have been paid or are determinable, any balance remaining in the Wastewater Project Account (less any amounts necessary to pay Project Costs not then due and owing) shall be transferred to the Wastewater Bond Account.

(c) *Investments.* Moneys deposited in the Water Project Account and the Wastewater Project Account may be invested or deposited in securities or obligations which are Permitted Investments. The investment of moneys deposited in the Water Project Account and the Wastewater Project Account shall, however, be subject to the covenants and provisions of the section hereof entitled "Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes." Except to the extent otherwise required by such section, interest income from the investment or reinvestment of moneys deposited in the Water Project Account and the Wastewater Account Project Account shall remain in the account from which such interest is earned.

Section 15. *Pledge and Lien for Payment of Bonds.*

(a) *Pledge of Revenues.* The Town hereby pledges for the payment of the principal of, premium, if any, and interest on the Water Bonds and Parity Lien Bonds at any time Outstanding, and grants a lien for such purpose on (i) the Net Pledged Water Revenues, (ii) all moneys on deposit from time-to-time in the Water Operations Fund, subject to the application of the Gross Water Revenues as provided in the section hereof entitled "Deposit of Gross Revenues", and (iii) all Pledged Water Capital Revenues on deposit from time-to-time in the Water Capital Fund. The Town hereby pledges for the payment of the principal of, premium, if any, and interest on the Wastewater Bonds and Parity Lien Bonds at any time Outstanding, and grants a lien for such purpose on (i) the Net Pledged Wastewater Revenues, (ii) all moneys on deposit from time-to-time in the Wastewater Operations Fund, subject to the application of the Gross Wastewater Revenues as provided in the section hereof entitled "Deposit of Gross Revenues", and (iii) all Pledged Wastewater Capital Revenues on deposit from time-to-time in the Wastewater Capital Fund. These pledges shall be valid and binding from and after the date of the first delivery of the Bonds, and the moneys, as received by the Town and hereby pledged, shall immediately be subject to the lien of the respective pledges without any physical delivery thereof, any filing, or further act. The liens of the respective pledges and the obligation to perform the contractual provisions hereby made shall have priority over any or all other obligations and liabilities of the Town (except as herein otherwise expressly provided), and the lien of the respective pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Town (except as herein otherwise expressly provided), irrespective of whether such parties have notice thereof.

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

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

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

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

Section 16. *Conditions to Issuance of Parity Lien Bonds.*

(a) *Water Revenue Parity Lien Bonds.* The Town shall not issue Parity Lien Bonds having a lien which is on a parity with the lien of the Water Bonds (as provided in the paragraph entitled "Pledge of Revenues" in the section hereof entitled "Pledge and Lien for Payment of Bonds") unless all of the following conditions are satisfied:

(i) The Town Administrator (or other Town official or employee designated in writing by the Mayor) certifies in writing that either:

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

(B) the Net Pledged Water Revenues for any 12 consecutive months in the 18 months immediately preceding the month in which such certification is delivered (referred to in this paragraph as the "test period") have been equal to at least 130% of the sum of the maximum amount of principal of and interest due or to become due on the Water Bonds, any outstanding Parity Lien Bonds, and the proposed Parity Lien Bonds during each calendar year following the date of issuance of the proposed Parity Lien Bonds, provided that in calculating the Net Pledged Water Revenues during the test period, the Town may add an amount by which the Town reasonably estimates the Net Pledged Water Revenues would have been increased during the test period from any increase in rates, fees, and charges for services furnished by or the use of the Water System during or since said test period, the effect of which is to estimate a sum which would have been realized had the increase been in effect during the entire test period. For purposes of this test only, in calculating Net Pledged Water Revenue, the Pledged Water Capital Revenue shall be considered revenue in the month collected regardless of the date such revenues are thereafter transferred to the Water Capital Fund. Additionally, Net Pledged Water Revenue shall be increased by an amount equal to the amount of money, other

than from the Water Operations Fund, which is used to pay the Superior Lien Loan.

(ii) Moneys (which may but need not be proceeds of the proposed Parity Lien Bonds) in an amount equal to the interest accrued on the proposed Parity Lien Bonds from their dated date to their date of issuance are deposited into the Water Bond Account.

(iii) The Water Reserve Account is funded in the amount of the Reserve Account Requirement in accordance with the section hereof entitled "Reserve Accounts."

(iv) The Mayor certifies in writing that no Event of Default has occurred and is continuing.

(b) *Wastewater Revenue Parity Lien Bonds.* The Town shall not issue Parity Lien Bonds having a lien which is on a parity with the lien of the Wastewater Bonds (as provided in the paragraph entitled "Pledge of Revenues" in the section hereof entitled "Pledge and Lien for Payment of Bonds") unless all of the following conditions are satisfied:

(i) The Town Administrator (or other Town official or employee designated in writing by the Mayor) certifies in writing that either:

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

(B) the Net Pledged Wastewater Revenues for any 12 consecutive months in the 18 months immediately preceding the month in which such certification is delivered (referred to in this paragraph as the "test period") have been equal to at least 130% of the sum of the maximum amount of principal of and interest due or to become due on the Wastewater Bonds, any Outstanding Parity Lien Bonds, and the proposed Parity Lien Bonds during each calendar year following the date of issuance of the proposed Parity Lien Bonds, provided that in calculating the Net Pledged Wastewater Revenues during the test period, the Town may add an amount by which the Town reasonably estimates the Net Pledged Wastewater Revenues would have been increased during the test period from any increase in rates, fees, and charges for services furnished by or the use of the Wastewater System

during or since said test period, the effect of which is to estimate a sum which would have been realized had the increase been in effect during the entire test period. For purposes of this test only, in calculating Net Pledged Wastewater Revenue, the Pledged Wastewater Capital Revenue shall be considered revenue in the month collected regardless of the date such revenues are thereafter transferred to the Wastewater Capital Fund.

(ii) Moneys (which may but need not be proceeds of the proposed Parity Lien Bonds) in an amount equal to the interest accrued on the proposed Parity Lien Bonds from their dated date to their date of issuance are deposited into the Wastewater Bond Account.

(iii) The Wastewater Reserve Account is funded in the amount of the Reserve Account Requirement in accordance with the section hereof entitled "Reserve Accounts."

(iv) The Mayor certifies in writing that no Event of Default has occurred and is continuing.

Section 17. ***Additional General Covenants.*** In addition to the other covenants of the Town contained herein, the Town hereby further covenants for the benefit of Owners of the Bonds that:

(a) ***Maintenance of Water Rates and Coverage.*** The Town hereby covenants that it will establish, maintain, enforce, and collect rates, fees, and charges for services furnished by or the use of the Water System to create Gross Water Revenue each calendar year sufficient to pay Water Operation and Maintenance Expenses and to create Net Pledged Water Revenue in an amount: (i) equal to not less than 120% of the amount necessary to pay when due the principal of and interest on the Water Bonds and any Parity Lien Bonds coming due during such calendar year; and (ii) sufficient to make up any deficiencies in the Water Reserve Account. For purposes of this covenant only, in calculating Net Pledged Water Revenue the Town shall be allowed to increase the amount of the Net Pledged Water Revenue by an amount equal to any moneys other than from the Water Operations Fund which are used to pay the Superior Lien Loan. Additionally, for purposes of calculating this covenant only, moneys deposited to the Water Rate Stabilization Account shall not be considered Gross Water Revenue in the calendar year deposited and moneys withdrawn from the Water Rate Stabilization Account shall be considered Gross Water Revenue in the year withdrawn; provided however, no moneys shall be considered to be Gross Water Revenue in more than one calendar year and the deposit, if any, of moneys to the Water Rate Stabilization Account shall not affect the pledge of the Town for payment of the Water Bonds set forth in the section hereof entitled "Pledge and Lien for Payment of Bonds". In the event that the Gross Water Revenue at any time is not sufficient to make such payments, the Town shall promptly

increase such rates, fees, and charges to an extent which will ensure the payments and accumulations required by this Ordinance.

(b) *Maintenance of Wastewater Rates and Coverage.* The Town hereby covenants that it will establish, maintain, enforce, and collect rates, fees, and charges for services furnished by or the use of the Wastewater System to create Gross Wastewater Revenue each calendar year sufficient to pay Wastewater Operation and Maintenance Expenses and to create Net Pledged Wastewater Revenue in an amount: (i) equal to not less than 120% of the amount necessary to pay when due the principal of and interest on the Wastewater Bonds and any Parity Lien Bonds coming due during such calendar year; and (ii) sufficient to make up any deficiencies in the Wastewater Reserve Account. For purposes of calculating this covenant only, moneys deposited to the Wastewater Rate Stabilization Account shall not be considered Gross Wastewater Revenue in the calendar year deposited and moneys withdrawn from the Wastewater Rate Stabilization Account shall be considered Gross Wastewater Revenue in the year withdrawn; provided however, no moneys shall be considered to be Gross Wastewater Revenue in more than one calendar year and the deposit, if any, of moneys to the Wastewater Rate Stabilization Account shall not affect the pledge of the Town for payment of the Water Bonds set forth in the section hereof entitled "Pledge and Lien for Payment of Bonds". In the event that the Gross Wastewater Revenue at any time is not sufficient to make such payments, the Town shall promptly increase such rates, fees, and charges to an extent which will ensure the payments and accumulations required by this Ordinance.

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

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

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

necessary for the efficient operations; provided however, that the proceeds of any such sale of Water System property shall be included as part of the Gross Water Revenue and any such sale of Wastewater System property shall be included as part of the Gross Wastewater Revenue.

(f) *Billing and Enforcement.* The Town will promptly render bills for services furnished by or the use of the Water System and Wastewater System, shall use all legal means to assure prompt payment thereof, shall take such action as may be necessary to make delinquent rates, fees, and charges of the Water System and Wastewater System a lien upon the real property served, and to the extent permitted by law, shall discontinue service to any user who becomes delinquent in the payment of such charges until the delinquency and all interest, costs, and expenses incident thereto have been paid in full.

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

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

(i) *Enterprise Status.* The Town has and will continue to maintain the Water System and Wastewater System as "enterprises" within the meaning Article X, Section 20 of the Colorado Constitution, and as "water activity enterprises" within the meaning of Title 37, Article 45.1, C.R.S.; provided, however, after the current calendar year the Town may disqualify the Water System or the Wastewater System as an "enterprise" in

any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made pursuant to this Ordinance with respect to the applicable issue of Bonds. In the event that the Water System or Wastewater System are disqualified as an enterprise and the enforceability of the covenants made pursuant to this Ordinance are materially, adversely affected, the Town covenants to (i) immediately take all actions necessary to qualify Water System and the Wastewater System enterprises within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made herein.

(j) *Project Useful Life.* The Water Bonds mature at such time not exceeding the estimated useful life of the Water Project and the Wastewater Bonds mature at such time not exceeding the estimated useful life of the Wastewater Project.

Section 18. *Covenants Regarding Exclusion of Interest on Bonds from Gross Income for Federal Income Tax Purposes.* For purposes of ensuring that the interest on the Bonds is and remains excluded from gross income for federal income tax purposes, the Town hereby covenants that:

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

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

(c) *Letter of Instructions.* The Town will comply with the Letter of Instructions delivered to it on the date of issuance of the Bonds, including but not limited by the provisions of the Letter of Instructions regarding the application and investment of Bond proceeds, the calculations, the deposits, the disbursements, the investments and the retention of records described in the Letter of Instructions; provided that, in the event the original Letter of Instructions is superseded or amended by a new Letter of Instructions drafted by, and accompanied by an opinion of Bond Counsel stating that the

use of the new Letter of Instructions will not cause the interest on the Bonds to become includible in gross income for federal income tax purposes, the Town will thereafter comply with the new Letter of Instructions.

(d) *Bank Qualified.* The Town hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code.

Section 19. *Defeasance.* Any Bond shall not be deemed to be Outstanding hereunder if it shall have been paid and cancelled or if cash or Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the Town shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit described above, the Town may include interest to be earned on the Federal Securities. If less than all the Bonds are to be defeased pursuant to this section, the Town, in its sole discretion, may select which of the Bonds shall be defeased.

Section 20. *Events of Default.*

(a) *Water Bond Event of Default.* With respect to the Water Bonds, each of the following events constitutes an Event of Default:

(i) Failure to make any payment of principal of, premium, if any, or interest on the Water Bonds when due hereunder;

(ii) Breach by the Town of any material covenant set forth herein relating to the Water Bonds or failure by the Town to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the Town Attorney of the Town of written notice thereof from the Paying Agent or from the Owners of at least 10% in principal amount of the Outstanding Water Bonds, provided that, with the prior written consent of the Bond Insurer, such 60 day period shall be extended so long as the Town has commenced and continues a good faith effort to remedy such breach or failure; or

(iii) An order or decree is entered by a court of competent jurisdiction appointing a receiver for all or any portion of the revenues and moneys pledged for the payment of the Water Bonds pursuant hereto is entered with the consent or acquiescence of the Town or is entered without the consent or acquiescence of the Town but is not vacated, discharged or stayed within 30 days after it is entered.

(b) *Wastewater Bond Event of Default.* With respect to the Wastewater Bonds, each of the following events constitutes an Event of Default:

(i) Failure to make any payment of principal of, premium, if any, or interest on the Wastewater Bonds when due hereunder;

(ii) Breach by the Town of any material covenant set forth herein relating to the Wastewater Bonds or failure by the Town to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the Town Attorney of the Town of written notice thereof from the Paying Agent or from the Owners of at least 10% in principal amount of the Outstanding Wastewater Bonds, provided that, with the prior written consent of the Bond Insurer, such 60 day period shall be extended so long as the Town has commenced and continues a good faith effort to remedy such breach or failure; or

(iii) An order or decree is entered by a court of competent jurisdiction appointing a receiver for all or any portion of the revenues and moneys pledged for the payment of the Wastewater Bonds pursuant hereto is entered with the consent or acquiescence of the Town or is entered without the consent or acquiescence of the Town but is not vacated, discharged or stayed within 30 days after it is entered.

Section 21. *Remedies for Events of Default.*

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

payment of the Bonds pursuant hereto arising after the appointment of such receiver or operating trustee in the same manner as the Town itself might do.

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

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

(d) *Rights of the Bond Insurer.* The Bond Insurer shall be deemed to be the sole holder of the Bonds insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the holders of the Bonds insured by it are entitled to take pursuant to this section.

Section 22. *Amendment of Ordinance.*

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

(i) to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision of this Ordinance;

(ii) to subject to this Ordinance additional revenues, properties or collateral;

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

(iv) to facilitate the issuance of Parity Lien Bonds permitted to be issued pursuant to the section hereof entitled "Conditions to Issuance of Parity Lien Bonds;"

(v) 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;"

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

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

(b) *Amendments Requiring Notice to and Consent of Owners.* Except for amendments permitted by paragraph (a) of this section, this Ordinance may only be amended (i) by an ordinance of the Town amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof) and (ii) with the written consent of the Owners of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding (the consent of the Owners of the Water Bonds shall not be required to with respect to any amendments relating solely to the Owners of the Wastewater Bonds and the consent of the Owners of the Wastewater Bonds shall not be required to with respect to any amendments relating solely to the Owners of the Water Bonds); provided that any amendment that makes any of the following changes with respect to any Bond shall not be effective without the written consent of the Owner of such bond: (A) a change in the maturity of such bond; (B) a reduction of the interest rate on such bond; (C) a change in the terms of redemption of such bond; (D) a delay in the payment of principal of, premium, if any, or interest on such bond; (E) the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such

bond hereunder that is superior to the pledge and lien for the payment of such bond hereunder; (F) a relaxation of the conditions to the issuance of Parity Lien Bonds or to the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is equal to or on a parity with the pledge and lien for the payment of such bond hereunder; (G) a reduction of the principal amount or percentage of Bonds whose consent is required for an amendment to this Ordinance; or (H) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such bond.

(c) *Procedure for Notifying and Obtaining Consent of Owners.* Whenever the consent of an Owner or Owners of Bonds is required under paragraph (b) of this section, the Town shall mail a notice to such Owner or Owners at their addresses as set forth in the registration books maintained by the Paying Agent and to the Underwriter, which notice shall briefly describe the proposed amendment and state that a copy of the amendment is on file in the office of the Town Clerk for inspection. Any consent of any Owner of any Bond obtained with respect to an amendment shall be in writing and shall be final and not subject to withdrawal, rescission or modification for a period of 60 days after it is delivered to the Town unless another time period is stated for such purpose in the notice mailed pursuant to this paragraph.

Section 23. *Findings and Determinations.* The Board hereby finds, determines and declares that it is in the best interest of the Town and its residents that the Bonds be authorized, sold, issued and delivered at the time, in the manner and for the purposes provided herein.

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

Section 25. *Approval of Official Statement and Miscellaneous Documents.* The Board hereby ratifies and approves the distribution and use of the Preliminary Official Statement; authorizes and directs the Town staff to prepare a final Official Statement for use in connection with the sale of the Bonds in substantially the form thereof presented to the Board at the meeting at which this Ordinance is adopted, with such changes therein, if any, not inconsistent herewith, as are approved by the Town; authorizes and approves the execution of the DTC Blanket Letter of Representations; and authorizes and approves the execution of the Bond Purchase Agreement. The Mayor is hereby authorized and directed to execute the final Official Statement and the Mayor, the Town Clerk and all other officers of the Town are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the

Bond Insurance Policy by the Bond Insurer, the issuance of the Bonds and the transactions contemplated hereby.

Section 26. *Notice to the Bond Insurer.* At the time that the Town, the Bond Registrar, or the Paying Agent are required to give any notice hereunder to the Owners (other than a notice of mandatory sinking fund redemption), like notice shall be given to the Bond Insurer.

Section 27. *Claims Upon the Bond Insurance Policy and Payments by and to the Bond Insurer; Subrogation.*

(a) If, on the third business day prior to the related scheduled interest payment date or principal payment date or the date to which Bond maturity has been accelerated ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under this Ordinance, moneys sufficient to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Bonds due on such Payment Date, the Paying Agent shall make a claim under the Bond Insurance Policy and give notice to the Bond Insurer of the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Bond Insurance Policy.

In the event the claim to be made is for a mandatory sinking fund redemption installment, upon receipt of the moneys due, the Paying Agent shall authenticate and deliver to affected Owners who surrender their Bonds a new Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered. The Paying Agent shall designate any portion of payment of principal on Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Bonds registered to the then current Owner, whether DTC or its nominee or otherwise, and shall issue a replacement Bond to the Bond Insurer, registered in the name of Financial Security Assurance Inc., in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Bond shall have no effect on the amount of principal or interest payable by the Town on any Bond or the subrogation rights of the Bond Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account and the allocation of such funds to payment of interest on and principal paid in respect of any Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Bond Insurance Policy the Paying Agent shall establish a separate special purpose trust account for the benefit of Owners referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Bond Insurance Policy in trust on behalf of Owners and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to Owners in the same manner as principal and interest payments are to be made with respect to the Bonds under the sections hereof regarding payment of Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent.

Any funds remaining in the Policy Payments Account following a Bond payment date shall promptly be remitted to the Bond Insurer.

(b) The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Bond Insurance Policy.

(c) Amounts paid by the Bond Insurer under the Bond Insurance Policy shall not be deemed to be paid for purposes of this Ordinance and shall remain Outstanding and continue to be due and owing until paid by the Town in accordance with this Ordinance. This Ordinance shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full or have been provided for.

Section 28. *Concerning the Bond Insurance Policy.* The officers of the Town are hereby authorized and directed to take all actions necessary to cause the Bond Insurer to issue the Bond Insurance Policy in accordance with the Commitment, including without limitation, payment of the premium due in connection therewith.

(a) The prior written consent of the Bond Insurer shall be a condition precedent to the deposit of any Reserve Account Contract provided in lieu of a cash deposit into the Water Reserve Account or the Wastewater Reserve Account.

(b) No modification, amendment or supplement to this Ordinance or any other transactional document (each a "Related Document") may become effective except upon obtaining the prior written consent of the Bond Insurer.

(c) Copies of any modification or amendment to this Ordinance or any other Related Document shall be sent to Standard & Poor's Ratings Services and Moody's Investors Service, Inc. at least 10 days prior to the effective date thereof.

(d) To accomplish defeasance the Town shall cause to be delivered (1) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Bond Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity date ("Verification"), (2) an escrow deposit agreement (which shall be acceptable in form and substance to the Bond Insurer), and (3) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Ordinance; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Town, the Paying Agent and the Bond Insurer. In the event a forward purchase agreement will be employed in the refunding, such agreement shall be subject to the approval of the Bond Insurer and shall be accompanied by such opinions of counsel as may be required by the Bond Insurer. The Bond Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

(e) The Bond Insurer shall be considered a third-party beneficiary to this Ordinance. No contract shall be entered into nor any action taken by which the rights of the Bond Insurer or security for or sources of payment of the Bonds may be impaired or prejudiced except upon obtaining the prior written consent of the Bond Insurer.

(f) The Bond Insurer shall be entitled to pay principal or interest on the Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Town (as such terms are defined in the Bond Insurance Policy) and any amounts due on the Bonds as a result of acceleration of the maturity thereof in accordance with this Ordinance, whether or not the Bond Insurer has received a Notice (as defined in the Bond Insurance Policy) of Nonpayment or a claim upon the Bond Insurance Policy.

(g) The notice address of the Bond Insurer is: Financial Security Assurance Inc., 350 Park Avenue, New York, New York 10022-6022, Attention: Managing Director-Surveillance-Re: Policy No. _____, Telephone: (212) 826-0100; Telecopier: (212) 339-3529. In each case in which notice or other communication refers to an Event of Default or with respect to which failure on the part of the Bond Insurer to respond shall be deemed to constitute consent or acceptance, then a copy of such notice or other communication shall also be sent to the attention of General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

(h) The Bond Insurer shall be provided with the following information:

(1) Annual audited financial statements with 120 days after the end of the Town's fiscal year and the Town's annual budget within 30 days after the approval thereof;

(2) Notice of any draw upon the Water Reserve Account or the Wastewater Reserve Account within two Business Days after knowledge thereof other than (i) withdrawals of amounts in excess of the Reserve Account Requirement and (ii) withdrawals in connection with a refunding of Bonds;

(3) Notice of any default within five Business Days after knowledge thereof;

(4) Prior notice of the advance refunding or redemption of any of the Bonds, including the principal amount, maturities and CUSIP numbers thereof;

(5) Notice of the resignation or removal of the Paying Agent and Bond Registrar and the appointment of, and acceptance of duties by, any successor thereto;

(6) Notice of the commencement of any proceeding by or against the Town commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(7) Notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Bonds;

(8) A full original transcript of all proceedings relating to the execution of any amendment or supplement to the Related Documents; and

(9) All reports, notices and correspondence to be delivered under the terms of the Related Documents.

(i) The Town shall agree to pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses which the Bond Insurer may reasonably pay or incur in connection with (1) the administration, enforcement, defense or preservation of any rights or security in respect of this Ordinance or any other Related Document, (2) the pursuit of any remedies under this Ordinance or any other Related Document or otherwise afforded by law or equity, (3) any amendment, waiver or other action with respect to, or related to, this Ordinance or any other Related Document whether or not executed or completed, (4) the violation by the Town of any law, rule or regulation, or

any judgment, order or decree applicable to it or (5) any litigation or other dispute in connection with this Ordinance or any other Related Document or the transactions contemplated thereby, other than amounts resulting from the failure of the Bond Insurer to honor its obligations under the Bond Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of this Ordinance or any other Related Document.

(j) Payments required to be made to the Bond Insurer shall be payable solely from the revenues pledged to the Bonds, respectively, pursuant to this Ordinance and shall be paid prior to an Event of Default, to the extent not paid from Water Bond Account or the Wastewater Bond Account, as applicable, after required deposits to the Water Reserve Account or the Wastewater Reserve Account, as applicable. The obligations of the Town to the Insurer shall survive discharge or termination of the Related Documents.

(k) Rights of the Bond Insurer to direct or consent to Town or Owner actions under this Ordinance shall be suspended during any period in which the Bond Insurer is in default in its payment obligations under the Bond Insurance Policy (except to the extent of amounts previously paid by the Bond Insurer and due and owing to the Bond Insurer) and shall be of no force or effect in the event the Bond Insurance Policy is no longer in effect or the Bond Insurer asserts that the Bond Insurance Policy is not in effect or the Bond Insurer shall have provided written notice that it waives such rights.

(l) The rights granted to the Bond Insurer under this Ordinance or any other Related Document to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit or on behalf of the Bondholders nor does such action evidence any position of the Bond Insurer, positive or negative, as to whether Bondholder consent is required in addition to consent of the Bond Insurer.

Section 29. ***Ratification of Prior Actions.*** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or by the officers and employees of the Town directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 30. ***Events Occurring on Days That Are Not Business Days.*** Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this section, is to be made or is to occur on a day that is not a Business Day shall instead be made or occur on the next succeeding day that is a Business Day.

Section 31. **Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 32. **Ordinance Irrepealable.** After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the Town, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 33. **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 34. **Repealer.** All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 35. **Effective Date; Recording and Authentication.** This Ordinance shall be in full force and effect 30 days after its publication. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the Town Clerk, and shall be published in accordance with law.

At its meeting August 26, 1997, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 9th day of September, 1997. After the public hearing, the Ordinance was read, passed and ordered published by the Board of Trustees at its meeting this 9th day of September, 1997.

ATTEST:

TOWN OF BERTHOUD, COLORADO

By Mary K Cowdin
Town Clerk

By Brian D. Strachan
Mayor

APPENDIX A

FORM OF THE BOND

[Note: "{ }" indicates that appropriate language should be utilized for the respective bonds.]

EXCEPT AS OTHERWISE PROVIDED IN THE HEREINAFTER DEFINED ORDINANCE, THIS GLOBAL BOOK-ENTRY BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (AS DEFINED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.

UNITED STATES OF AMERICA

TOWN OF BERTHOUD, COLORADO

acting by and through the

TOWN OF BERTHOUD {WATER / WASTEWATER} ENTERPRISE

{WATER / WASTEWATER} REVENUE BOND

SERIES 1997

INTEREST RATE:	MATURITY DATE:	ORIGINAL DATED DATE:	CUSIP:
%		, 1997	

REGISTERED OWNER:

PRINCIPAL SUM:

DOLLARS

TOWN OF BERTHOUD, COLORADO, in the State of Colorado, a duly organized and validly existing town and political subdivision of the State of Colorado, acting by and through its {Water / Wastewater} Enterprise (the "Town"), for value received, hereby promises to pay to the order of the registered owner named above or registered assigns, solely from the special funds as hereinafter set forth, on the maturity date stated above, the principal sum stated above, in lawful money of the United States of America, with interest thereon from the original dated date stated above, at the interest rate per annum stated above, payable on April 15 and October 15 of each year, commencing April 15, 1998, the principal of and premium, if any, and the final installment of interest on this bond being payable to the registered owner hereof upon presentation and surrender of this bond at the principal operations office of The Bank of Cherry

Creek, N.A., as Paying Agent (the "Paying Agent"), in Denver, Colorado, or at such other location as identified by the Paying Agent, and the interest hereon (other than the final installment of interest hereon) to be paid by check or draft of the Paying Agent mailed on the interest payment date to the registered owner hereof as of the close of business on the last day (whether or not such day is a Business Day) preceding the interest payment date, except that so long as Cede & Co. is the registered owner of this bond, the principal of, premium, if any, and interest on this bond shall be paid by wire transfer to Cede & Co.

This bond is one of an issue of bonds of the Town designated {Water / Wastewater} Revenue Bonds, Series 1997, issued in the principal amount of \$_____,000 (the "Bonds"). The Bonds are being issued by the Town for the purpose of financing certain water and wastewater improvements, pursuant to and in full conformity with the Constitution and laws of the State of Colorado and an ordinance (the "Ordinance") duly adopted by the Town prior to the issuance hereof.

{Insert Optional Redemption and Mandatory Sinking Fund Redemption Provisions}

At its option, to be exercised on or before the forty fifth day next preceding each sinking fund redemption date, the Town may (i) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption and (ii) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof to the obligation of the Town on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the Town by sending a copy of such notice by first-class, postage prepaid mail, not less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

The Paying Agent shall maintain registration books in which the ownership, transfer and exchange of the Bonds shall be recorded. The person in whose name this bond shall be registered on such registration books shall be deemed to be the absolute owner hereof for all purposes, whether or not payment on this bond shall be overdue, and neither the Town nor the Paying Agent shall be affected by any notice or other information to the contrary. This bond may be transferred or exchanged, at the principal operations office of the Paying Agent in Denver, Colorado, or at such other location as identified by the Paying Agent, for a like aggregate principal amount of the Bonds of other authorized denominations (\$5,000 or any integral multiple thereof) of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith.

{The Following Paragraph for Water Revenue Bonds Only}

The principal of and interest on this Bond are payable only out of: (a) a special account of the Town designated as the Water Revenue Bond Account, into which the Town covenants and agrees to deposit, from certain fees, charges and revenues derived from the operation of the water facilities comprising the Town's Water Enterprise after deduction (i) of operations and maintenance costs and (ii) for monthly payments, when due, and deficiencies if any, on an outstanding superior lien loan entered into in 1994 (the "Net Pledged Revenues"), amounts sufficient to pay the principal of and interest on the Bonds when the same become due and payable and (b) if necessary, a special account designated as the Water Revenue Bond Reserve Account, all as more particularly set forth in the Bond Ordinance. The Bonds of this issue constitute an irrevocable and first lien upon the Net Pledged Revenues, but not necessarily an exclusive such lien. The Town is authorized to pledge and grant a lien, on a parity with the lien for the payment of the Bonds, on the Net Pledged Revenues upon satisfaction of certain conditions set forth in this Ordinance.

{The Following Paragraph for Wastewater Revenue Bonds Only}

The principal of and interest on this Bond are payable only out of: (a) a special account of the Town designated as the Wastewater Revenue Bond Account, into which the Town covenants and agrees to deposit, from certain fees, charges and revenues derived from the operation of the wastewater facilities comprising the Town's Wastewater Enterprise after deduction of operations and maintenance costs (the "Net Pledged Revenues"), amounts sufficient to pay the principal of and interest on the Bonds when the same become due and payable and (b) if necessary, a special account designated as the Wastewater Revenue Bond Reserve Account, all as more particularly set forth in the Bond Ordinance. The Bonds of this issue constitute an irrevocable and first lien upon the Net Pledged Revenues, but not necessarily an exclusive such lien. The Town is authorized to pledge and grant a lien, on a parity with the lien for the payment of the Bonds, on the Net Pledged Revenues upon satisfaction of certain conditions set forth in the Ordinance.

This bond is issued pursuant to and in accordance with the Constitution of the State of Colorado; Title 31, Article 35, Part 4, C.R.S.; Title 37, Article 45.1, C.R.S., and all other laws of the State of Colorado thereunto enabling. This bond, including the interest hereon, is payable solely from and secured solely by the special funds provided in the Ordinance and shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory limitation, nor shall this bond be considered or held to be a general obligation of the Town.

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

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

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

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

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

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

[MANUAL OR FACSIMILE SEAL]

BERTHOUD, COLORADO

(Manual or Facsimile Signature)

Mayor

ATTEST:

By (Manual or Facsimile Signature)
Town Clerk

CERTIFICATE OF AUTHENTICATION

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

The Bank of Cherry Creek, N.A., as Paying Agent

By _____
Authorized Representative

Date of Authentication:

CERTIFICATE OF TRANSFER

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

Dated: _____

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

TRANSFER FEE MAY BE REQUIRED