

ORDINANCE NUMBER 96

AN ORDINANCE AUTHORIZING THE IMPROVEMENT AND EXTENSION OF THE EXISTING SEWER SYSTEM OF THE TOWN OF ARRIBA; AUTHORIZING THE ISSUANCE OF THE TOWN OF ARRIBA, REGISTERED SEWER SYSTEM REVENUE BONDS, SERIES 1972, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$83,000.00, IN ANTICIPATION OF THE COLLECTION OF REVENUES OF SUCH SYSTEM; RATIFYING CERTAIN ACTION HERETOFORE TAKEN; providing for OTHER DETAIL IN CONNECTION WITH SAID BONDS AND SAID SYSTEM; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Arriba (herein the " Town "), in the County of Lincoln and State of Colorado, is a body corporate operating as a town pursuant to the general statutes of the State of Colorado; and

WHEREAS, the Town now owns and operates a sewer system (herein " System "); and

WHEREAS, the Board of Trustees of the Town (herein the " Board ") has determined that it is necessary and for the best interests of the Town and its inhabitants that the sewer system be improved and extended (herein the " project ") and

WHEREAS, there are not sufficient funds in the treasury of said Town available for such purpose; and

WHEREAS, the Town has never pledged any revenues derived from operation of the System, with the result that the said revenues may be lawfully pledged to the payment of bonds herein authorized; and

WHEREAS, the United States of America, acting by and through the Farmers Home Administration (herein " FHA "), Department of Agriculture, pursuant to an agreement between it and the Town (herein " Loan Agreement "), has conditionally agreed to purchase the bonds herein authorized if no acceptable bid from any other person is received; and

WHEREAS, pursuant to due notice, sealed bids for the bonds herein authorized were received on the 10th day of August, 1972, at the hour of 7:30 o'clock P.M; and

WHEREAS, no bids other than the bid of the FHA were received at said sale, and said bonds have been sold publicly to the Farmers Home Administration of the United States Department of Agriculture (herein the " Purchaser ") for the principal amount thereof and no premium.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ARRIBA, COLORADO:

Section 1. For the purpose of providing funds for the construction and installation of the Project, and any money borrowed from the FHA, there shall be issued initially a non-negotiable single bond in the principal amount denomination of \$83,000.00 (or such lesser amount loaned to the Town by the FHA under the Loan Agreement), numbered R-1, which single bond shall be executed in the name of and on behalf of the

Town and signed by the Mayor, countersigned by the Treasurer, with the seal of the Town affixed thereto, and attested by the Town Clerk. The single bond shall bear no interest coupons, and shall be payable in lawful money of the United States of America, without deduction for exchange or collection charge, during the time the FHA is the registered owner or insures the bond, at the local county office of the FHA, or at such other address as the FHA may designate, and so payable during the time as any registered assign is the registered owner of the single bond at the address shown on the registration book of the Town. The single bond shall mature in installments of principal, bear interest, and be subject to prepayments of installments of principal, substantially as herein-after provided. The single bond may be registered by any Holder, and may be assigned in the manner and with the effect set forth in the provisions for registration contained in the form of single bond hereinafter set forth, and as herein further provided. Upon request of the holder of the single bond, the Town shall issue, at the holder's expense and within 90 days from the date of such request, negotiable, bearer, coupon bonds, or serial registered bonds without coupon, in the denomination of \$1000 each, to the extent practicable, as requested by the holder, in an aggregate principal amount equal to the amount of the unpaid principal of the outstanding single bond, of like tenor and date, in the form prescribed by, and subject to, the provisions of this ordinance, and the Board hereby so covenants.

Section 2. Form of Single Bond. The single bond, the form of assignment therefor, and the advance and payment records to be attached thereto, shall be in substantially the following form:

UNITED STATES OF AMERICA
 STATE OF COLORADO COUNTY OF LINCOLN
 TOWN OF ARRIBA
 SEWER SYSTEM
 SINGLE REGISTERED REVENUE BOND
 SERIES 1972

No. R-1 \$83,000.00

Solely from the special funds provided therefor, the Town of Arriba (herein "Town"), for value received promises to pay to the registered owner hereof, the principal sum above stated, or such lesser sum as shall represent the aggregate advances made to the Town by the Farmers Home Administration (herein "FHA") of the United States Department of Agriculture, as set forth in the schedule herein, on January 1, in the years and installments as follows:

<u>Amounts</u> <u>Maturing</u>	<u>Interest Rate</u> <u>(Per Annum)</u>	<u>Years</u> <u>Maturing</u>
\$1,000	5%	1974
1,000	5%	1975
1,000	5%	1976
1,000	5%	1977
1,000	5%	1978

<u>Amounts Maturing</u>	<u>Interest Rate (Per Annum)</u>	<u>Years Maturing</u>
\$1,000	5%	1979
1,000	5%	1980
1,000	5%	1981
1,000	5%	1982
1,000	5%	1983
1,000	5%	1984
1,000	5%	1985
1,000	5%	1986
1,000	5%	1987
1,000	5%	1988
1,000	5%	1989
1,000	5%	1990
2,000	5%	1991
2,000	5%	1992
2,000	5%	1993
2,000	5%	1994
2,000	5%	1995
2,000	5%	1996
2,000	5%	1997
2,000	5%	1998
2,000	5%	1999
2,000	5%	2000
3,000	5%	2001
3,000	5%	2002
3,000	5%	2003
3,000	5%	2004
3,000	5%	2005
3,000	5%	2006
4,000	5%	2007
4,000	5%	2008
4,000	5%	2009
5,000	5%	2010
5,000	5%	2011
6,000	5%	2012

with interest on the unpaid principal advanced to the Town from the date of each such advance at the rate of 5% per annum, payable annually on January 1, of each year until said sum is paid, commencing with the January 1, next succeeding the date of this bond. Principal and interest are payable in lawful money of the United States of America, without deduction for exchange or collection charge, during the period the FHA is the registered owner or insurer of this single bond, at the local county office of the FHA or at such other place as the FHA may designate, and so payable during any period the FHA is not the registered owner or insurer hereof at the address shown on the registration book of the Town. The final installment of principal and interest due on this single bond is payable only upon the bond's surrender to the Town.

Installments of principal becoming due on and before January 1, 1983, are not payable prior to their stated due dates unless the FHA is the registered owner hereof. If the FHA is the registered owner hereof, all installments are subject to unlimited prepayment prior to their stated due dates if redeemed in the amount of \$1,000 or multiples thereof, and in inverse order of maturity, by the payment of such principal amount and accrued interest to the prepayment date. Installments becoming due on and after January 1, 1984, are subject to prepayment prior to their stated due dates in the amount of \$1,000 or multiples thereof, at the option of the Town, in inverse order

of maturity, on January 1, 1983, or any January 1, thereafter, by the payment of the principal amount and accrued interest to the prepayment date. The Town also reserves the right, at its option, to prepay installments of principal in inverse order of maturity in the amount of \$1,000 or multiples thereof and accrued interest to the prepayment date from excess bond proceeds.

Payment of this bond and interest thereon shall be made solely from, and as security for such payment there are pledged two special funds, identified as the "1972 Revenue Bond Fund" and the "1972 Revenue Bond Reserve Fund", into which the Town covenants to pay the revenues of its sewer system (herein "System"), after provision only for all necessary and reasonable operation and maintenance expenses, sums sufficient to pay the principal and the interest of this bond, and to create and maintain a reasonable and specified reserve. For a description of said funds and the nature and extent of the security afforded thereby, reference is made to the bond ordinance. This bond is secured by and constitutes an irrevocable and first lien (but not necessarily an exclusive first lien) upon the net revenues of the System. Subject to designated conditions, additional bonds may be issued, payable from said net revenues and having a lien thereon inferior and junior to the lien, or having a lien thereon on a parity with the lien of this bond, in accordance with the bond ordinance.

This bond is issued under the authority of Article 52, Chapter 130, Colorado Revised Statutes 1963, as amended. Pursuant to Section 139-52-13 thereof, such recital conclusively imparts full compliance with all provisions of said act, and bonds issued containing such recital are incontestable for any cause whatsoever after their delivery for value.

The Town covenants and agrees with the holder hereof that it will keep and perform all the covenants of the bond ordinance, including its covenant against the sale or mortgage of the sewer system or any part thereof unless provision has been made for the payment of this bond and its covenant that it will fix, maintain and collect rates sufficient to pay operating and maintenance expenses and 100% of both the principal of and the interest on this bond and any other obligations payable from the revenues of the System.

This bond, including interest thereon, does not constitute a debt of the Town within the meaning of any constitutional or statutory limitations, but is payable solely out of special funds and the net revenues of the System pledged to the payment thereof. The holder may not look to any general or other fund for payment. This bond and the income therefrom is exempt from taxation by the State of Colorado, except inheritance, estate and

transfer taxes.

This bond is transferable only upon books kept by the Treasurer of the Town as bond registrar by the registered owner hereof in person or by his duly authorized attorney, and similarly noted hereon, or it may be surrendered in exchange for new bonds of the same aggregate principal amount, in coupon form or in serial registered form, in the denomination of \$1,000 each, to the extent practicable and consistent with the maturity schedule provided in, and subject to, the condition set forth in the bond ordinance.

This bond is issued against payment for the purchase price of par, but said purchase price may be paid the Town in one or more advances in accordance with the schedule stated herein. The principal amount of this bond shall in no event exceed the actual advances paid to the Town, and interest shall accrue on the amount of each advance only from the date each advance is paid. In the event the entire principal amount of this bond is not advanced, the principal installments above set forth shall be reduced in inverse order of maturity accordingly.

It is further certified, recited and warranted that all the requirements of law have been fully complied with by the proper Town officers in the issuance of this bond.

IN WITNESS WHEREOF, the Town of Arriba, has caused this bond to be signed and executed in the name of and on behalf of the Town; to be signed by the Mayor of the Town, attested and countersigned by the Town Clerk and Treasurer; and has caused the seal of the Town to be affixed hereon; all as of the 24th day of August, 1972, the date of the delivery hereof.

(Seal)

Mayor

ATTESTED AND COUNTERSIGNED:

Town Clerk and Treasurer

INSTALLMENT LOAN ADVANCES BY GOVERNMENT

The FHA, on behalf of the United States of America, loaned to the Town the respective amounts of principal on the respective dates herein designated, the sum of which amounts constitutes the aggregate principal amount of the within single bond, as follows:

<u>Date of Loan</u>	<u>Amount of Loan</u>	<u>Signature of Town's Treasurer</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REGISTRATION FOR PAYMENT AS TO PRINCIPAL AND INTEREST

The within single bond is registered in the office of the Treasurer of the Town of Arriba, Lincoln County, Colorado, as Registrar, in the name of the last owner listed

below; and the principal amount of the bond and interest thereon shall be payable only to such owner; all in accordance with the bond ordinance authorizing the bond's issuance.

DATE OF REGISTRATION	NAME OF OWNER	ADDRESS OF OWNER	SIGNATURE OF REGISTRAR
	UNITED STATES OF AMERICA		
	FARMERS HOME ADMINISTRATION		

ASSIGNMENT PROVISION

For Value Received, _____ hereby assign and transfer unto _____ the within bond, together with accrued interest thereon, hereby irrevocably constituting and appointing _____ attorney to transfer this bond on the books of the Town of Arriba, at the office of the Treasurer of the Town, with full power of substitution in the premises.

Dated: _____

Section 3. Use of Temporary Bonds for Interim Financing.

Notwithstanding the foregoing provisions hereof, The Board authorzes the Treasurer to issue temporary bonds in an aggregate amount not to exceed the maximum amount of the bonds payable to the lender which agrees to provide interim financing during the construction period in accordance with the Instructions of the FHA. Said temporary bonds shall bear interest at a rate of not exceeding 7% per annum from their respective dates until maturity, and shall be signed by the Mayor, Clerk and Treasurer and approved by the County Supervisor of the FHA. Said temporary bonds, together with the interest due thereon from the date of the issue of each of said temporary bonds until paid, shall be redeemed and retired in numerical order only from the proceeds of the bond or bonds to be delivered to the FHA, or from the net revenues of the system if said bond or bonds are not delivered in an amount sufficient to retire all of said temporary bonds. Each temporary bond shall be registered in the office of the Treasurer, and any transfer thereof must likewise be registered in said office.

Section 4. Form of Temporary Bond. The temporary bonds shall be in substantially the following form:

(Form of Temporary Bond)
UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTY OF LINCOLN

TOWN OF ARRIBA

SEWER SYSTEM

TEMPORARY REVENUE BOND

No. _____

Principal Amount: \$ _____

Interest Accrued: _____

Total Due: \$ _____

Town of Arriba, Colorado, _____, 1972

The Treasurer of the Town of Arriba, Colorado will on the _____ day of _____, 19____, or at an earlier date, upon call by said Town, pay to _____, at the office of the Treasurer of the Town of Arriba, Colorado, the sum _____ Dollars (\$ _____), together with the interest due thereon at the rate of _____ per centum (_____ %) per annum from the date hereof until paid.

This temporary bond and the interest thereon shall be a special obligation of the Town of Arriba, Colorado (herein "Town"), for the payment of which the governing body of said Town hereby pledges the net income to be derived from the operation of the Town's Sewer System and the proceeds of the sewer system revenue bonds of said Town which have been sold to the Farmers Home Administration (herein "FHA"), of the United States Department of Agriculture, as provided in the bond ordinance passed pursuant to Article 52, Chapter 139, Colorado Revised Statutes 1963, as amended. This temporary bond is being issued in accordance with said Article 52.

This temporary bond is registered in the office of the Town Treasurer, and any transfer thereof must likewise be registered in said office, and it may be transferred by registered assignment only.

Dated the day, month and year, and numbered, first above written, and duly registered by the Town Treasurer.

By Order of the Board of Trustees

Mayor

Town Clerk and Treasurer

(Seal)

APPROVED:

County Supervisor, FHA

(Form of Assignment of Bank of Temporary Bond)

The within and foregoing Temporary Bond No. _____, issued in connection with Town of Arriba, Colorado Sewer System Revenue Bonds, Series 1972, is hereby sold, assigned, transferred and set over, without recourse, unto _____

_____, subject to the terms and conditions of said temporary bond.

Dated this _____ day of _____, 19_____.

 Owner

(Form of Registration Certificate of Temporary Bond)

The within and foregoing assignment of temporary bond No. _____, issued in connection with the Town of Arriba, Colorado Sewer System Revenue Bonds, Series 1972, has been duly registered in the name of the above assignee this _____ day of _____, 19_____.

 Treasurer

Section 5. Period of Facilities' Usefulness. The facilities to be acquired with bond proceeds will be useful for at least 40 years.

Section 6. Disposition of Bond Proceeds.

A. Construction Account. Bond proceeds shall be promptly deposited in a "supervised bank account" in a Insured Bank selected by the Purchaser. Amounts in the account exceeding \$10,000 shall be secured by the depository bank in advance, in accordance with the U. S. Treasury Department regulations. Moneys in the account shall be used solely for the Project, and shall be withdrawn only upon warrants or checks drawn and signed by the Mayor and countersigned by the Treasurer. Warrants or checks shall not be issued until the Board has received engineering approval that such sum is due and owing. The Town's share of any liquidated damages and other moneys paid by defaulting contractors or their sureties shall be deposited in said account to assure completion of the project. After the engineer has certified that work is completed and that all expenses have been paid, the Town shall redeem bonds or installments of principal in accordance with this ordinance, transferring any amount not sufficient to redeem a \$1,000 bond or installment in like amount to the Income Fund.

B. Accrued Interest and Premium. Accrued interest and any premium shall be deposited in the Bond Fund, to apply on the payment of interest next due. Interest maturing on January 1, 1973, shall be paid from bond proceeds.

C. Purchaser Not Responsible. The Purchaser or any Holder shall not be responsible for the application or disposal of funds.

Section 7. Fiscal Year. For the purpose of this ordinance the System shall be operated upon a fiscal year commencing January 1, of each year, and ending on December 31, of said year.

Section 8. Income Fund. A special fund and bank account shall be maintained, known as the "Income Fund".

So long as any 1972 bond shall be outstanding all income and revenues derived from the operation of the sewer system shall be deposited into the Income Fund.

Section 9. Administration of Income Fund. The following payments shall be made from the Income Fund:

A. Operation and Maintenance Expenses. First, there shall be set aside each month such reasonable percentage of the Income Fund as the Board shall determine to be reasonable and necessary for the proper operation and maintenance of the System. Any surplus remaining at the end of the fiscal year and not used for operation and maintenance purpose shall be transferred back to the Income Fund.

B. Bond Fund Payments. Second, from any moneys remaining in the Income Fund, being the net income of the System, there shall be deposited into a separate fund known as the "1972" Revenue Bond Fund" (herein "Bond Fund") the following:

(1) Commencing February 1, 1973, an amount in equal monthly installments sufficient, together with any available moneys therein, to pay the January 1, 1974, installment of interest on the outstanding 1972 bonds, and on January 1, 1974, and on the first of each and every month thereafter, one-twelfth of the amount necessary to pay the next maturing installment of interest on outstanding 1972 bonds.

(2) Commencing February 1, 1973, an amount in equal monthly installments sufficient, together with any available moneys therein, to pay the January 1, 1974, installment of principal of the outstanding bonds, and commencing on January 1, 1974, and on the first of each and every month thereafter, one-twelfth of the amount necessary to pay the next maturing installment of principal on outstanding 1972 bonds.

C. Reserve Fund Payment. Concurrently with the above payment into the Bond Fund, commencing on or before January 1, 1973, at least \$41.00 per month into a separate fund, known as the "1972 Revenue Bond Reserve Fund", until an amount not less than \$4,900.00 (herein "Minimum Reserve") has been accumulated. After the Minimum Reserve has been accumulated, an amount shall be deposited monthly from the Income Fund into the Reserve Fund sufficient to maintain said Reserve Fund in an amount not less than the Minimum Reserve. The moneys in the Reserve Fund shall be maintained as a continuing reserve to be used only for the following:

(1) Capital Costs. To pay the cost of reconstructing or improving the System;

(2) Major Maintenance Costs. To pay the costs of extraordinary and major repairs, renewals, replacements or maintenance items appertaining to such System, of a type not recurring annually and not defrayed as operation and maintenance expenses;

(3) Securities Requirements. To pay principal and interest of bonds, if necessary to prevent a default.

D. Termination of Deposits. Payment need not be made

into the Bond Fund or the Reserve Fund, if the total amount in both funds at least equal the principal and interest requirements of the then outstanding bonds to maturity. In that case such an amount equal to such principal and interest requirements shall be set aside for that purpose, and all other moneys may be used in any lawful manner.

E. Defraying Delinquencies in Bond Fund and in Reserve Fund. If, for any reason, the Town shall fail to pay into the Bond Fund the full stipulated amount from net revenues, then the differences between that paid and the amount stipulated shall be paid into the Bond Fund from the Reserve Fund. Moneys so used shall be replaced in the Reserve Fund from the first revenues thereafter received not required to be otherwise applied by this section. If the proceedings authorizing other parity lien obligations require the replacement of moneys in a reserve fund, then moneys shall be replaced in each such reserve fund on a pro rata basis. If, for any reason, the Town shall fail to pay into the Reserve Fund the full stipulated amount, the difference between the amount paid and the amount stipulated shall in like manner be paid therein from the first revenues thereafter received, not required to be otherwise applied by this section. The moneys in the Bond Fund shall be used only for the purpose of paying bond principal and interest. Any moneys in the Reserve Fund in excess of the Minimum Reserve may be withdrawn and used in the same manner as net income.

F. Payment for Additional Obligations. After making the above payments, any balance in the Income Fund may be used for the payment and interest on additional bonds, including reasonable reserves therefor. The lien of additional bonds on net income shall be on a parity with, or subordinate to, the lien and pledge of the 1972 bond. Any payments in respect of additional parity bonds shall be made concurrently with those required by this section.

G. Use of Surplus Revenues. After making the above payments, the remaining net income shall be applied for any of the following purposes:

- (1) The improvement, extension and betterment of the System;
- (2) The payment of debt service on general obligation bonds incurred in the acquisition, construction and improvement of the System;
- (3) The purchase in the open market or prior redemption of any bonds payable from net revenues at the best reasonable price obtainable;
- (4) Any other lawful purpose.

Section 10. General Administration of Funds. The funds and accounts hereof shall be administered as follows:

A. Places and Times of Deposits. The above accounts and funds shall be separately maintained and deposited in one or more bank accounts in an Insured Bank or Banks. Each account shall be continuously secured to the extent required

by law, and shall be irrevocable and not withdrawable by anyone for any other purpose. Payments shall be made into the proper account on the first day of the month or year, as the case may be, except that when the first day shall be a Sunday or legal holiday, then payment shall be made the preceding secular day. At least 5 days prior to any interest payment date, moneys sufficient to pay interest and principal then due shall be credited at the Paying Agent. Nothing in this ordinance shall prevent the Board from establishing one bank account for any of the funds required by this ordinance.

B. Investment of Moneys. Moneys in any account not immediately needed may be invested as provided by States law and applicable federal statutes and regulations, but the Town shall take no step or make any investment which would imperil the exemption of the interest on the bonds from income taxation under any federal law now in force or hereafter existing.

Section 11. First Lien Bonds. The 1972 bonds, subject to the payment of all necessary and reasonable operation and maintenance expenses, constitute an irrevocable and first (but not necessarily an exclusive first) lien upon the revenues.

Section 12. Additional Bonds.

A. Earnings Test. This ordinance shall not prevent the issuance of additional bonds payable from and constituting a lien upon net income on a parity with the lien of the 1972 bonds. Before any such additional parity bonds are actually issued it must be determined that:

(1) The Town is not, and has not been in default as to any payments required to be made herein during the fiscal year immediately preceding the issuance of such additional bonds, or if none of the 1972 bonds have been outstanding for a full fiscal year, then for the longest period of time the 1972 bonds have been outstanding; and

(2) The annual net revenues derived from the operation of said System for the fiscal year immediately preceding the date of the ordinance authorizing the issuance of any such parity lien obligation shall have been sufficient to pay an amount representing 120% of the average annual principal and interest requirements on the outstanding bonds constituting a lien upon net revenues and the bonds proposed to be issued. As used in this section, "average annual principal and interest requirements" shall be the total principal and interest coming due on the then outstanding and proposed parity lien obligations during the period extending from the date of the proposed parity lien obligations to the final principal payment date of the then outstanding parity lien obligations or the proposed parity lien obligations, whichever is longer divided by the number of years (including any fraction thereof) computed from the date of the proposed parity lien obligations to the last principal date of the then outstanding parity lien obligations, or the proposed parity

lien obligations, whichever is longer.

The foregoing limitations upon issuance of parity bonds shall not apply in the case of the issuance of additional parity bonds necessary to complete the Project in accordance with the plans and specifications.

B. Certification of Revenues. A written certificate by an Independent Accountant that annual revenues are sufficient shall conclusively determine the right of the Town to issue additional parity bonds. The Independent Accountant may utilize the results of any annual audit to the extent it covers the applicable period.

C. Consideration of Additional Expenses. In determining whether additional parity bonds may be issued, the Independent Accountant shall consider any probable increase (but not reduction) in operation and maintenance expenses.

D. Subordinate Obligations Permitted. The Town may issue bonds or other obligations having a lien on net revenues subordinate to the lien of the 1972 bonds.

E. Superior Obligations Prohibited. The Town shall not issue any bond or other obligation having a lien prior and superior to the 1972 bonds.

Section 13. Refunding Bonds. The provisions of the above section are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the Board shall find it desirable to refund any outstanding bonds or obligations constituting a lien upon system revenues, said bonds or other obligations may be refunded (but only with the consent of the holders, unless the bonds or other obligations shall then mature or be callable) regardless of whether lien priority is changed thereby (except as provided in paragraph E of Section 12 hereof, and in paragraphs B and C of this section).

B. Limitations upon Issuance of Parity Refunding Obligations. No refunding bonds or obligations shall be issued on a parity with the 1972 bonds, unless:

(1) The lien of the obligations refunded is on a parity with the lien of the 1972 bonds, or

(2) The refunding bonds or obligations are issued in compliance with paragraph A of Section 12 hereof.

C. Refunding Part of an Issue. The refunding bonds or obligations shall enjoy complete equality of lien with any portion of the same issue which is not refunded. The holders of such refunding bonds or obligations shall be subrogated to all of the rights and privileges enjoyed by the holders of the bonds or obligations of the same issue refunded thereby.

D. Limitation upon Issuance of any Refunding Obligations. Any refunding bonds or obligations payable from system revenues shall be issued with such details as the Board may provide, but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion

of any issue (including the 1972 bonds). If only a part of any issue is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion, unless:

(1) The refunding bonds or obligations do not increase the aggregate principal and interest requirements for any fiscal year commencing prior to the last maturity date of such unrefunded obligations, or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded.

Section 14. Protective Covenants. The Town covenants and agrees with each and every Holder that:

A. Use of Bond Proceeds. The Project shall be acquired without delay.

B. Payment of Bonds Herein Authorized. The Town will pay bond principal and interest at the place, on the dates, and in the manner specified, according to the true intent and meaning thereof.

C. Use Charges. Rates for services rendered by the System shall be reasonable and just, taking into account the cost and value of the System, operation and maintenance expenses, proper allowances for depreciation and the amounts necessary to retire all bonds payable from net revenues, and the reserves therefor. There shall be charged against all users, including the Town, rates and amounts sufficient to produce revenues to pay the annual operating and maintenance charges, and 100% of both the principal of and the interest on all bonds payable from net revenues, including reserves. No free service shall be furnished by the System. Any use of the System by the Town will be paid for from the Town's general fund at the reasonable value of the use so made. Income so derived from the Town shall be treated in the same manner as any other System income. The Town is granted a statutory lien upon realty for unpaid rates and charges. The Town covenants and agrees that it will cause each such lien to be perfected and enforced in accordance with law.

D. Levy of Charge. Prior to the delivery of any 1972 bonds, the Town will establish and levy the required rates and charges. No reduction in any initial rate schedule may be made unless:

(1) The Town has complied with Section 9 hereof for at least two fiscal years immediately preceding such reduction.

(2) The audits for the full two fiscal years immediately preceding such reduction disclose that the estimated revenues resulting from the proposed rates schedule will be sufficient to meet the requirements of paragraph C of this section.

E. Efficient Operation. The Town shall make such improvements and repairs to the System as may be necessary to insure its economical and efficient operation and its ability to meet demands for service.

F. Records. Separate records will be kept, showing complete and correct entries of all transaction relating to the System. Such records shall include monthly entries showing:

- (1) The number of customers;
- (2) The revenues received; and
- (3) A detailed statement of expenses.

Before each fiscal year, the Board will cause an operating budget to be prepared.

G. Right to inspect. The Purchaser, any Holder, or their duly authorized agents, shall have the right at all reasonable times to inspect the System, and all records, accounts and data relating thereto.

H. Audits and Budgets. The Town agrees that it will, within 60 days following the close of each fiscal year, furnish an audit made by an Independent Accountant to the Purchaser. Each such audit, in addition to matters thought proper by the accountant, shall include:

- (1) A statement for the fiscal year just closed of the income and expenditures of the System, including gross revenues, net revenues, the amount of any capital expenditures and profit or loss;
- (2) A balance sheet as of the end of such fiscal year, including all funds created by proceedings authorizing bonds payable from System revenues;
- (3) The accountant's comment regarding the Town's methods of operation and accounting practice;
- (4) A list of the insurance policies in force, setting out the amount of each policy, the risks covered, the name of the insurer, and the expiration date;
- (5) A recapitulation of each fund or account created by the various proceedings showing deposits and withdrawals for said fiscal year.

Along with the audit, the Town shall furnish an operating budget showing the budget for the preceding year, actual income and expenses for that year and the planned budget for the ensuing year. During the first year of operation the Town will furnish the Purchaser with monthly operating reports on forms furnished by the Purchaser. The Town will furnish a copy of each audit and budget to any Holder at his request, and without request to the Purchaser. Any Holder shall have the right to discuss the contents with any person making the audit.

I. Billing Procedure and Discontinuance of Service. All bills shall be sent out on a regularly established day of each month in advance or after service is rendered. Bills shall be due within 20 days from date. If bills are not paid 90 days after such date they shall be collected in any lawful manner. Sewer service will be discontinued for failure to pay sewer charge.

J. Use of Bond and Reserve Funds. The Bond Fund and the Reserve Fund shall be used solely and only, and said

funds are hereby pledged, for the purposes set forth above.

K. Charges and Lien upon System. The Town will pay all taxes and governmental charges lawfully levied in respect of said System when due. The Town will comply with all valid requirements of any governmental authority relative to the System. It will not create or permit to be created any lien or charge upon the System or the revenues except as permitted herein. The Town will satisfy all claims and demands within 60 days after the same shall accrue which might by law become a lien upon the System or upon the revenues, unless the validity thereof is being contested in good faith by appropriate legal proceedings.

L. Construction Contract and Bond. Any construction contract and performance and payment bond will meet the reasonable requirements of the Purchaser if the Purchaser is the FHA.

M. Insurance. The Town will carry prudent amounts of fire and extended coverage insurance on the System, and public liability insurance in the minimum amount of \$10,000.00 each individual, \$80,000.00 each accident and \$5,000.00 property damage.

N. Competing System or Works. The Town shall not grant any franchise or license to a competing system, or permit any person or organization to sell water or sewer service within the Town.

O. Alienating System. The Town will not sell, lease, mortgage, pledge or otherwise alienate the System, or any part thereof, except any portion which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the System. In the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net income.

P. Extension of Interest Payments. The Town will not extend or be a party to the extension of the time for paying any coupon or claim for interest. Any coupon or installment of interest so extended shall not be entitled in case of default here under to the benefit or security of this ordinance except subject to the prior payment in full of the principal of all bonds and interest which has not been extended.

Q. Management of the System. If an "event of default" shall occur or if the net revenues in any fiscal year fail to equal principal, interest and reserves for all bonds payable from net revenues, the Town shall retain a Consulting Engineer to assist the management of the System so long as such default continues or the net revenues are less than the amount designated.

R. Surety Bonds. The Clerk and Treasurer, having the funds derived from operation of the System, shall be bonded in an amount of at least \$5,000.00. Any other person accepting payments on behalf of the Town shall have a bond

of at least \$500.00.

S. Town's Existence. The Town will maintain its corporate identity and existence so long as any of the 1972 bonds remain outstanding, unless another political subdivision by operation of law succeeds to liabilities and rights of the Town, without adversely affecting to any substantial degree the privileges and rights of the Holder.

Section 15. Events of Default. It is an "event of default" if:

A. Non-Payment of Principal. Payment of principal of any 1972 bond is not made when due at maturity or upon prior redemption,

B. Non-Payment of Interest. Payment of interest is not made when due.

C. Incapable to Perform. The Town is not capable of fulfilling its obligations hereunder.

D. Default of any Provision. The Town defaults in the punctual performance of its covenants hereunder for 60 days after written notice shall have been given by the Holders of 25% of the outstanding bonds.

Section 16. Remedies of Default. Upon the happening of any event of default, the Holder of not less than 25% in principal amount of the outstanding bonds, or a trustee therefor, may protect and enforce the rights of any bond holder by proper legal or equitable remedy deemed most effectual, including mandamus, specific performance of any covenant, the appointment of a receiver (the consent to such appointment being hereby granted), injunctive relief, or requiring the governing body of the Town to act as if it were the trustee of an expressed trust, or any combination of such remedies. All proceedings shall be maintained for the equal benefit of all Holders. Any receiver appointed to protect the rights of bondholders may take possession and operate and maintain the System in the same manner as the Town itself might do. The failure of any Holder to proceed does not relieve the Town or any person of any liability for failure to perform any duty hereunder. The foregoing rights are in addition to any other right, and the exercise of any right by any bondholder shall not be deemed a waiver of any other right.

Section 17. Refinancing. If it shall appear to the Purchaser that the Town can refinance the amount of the bonds then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the Town will, upon request of the Purchaser, within the limitations of its then existing powers, and subject to any contractual limitations contained herein concerning the payment of the bonds and their redemption; apply for and accept such loan in sufficient amount to repay the Purchaser, and will take

all such action as may be required in connection with such loan. Any such refinancing shall be accomplished according to applicable statutes of the State.

Section 18. Equal Opportunity Agreement. The Mayor and the Town Clerk are directed to execute for and on behalf of the Town Form FHA 400-1 entitled "Equal Opportunity Agreement", to which is attached and made a part thereof an "Equal Opportunity Clause", designated as Form FHA 400-2, and Form FHA 400-4, entitled "Non-Discrimination Agreement", or equivalent FHA forms.

Section 19. Defeasance. When the bonds have been paid, the pledge and lien and all obligations hereunder shall be discharged and the bonds shall no longer be deemed to be outstanding, and payment shall be deemed made when the Board has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities) to meet all requirements of principal and interest as the same become due to their final maturities. Any Federal Securities shall become due when needed in accordance with a schedule agreed upon between the Board and such bank at the time of the creation of the escrow. Federal Securities within the meaning of this section shall include only direct obligations of, or which are unconditionally guaranteed by, the United States of America.

Section 20. Amendment of Ordinance. This ordinance may be amended, without receipt by the Town of any additional consideration, but with the written consent of the Holders of 3/4 of the 1972 bonds then outstanding (not including bonds which may be held for the account of the Town); but no ordinance adopted without the written consent of the Holders of all outstanding bonds shall have the effect of permitting:

- (1) An extension of the maturity of any bond; or
- (2) A reduction in the principal amount or interest rate of any bond; or
- (3) The creation of a lien upon revenues ranking prior to the lien or pledge created by this ordinance; or
- (4) A reduction of the principal amount of bonds required for consent to such amendatory ordinance; or
- (5) The establishment of priorities as between bonds issued and outstanding under the provisions of this ordinance; or
- (6) The modification of or otherwise affecting the rights of the Holders of less than all of the outstanding bonds.

Section 21. Ordinance Irrepealable. After any of the bonds herein authorized are issued, this ordinance shall be and remain irrepealable until the bonds and the interest thereon shall be fully paid, cancelled and discharged, as herein provided.

Section 22. Severability Clause. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 23. Repealer Clause. All by-laws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency.

Section 24. Publication. The ordinance, immediately upon its final passage, shall be recorded in a book kept for that purpose, authenticated by signatures of the Mayor and the Clerk, and shall be published in the Plainsman, Hugo, Colorado, a legal newspaper of general circulation within the Town.

Section 25. Emergency Clause and Effective Date. By reason of the fact that the Town and its inhabitants are not properly or adequately supplied with sewer facilities at the present time an emergency is declared to exist. In the opinion of the Board the lack of sewerage facilities is an impairment to the public peace, health, property and welfare and should not be allowed to exist in the future; and if the financing for the improvements is not completed in time to start the construction for the improvements, and with the time specified in the regulations of the FHA such delay would cause substantial health problems; therefore, it is hereby declared that in the opinion of the Board an emergency exists; and that this ordinance is deemed necessary for the immediate preservation and enhancement of the public peace, health, safety, property and welfare; and this ordinance shall be in full force and effect five (5) days after such publication.

PASSED, ADOPTED AND APPROVED THIS 10TH DAY OF AUGUST, 1972.

Charles W. Barick
Mayor

(SEAL)

ATTEST:

Town Clerk