1. Meeting Materials

   Documents:

   AGENDA.PDF
   PACKET.PDF
   MINUTES.PDF

AGENDA for a Regular Meeting
of the Board of Trustees of the Town of Fairplay, Colorado
Monday, July 3, 2023, at 6:00 P.M. at the Fairplay Town Hall Meeting Room
901 Main Street, Fairplay Colorado

Click here to join the TEAMS meeting
(Meeting ID: 223 473 751 347 / Passcode: fn9Mjq)

I. CALL TO ORDER
II. PLEDGE OF ALLEGIANCE
III. ROLL CALL
IV. APPROVAL OF AGENDA
V. CONSENT AGENDA (*This item is intended to streamline the Board Meeting grouping routine, non-controversial business. The public or the Board Members may ask that an item be removed from the Consent Agenda for individual consideration.)*
   A. APPROVAL OF MINUTES OF PRIOR MEETING – May 15, 2023 Regular Meeting.
   B. APPROVAL OF EXPENDITURES – Paid bills for all Town funds from June 16, 2023 through June 28, 2023 in the amount of **$26,028.10.**
VI. CITIZEN COMMENTS (*This portion of the agenda allows for the public to sign up to address the Board on matters that are not on the agenda)*
VII. PUBLIC HEARINGS
   A. FIRST READING – Ordinance No. 6, Series of 2023, entitled "**AN ORDINANCE OF THE TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE, AUTHORIZING A COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY LOAN TO FINANCE CAPITAL IMPROVEMENTS TO THE TOWN'S WATER AND WASTEWATER SYSTEM; AUTHORIZING EXECUTION OF A LOAN AGREEMENT AND BOND TO EVIDENCE THE LOAN; AND PROVIDING FOR PAYMENT OF THE BOND FROM THE OPERATION OF THE JOINT WATER AND WASTEWATER SYSTEM."** *The Board will consider approving a Drinking Water Revolving Fund Loan and authorizing a Loan Agreement for improvements at the Beaver Creek Water Plant.*
VIII. NEW BUSINESS
   A. FIRST READING – Resolution No. 20, Series of 2023, entitled "**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, APPROVING AN INDEPENDENT SERVICES AGREEMENT WITH KIM WITTBRODT.** *The Board will consider an agreement with retiring Town Treasurer Kim Wittbrodt for temporary accounting, payroll and training services.*
   B. FIRST READING – Resolution No. 21, Series of 2023, entitled "**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, APPROVING A REVOCABLE LICENSE AGREEMENT WITH DUKE, LLC FOR IMPROVEMENTS LOCATED IN THE TOWN RIGHT OF WAY AT 500 MAIN STREET.** *The Board will consider approving an agreement with the owner of the Valiton Hotel at 500 Main for fencing, stairs and an ADA ramp built on Town property.*
IX. BOARD OF TRUSTEE AND STAFF REPORTS
   A. Report from Warm Springs, LLC regarding 2nd Quarter 2023 Operator in Responsible Charge (ORC) responsibilities and activities.
X. ADJOURNMENT

Upcoming Meetings/Important Dates

Fairplay Independence Day Celebration	Tuesday, July 4, 2023
Park County Fair	Thursday-Sunday, July 7-16, 2023
Board of Trustees Regular Meeting	*Monday, July 20, 2023*
Fairplay Gem & Mineral Show	Thursday-Sunday, July 27-30, 2023
TGIFairplay Free Concert – Nalani Effect with Reggie Wooten	Friday, July 28, 2023
74th Burro Days Celebration	Friday-Sunday, July 28-30, 2023
Board of Trustees Regular Meeting	*Monday, August 7, 2023*
Board of Trustees Regular Meeting	*Monday, August 21, 2023*
Final TGIFairplay Free Concert W Hazel Miller and *FREE* Peaches & Ice Cream	Saturday, August 26, 2023

Posted at Fairplay Town Hall, Fairplay Public Library, Fairplay Post Office, and on The Town of Fairplay Website (www.fairplayco.us) on Thursday, June 29, 2023. THIS AGENDA MAY BE AMENDED.

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of the Board of Trustees of the Town of Fairplay, Colorado
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MINUTES OF THE REGULAR MEETING OF THE
FAIRPLAY BOARD OF TRUSTEES
MAY 15, 2023

CALL TO ORDER
A Regular Meeting of the Board of Trustees for the Town of Fairplay was called to order by Mayor Frank Just on Monday, May 1, 2023, at 6:00 p.m. in the Board Room located in the Fairplay Town Hall at 901 Main Street, having previously been posted in accordance with Colorado Open Meetings law.

PLEDGE OF ALLEGIANCE AND ROLL CALL
Mayor Just proceeded with the pledge of allegiance, followed by the roll call, which was answered by Mayor Frank Just, Mayor Pro Tem Dodge, and Trustees Ray Douglas and Pete Lynn.

Staff in attendance were Town Administrator / Town Clerk Janell Sciacca, Town Treasurer Kim Wittbrodt, Public Works Director Donovan Graham, Special Projects Coordinator Alex Wagner, Special Events Coordinator Julie Bullock, Chief of Police Bo Schlunsen, Building Official Kyle Parag, and Town Attorney Nina Williams (online).

APPROVAL OF AGENDA
Motion #1 by Trustee Douglas, seconded by Trustee Lynn, that the agenda be adopted as written. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Lynn – aye. Motion carried unanimously.

CONSENT AGENDA
- **A. APPROVAL OF MINUTES OF PRIOR MEETING** – April 3, 2023 Regular Meeting.
- **B. APPROVAL OF EXPENDITURES** – Paid bills for all Town funds from April 27, 2023 through May 9, 2023 in the amount of **$67,721.55**.

Motion #2 by Trustee Lynn, seconded by Trustee Douglas, that the consent agenda be approved with the expenditures as stated. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Lynn – aye. Motion carried unanimously.

Trustee Voorhis arrived at 6:13 PM.

CITIZEN COMMENTS
Mayor Just recognized Justin Kurth who was appearing online. Kurth introduced himself announcing he was a Field Representative for Congresswoman Brittany Pettersen, and he then provided an update on the Congresswoman's activities including a financial transparency bill and a stop the import of fentanyl bill, assisting Park County to elevate a request for funding for county roadways impacted by State parks to the House Appropriations Committee, and opening an office in Canon City. Kurth also advised of upcoming opportunities to meet with him and other representatives. Mayor Just thanked Kurth for joining in and providing updates.

PROCLAMATIONS, PRESENTATIONS AND UPDATES
- **A.** Proclamation recognizing May 21-27, 2023 as Public Works Week.

Mayor Just read the proclamation into the record and signed it proclaiming May 21-27, 2023 Public Works Week. Just advised that the Board and community appreciated all that the Public Works Staff do for the safety of the general public.

<u>**PUBLIC HEARINGS**</u>

A. SECOND READING: Ordinance No. 1, Series of 2023 entitled, "**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, AMENDING THE FAIRPLAY MUNICIPAL CODE BY CREATING A NEW ARTICLE 29 OF CHAPTER 16, UNIFIED DEVELOPMENT CODE, ESTABLISHING INCLUSIONARY HOUSING**."

Mayor Just introduced the Ordinance and reviewed the legislative-related hearing format. He then opened the Public Hearing at 6:15 p.m. Town Attorney Williams provided an overview of the Staff Report reminding the Board they conducted a work session on February 13 and also discussed and made changes to the proposed ordinance that their meeting on May 1. Williams reviewed the recent changes to Section D on page 4 which clarified the AMI levels and number of AMI units and Sections F and 16-29-60 on page 6 which both changed to 50%. Mayor Pro Tem Dodge pointed out a type in Section 16-29-30 (F)(3) the requirement for each required affordable housing unit should say "every second market-rate…" and not every sixth. The Mayor opened the floor to public comment and there were no comments in favor or opposition. The Public Hearing was closed at 6:17 PM.

Mayor Just then took the opportunity to remind everyone that the reason the Board was doing this was because of the exaggerated prices and limited availability in the local housing market and to try make the community better. Trustee Douglas questioned the resale price and getting a return on your investment. Williams advised this was covered in the deed restriction language which was much more comprehensive than the ordinance where capital improvements, construction and different types of improvements were addressed in detail.

Motion #3 by Mayor Pro Tem Dodge, seconded by Trustee Douglas, to approve Ordinance No. 1, Series of 2023, with the one stated amendment. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

<u>**NEW BUSINESS**</u>

A. FIRST READING – Resolution No. 15, Series of 2023, entitled, "**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, AUTHORIZING THE EXECUTION OF A PROPERTY IMPROVEMENT INCENTIVE PROGRAM (PIIP) AGREEMENT WITH SCOTT BULLOCK FOR THE 601 BOGUE STREET FENCE PROJECT.**"

Town Treasurer Wittbrodt presented reviewing the Staff Report and purpose of the project. She noted this was the first application the Town had received in 2023. Wittbrodt advised the applicant was planning to spend approximately, $6,862.68 and the portion of their taxes to be reimbursed was $1,083.00. She introduced the applicant, noted the Board had $20,000 in their budget and that Staff was recommending approval as presented. Bullock advised the current fence was in need of repair and a portion of the current fence on Bogue was found to be in the easement so they would also be bringing it in a bit and replacing the entire fence instead of just repairing it.

Motion #4 by Trustee Douglas, seconded by Mayor Pro Tem Dodge, to approve Resolution No. 15, Series of 2023, as presented approving a PIIP for the 601 Bogue Street fence project. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

B. **FIRST READING** – Resolution No. 16, Series of 2023, entitled, "**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, APPROVING A CONSTRUCTION CONTRACT WITH PAVEMENT MAINTENANCE SERVICES, INC. FOR THE 2023 STREET MAINTENANCE PROJECT.**"

Town Administrator Sciacca presented an overview of the Staff Report noting the resolution allows the Town to enter into a construction agreement and get on the contractor's schedule. Public Works Director Graham reported the project should begin in June or July. Discussion took place about drainage improvements that might be necessary before paving Aspen Drive and then Graham noted that prep work was being done at 5th and Clark where the sinkhole was last year and that would be paved this year. Douglas inquired about the alleyway between second and third and Graham advised that was the cul-de-sac on Hathaway and it was also on the schedule.

Motion #5 by Trustee Lynn, seconded by Trustee Voorhis, to approve Resolution No. 16, Series of 2023, as presented approving a construction contract for the 2023 Street Maintenance Project. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye, Lynn – aye. Motion carried unanimously.

BOARD OF TRUSTEE AND STAFF REPORTS

Chief Schlunsen reported there were a lot of little extra things coming up which was making things busier. He also addressed complaints about motorcycles on Front Street and also on 6th near the Rec Center stating the PD and Sheriff's Department were aware of the issues and trying to address them. The Chief also advised that a teacher at South Park High School obtained a grant and approached the PD to hand out gift cards to adolescents that were observed doing "good" things. It was being referred to as positive ticketing.

Public Works Director Graham advised that Chris Bannister passed his distribution test and was at a training this week getting his backflow certification so the Town could actually conduct inspections. He also reported that the smelter for crack sealing had been picked up and a water tank was put on the new UTV and would be used to make the flower watering process easier and more efficient. Graham also reported that Staff located another PRV leak was located at the Dollar General and they would try to get the vaults lined so the issue didn't happen again. He also reported that the sludge pond needed a new liner and that instead of spending $100,000 on sludge removal the Town would use that money to replace the liner which should be less than the $100,000.

Town Treasurer Wittbrodt referred the Board to some plans she had distributed for a new Cemetery sign. She reminded that the Town had about $3,700 that was donated in memory of former Mayor Gabby Lane. The total cost of the sign was around $10,000 so the Town would have to step up with $6-7,000 or scale it back. The Board generally agreed with the proposed sign but asked that the established date be somewhere on the sign or a marker. Wittbrodt also advised that Special Events Coordinator Bullock suggested a cobble rock area below the sign with wildflowers along with a plaque recognizing Lane. After additional aesthetic and location discussion, the Board agreed with the expense.

Town Administrator Sciacca reported that the Board would see an agreement at the next meeting for Bond Counsel services with Kutak Rock for the Drinking Water Revolving Fund Loan for the Infiltration Gallery project, the community information meeting with CDOT and American Civil Constructors representatives had been schedule for Tuesday, May 23 at 4:30 in the Park County Board Room, the Intergovernmental Meeting would take place that same night at 6PM, and demolition of the CDOT property at 850 Hathaway would be starting soon. Sciacca then advised the Board that the Park County Fair Board had asked about putting up banners or signs for the Fair on Town property and she asked for their approval. The Board agreed this was acceptable since they are a non-profit and benefit the community as a whole. Sciacca also advised that she requested the Town be recognized this year as an in-kind sponsor for the water donated and the Fair Board agreed. Sciacca also advised that the NWFPD Board approved contracting with Charles Abbott for inspection and plan review services and some logistics had to be figured out, but the Town was getting closer to being a one-stop shop.

Building Official Parag reported that construction season was in full swing, and things were picking up with several new homes going in. He advised the Sinclair station was putting in a Fried Chicken business and there was some other commercial activity occurring as well.

Mayor Pro Tem Dodge reminded everyone of the Town Clean Up and stated he was helping to clean up his neighborhood and a couple other properties. Mayor Just volunteered his dump trailer for use.

Trustee Lynn reported that he and Sciacca attended a meeting at the school to discuss a community garden on the Town's property at Cohen Park. He felt there was good energy, and he shared some information with them but it was obviously a big undertaking. Lynn then reported that he was going to work on the outhouses at Cohen Park and the Beach tomorrow to try and get them back up and running. The Board and Staff thanked Lynn for his expert assistance.

Special Events Coordinator Bullock reported Staff were gearing up for summer events, all the bands were booked and food vendors were being confirmed. She reported that the final concert in August would actually be on Saturday, August 26 instead of Friday night and that details were coming together for Burro Days with less than 20 booths left.

Special Projects Coordinator Wagner reported that Staff had been preparing over the last few months for the GIS GPS infrastructure inventory project and SGM came down last week to do take pictures and obtain measurements. Wagner was excited about the project noting that all the information would be extremely and make locating issues and infrastructure easier for Public Works. He also reported that a crew would be in Town on Wednesday to replace all the ballasts for Town facilities which was part of a energy efficiency program through Xcel Energy. Wagner commended all the Public Works staff for working so well together on the project. Sciacca added that she and Wagner were also meeting with a company at 501 Main to discuss the repairs, exterior improvements and interior renovations and they would update the Board as necessary.

Mayor Just reported that a 37th business anniversary party was held for Pat Pocius on Saturday, May 13 and it was well attended. Pocius was taken back, but the Mayor and many others felt she deserved recognition for all she has done for the Town. She was presented with a plaque.

ADJOURNMENT
There being no further business before the Fairplay Board of Trustees, Mayor Just declared the meeting adjourned at approximately 7:17 p.m.

BOARD OF TRUSTEES, FAIRPLAY, COLORADO

____
Frank Just, Mayor

ATTEST:

____
Janell Sciacca, Town Clerk

MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Kim Wittbrodt, Treasurer

RE: Paid Bill

DATE: June 29, 2023

Agenda Item: Bills

Attached is the list of the invoices paid between June 16, 2023, and June 28, 2023.

Total Expenditures: $26,028.10

Upon motion to approve the consent agenda, the expenditures will be approved.

Please contact me if you have any questions.

Report Criteria:
Detail report type printed

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
06/19/2023	19275	Caselle, Inc	Software Support	1	06/01/2023	453.00	517206
06/19/2023	19275		Software Support	2	06/01/2023	453.00	105060
Total 334:						906.00	
06/20/2023	19292	Postal Pros Southwest, Inc	utility billing	1	06/12/2023	268.50	517218
06/20/2023	19292		insert	2	06/12/2023	92.88	105130
Total 1699:						361.38	
06/22/2023	19300	Xcel Energy	945 quarry road	1	06/16/2023	16.24	517490
Total 2296:						16.24	
06/20/2023	19291	Patrick & Co	dog tags	1	06/16/2023	245.00	105070
Total 2346:						245.00	
06/23/2023	19302	CIRSA	Workman's Comp Payroll A	1	06/03/2023	3,967.00	105014
Total 2490:						3,967.00	
Multiple	19262	NAPA Auto Parts	Repairs & Maint.	1	05/17/2023	.00	105630
			Repairs & Maint.	2	05/17/2023		105630
Multiple	19262		Repairs & Maint.	1	05/31/2023	.00	105630
			Repairs & Maint.	2	05/31/2023		105630
Total 2608:						.00	
06/19/2023	19287	Wittbrodt, Kim	cell phone reimb	1	06/19/2023	50.00	105065
Total 2655:						50.00	
06/19/2023	19276	Chaffee County Waste	6 yd weekly	1	06/06/2023	129.00	105650
06/19/2023	19276		6 yd weekly	2	06/06/2023	129.00	105023
06/19/2023	19276		2 yd biweekly	3	06/06/2023	86.00	517675
Total 2801:						344.00	
06/21/2023	19293	Bullock, Julie	treasurer going away party	1	06/21/2023	114.97	105070
06/21/2023	19293		supplies	2	06/21/2023	211.89	105630
06/19/2023	19274		cell phone reimburse	1	06/19/2023	25.00	517226
06/19/2023	19274		cell phone reimburse	2	06/19/2023	25.00	105645
Total 2812:						376.86	
06/22/2023	19297	Colorado Analytical Lab	water testing	1	06/20/2023	24.00	517475
Total 2864:						24.00	
06/19/2023	19279	Fairplay Auto Supply	parts	1	05/17/2023	44.64	105630
06/19/2023	19279		parts	2	05/17/2023	3.32	105630

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
Total 2948:						47.96	
06/22/2023	19298	Continental Divide Producti	sound for july 4	1	06/22/2023	650.00	105171
06/21/2023	19294		sound for june concert	1	06/21/2023	650.00	105150
Total 3123:						1,300.00	
06/28/2023	19304	House of Signs	Cemetary Sign final	1	06/28/2023	4,638.50	105850
Total 3201:						4,638.50	
06/22/2023	19301	Zions Bank	annual fee	1	06/22/2023	250.00	517210
Total 3203:						250.00	
06/22/2023	19299	H & H Painting	final payment - paint town	1	06/22/2023	4,000.00	105025
Total 3214:						4,000.00	
06/21/2023	19295	Ernst, Sarah	reimburse treasurergoing a	1	06/21/2023	41.96	105070
06/19/2023	19278		cell phone reimburse	1	06/19/2023	50.00	105065
06/23/2023	19303		Gift Card for Kim & Chip	1	06/05/2023	100.00	105070
Total 3313:						191.96	
06/19/2023	19273	Bannister, Chris	Wellness Reimbursement	1	06/16/2023	499.00	517010
06/19/2023	19273		cell phone reimburse	1	06/19/2023	25.00	105645
06/19/2023	19273		cell phone reimburse	2	06/19/2023	25.00	517226
Total 3464:						549.00	
06/19/2023	19286	Wagner, Alex	cell phone reimburse	1	06/19/2023	50.00	105065
Total 3506:						50.00	
06/19/2023	19280	Graham, Donovan	cell phone reimburse	1	06/19/2023	25.00	517226
06/19/2023	19280		cell phone reimburse	2	06/19/2023	25.00	105645
Total 3519:						50.00	
06/20/2023	19288	All Around the Peaks Prop	deep clean	1	06/01/2023	880.00	105025
06/20/2023	19288		deep clean	2	06/01/2023	280.00	517260
Total 3535:						1,160.00	
06/19/2023	19281	Kenosha Pest Specialist	pest control	1	06/13/2023	30.00	105025
06/19/2023	19281		pest control	2	06/13/2023	30.00	517260
Total 3564:						60.00	
06/19/2023	19283	Sciacca, Janell	cell phone reimburse	1	06/19/2023	50.00	105065
Total 3583:						50.00	
06/19/2023	19282	Kleinschmidt, Sean	cell phone reimburse	1	06/19/2023	25.00	105645
06/19/2023	19282		cell phone reimburse	2	06/19/2023	25.00	517226

Check Issue Date	Check Number	Name	Description	Seq	Invoice Date	Check Amount	GL Account
Total 3590:						50.00	
06/20/2023	19289	Nate Carrigan Scholarship	scholarship donation	1	06/20/2023	500.00	105175
Total 3631:						500.00	
06/19/2023	19284	Utopia Fairplay, Inc.	2021 Ford tires	1	06/02/2023	843.80	105625
06/19/2023	19284		2021 Ford tires	2	06/02/2023	843.80	517242
06/19/2023	19284		new tires-2022 tires	1	06/01/2023	863.80	105625
06/19/2023	19284		new tires-2022 ford	2	06/01/2023	863.80	517242
Total 3718:						3,415.20	
06/19/2023	19285	Vacasa LLC	Lodging tax refund	1	06/19/2023	50.00	104096
Total 3719:						50.00	
06/19/2023	19277	EDCOR LLC	CPR Training	1	06/15/2023	425.00	105424
Total 3720:						425.00	
06/20/2023	19290	Park County Law Enforcem	National Night Out-SPAA	1	06/20/2023	2,500.00	105175
Total 3721:						2,500.00	
06/21/2023	19296	Iconix Clothing	Burro Buster Shirts	1	06/21/2023	450.00	105171
Total 3722:						450.00	
Grand Totals:						26,028.10	

Report Criteria:
Detail report type printed

PUBLIC HEARING FORMAT

LEGISLATIVE HEARINGS (Policy issues such as ordinances amending the Municipal Code, Budget Hearings, Etc.

1. Mayor will introduce the topic and announce that the Public Hearing is open at _________ (time).
2. Mayor will ask for Staff presentation and allow for questions from the Board and suggested amendments, if any.
3. Mayor will solicit public comment in favor of or in opposition to issue/matter.
4. Mayor will close the public hearing and ask for Board deliberation.
5. Following deliberation, Mayor will ask for a motion to continue, approve as presented, approve with stated amendment(s) or deny.

MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: Public Hearings Item A – Ordinance No. 6 Authorizing a DWRF Loan Agmt with the Colorado Water Resources and Power Development Authority

DATE: July 3, 2023

Background:
The Town, along with its contract engineer Ken Hardesty, has been working with the Colorado Department of Public Health and Environment Grants & Loans Unit to secure a State Revolving / Drinking Water Fund Loan for improvements at the Town's Beaver Creek Water Treatment Plant. These improvements include bringing online an Infiltration Gallery and an additional Well. The improvements will add additional production capacity, or redundancy, in the system to ensure the Town's production exceeds current demands and can accommodate new demands.

The Town was notified on April 25, 2023 of approval of its application by the Colorado Water & Resources and Power Development Authority (CWRPDA) for $300,150.00 which includes $163,306.13 of up-front BIL Principal Forgiveness. The Town also applied for and received $199,850.00 EIAF grant from the Department of Local Affairs (DOLA) that will serve as the Town's match for the loan. On June 5, the Board authorized an agreement for Bond Counsel services to secure a required independent Bond Counsel opinion. The Town is now at the step of approving the loan and authorizing the execution of the loan agreement. Both documents are in the Board packet and have been reviewed by the Town Attorney who is also required to provide a Counsel Opinion as per Exhibit E-1. The Mayor and I will be the authorized signatories for all documents.

Recommendation:
Staff recommends approval of Ordinance No. 6, Series of 2023, as presented by motion, second and a roll call vote to approve the Colorado Water Resources and Power Development Authority Loan and authorize execution of a Loan Agreement and Bond.

Attachments:

- Ordinance No. 6, Series 2023
- Draft Loan Agreement

TOWN OF FAIRPLAY, COLORADO

ORDINANCE NO. 6
(SERIES OF 2023)

AN ORDINANCE OF THE TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE, AUTHORIZING A COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY LOAN TO FINANCE CAPITAL IMPROVEMENTS TO THE TOWN'S WATER AND WASTEWATER SYSTEM; AUTHORIZING EXECUTION OF A LOAN AGREEMENT AND BOND TO EVIDENCE THE LOAN; AND PROVIDING FOR PAYMENT OF THE BOND FROM THE OPERATION OF THE JOINT WATER AND WASTEWATER SYSTEM.

WHEREAS, the Town of Fairplay, Colorado, is a municipal corporation duly organized and operating as a statutory town under the Constitution and laws of the State of Colorado (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, the Town is the owner and operator of a water and wastewater utility (referred to in this preamble as the "System") and the Town operates and maintains the System as a single public utility and income-producing project; and

WHEREAS, pursuant to Ordinance No. 2, Series 2018 of the Town and Section 2-7-30 of the Municipal Code of the Town, the System has been established by the Town as an "enterprise" under the Colorado Constitution Article X, Section 20 ("TABOR"); and

WHEREAS, in calendar year 2022 the System was, and in calendar year 2023 the System continues to be, operated as a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all State and local governments combined, and the System is an enterprise within the meaning of TABOR; and

WHEREAS, the Board of Trustees is acting hereunder as the governing body of the Enterprise; and

WHEREAS, the Board of Trustees has determined, for the benefit of the Town and its inhabitants, that it is necessary to finance the addition of a cartridge filtration system to the System's water treatment plant to upgrade instrumentation and controls and rehabilitate the infiltration gallery; and

WHEREAS the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, has established and administers a Drinking Water Revolving Fund to enable the State to comply with the provisions of the federal Safe Drinking Water Act of 1996 and has entered into the Federal Capitalization Agreement (as defined in the Loan Agreement) to enable the CWRPDA to make capitalization grant payments pursuant to the federal Safe Drinking Water Act of 1996; and

WHEREAS, the CWRPDA has approved a loan from its Drinking Water Revolving Fund for funding of the Project, the terms of which are set forth in the Loan Agreement; and

WHEREAS, the Town's repayment obligation under the Loan Agreement will be evidenced by a governmental agency bond to be issued by the Town to the CWRPDA, and the Bond shall constitute a special revenue obligation of the Town to be paid from the income and revenues derived from the operation and use of the System less reasonable and necessary current expenses of the Town of operating, maintaining and repairing the System and, after consideration, the Board of Trustees has determined that the execution of the Loan Agreement and the issuance of the Bond to the CWRPDA is to the best advantage of the Town; and

WHEREAS, as an obligation of the Enterprise, voter approval in advance is not required under TABOR for the execution of the Loan Agreement or the issuance of the Bond; and

WHEREAS, upon its issuance, the Bond will be secured by a lien on the Net Revenue of the System that is on a parity with that of the Town's outstanding Series 2018 Note; and

WHEREAS, the form of the Loan Agreement and the Bond have been presented to the Town and made available upon request to the Board of Trustees; now, therefore,

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

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

"*Additional Parity Obligations*" means one or more series of additional bonds, notes, interim securities or other obligations issued by the Town having a lien on the Net Revenue which is on a parity with the lien of the Bond and the Series 2018 Note.

"*Board of Trustees*" means the Board of Trustees of the Town, acting as the governing body of the Enterprise.

"*Bond*" means the governmental agency Bond to be issued by the Town to the CWRPDA pursuant to the Loan Agreement, the form of which is set forth in Exhibit D to the Loan Agreement.

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

"*CWRPDA*" means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State.

"*Debt Service Requirements*" means the principal of and interest on, and any premium due in connection with the redemption of the Bond, the Series 2018 Note, any Additional Parity Obligations or any other securities payable from the Net Revenues, excluding any amounts provided for with capitalized interest or other funds actually on hand and irrevocably committed to the payment of Debt Service Requirements.

"*Enabling Law*" means Part 4 of Article 35, Title 31, C.R.S., the Supplemental Public Securities Act, the and all other laws of the State establishing the power of the Town to complete the financing contemplated by this Ordinance.

"*Enterprise*" means the "Town of Fairplay, Colorado, Water and Wastewater Enterprise" which has been established pursuant to Ordinance No. 2, Series 2018 and the provisions of Section 2-7-30 of the Municipal Code of the Town, and the operation of which is accounted for in the Utility Fund.

"*Financing Documents*" means the Loan Agreement and the Bond.

"*Generally Accepted Accounting Principles*" means accounting principles, methods and terminology followed and construed for enterprises which are employed in business comparable to the business of the Town, as amended from time to time

"*Improvements*" means the addition, extension, enlargement, betterment, replacement or improvement or any combination thereof, of facilities, other property, any project, or any interest therein, but not including reconstruction, replacement, repair or other renewal of existing facilities that does not increase the capacity of the System.

"*Income*" means all income from rates, fees or charges for the services furnished by, or the direct or indirect use of, the System, together with any interest income of the System not specifically excluded from the lien of this Ordinance. To the extent provided by resolution or ordinance of the Town, the Income may exclude particular funds or revenues and may also include, for the purpose of determining compliance with the payment, accumulation and coverage requirements hereof, any other funds contributed to the System for use in paying Debt Service Requirements or Operation and Maintenance Expenses.

"*Loan Agreement*" means the Loan Agreement between the Town and the CWRPDA pursuant to which the CWRPDA is to make a loan to the Town from its Drinking Water Revolving Fund.

"*Net Revenue*" means the Income remaining after deducting Operation and Maintenance Expenses.

"*Operation and Maintenance Expenses*" means all reasonable and current expenses of the Town, paid or accrued, of operating, maintaining and repairing the System, and shall include, without limiting the generality of the foregoing, legal and overhead expenses of the various Town departments directly related and reasonably allocable to the administration of the System, insurance premiums, the reasonable charges of depository banks and paying agents, contractual services, professional services required by this Ordinance or any other applicable requirement, salaries and administrative expenses, labor and the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, liabilities incurred by the Town as the result of its negligence (as determined by a court of law) in the operation of the System, improvements, extensions, enlargements or betterments or any charges for the accumulation of reserves for capital replacements.

"*Ordinance*" means this Ordinance which authorizes the execution of the Loan Agreement and the issuance of the Bond, including any amendments properly made hereto.

"*Prime Rate*" means the prevailing commercial interest rate established pursuant to the terms of the Loan Agreement.

"*Project*" means the financing of improvements to the existing System, including the addition of cartridge filtration to the System's water treatment plant, the upgrading of instrumentation and controls, and the rehabilitation of the infiltration gallery.

"*Project Costs*" means the Town's costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Enabling Law.

"*Pro Rata Portion*" means when used with respect to a required credit to the accounts or subaccounts established for the payment of the principal of and interest on the Bond, the Series 2018 Note and any Additional Parity Obligations, 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.

"*Series 2018 Note*" means the Town of Fairplay, Colorado, acting by and through its Water and Wastewater Enterprise, Water and Wastewater Enterprise Revenue Note, Series 2018, which Series 2018 Note was issued in the original aggregate principal amount of $3,745,300 to ZB, N.A., dba Vectra Bank Colorado, acting as lender and the initial purchaser of the Series 2018 Note.

"*State*" means the State of Colorado.

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

"*System*" means the combined water and wastewater system owned and operated by the Town, comprising the sanitation activities, services and facilities of the Town related to collection, pretreatment, treatment, advanced treatment, re-use and discharge of sewerage and wastewaters and the municipal water system of the Town, together with all equipment and Improvements to the System, including, without limitation, the Project, and any other property or facilities hereafter specifically added to the System by ordinance of the Board of Trustees.

"*Town*" means the Town of Fairplay, Colorado.

"*Utility Fund*" means the Town's Utility Fund, a propriety fund of the Town which is used to account for the revenues and expenditures of the Enterprise, and any additional funds established hereafter for such purpose.

"*2018 Ordinance*" means the Note Ordinance adopted by the Board of Trustees on June 14, 2018 authorizing the execution and delivery of the Series 2018 Note.

Section 2. Approval of Loan Agreement and Authorization of Bond. Pursuant to and in accordance with the State Constitution and the Enabling Law, the Bond shall be issued by the Town, acting by and through the Enterprise. The form of the Loan Agreement setting forth the terms, conditions and details of the Bond and the procedures relating thereto, is incorporated herein by reference and is hereby approved; all Town officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Town under the Financing Documents. The Town shall enter into the Loan Agreement and deliver the Bond in substantially the form presented to the Town at or prior to this meeting of the Board of Trustees with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered. It is hereby determined that the date of final maturity of the Bond does not exceed the estimated life of the Project.

Section 3. Details for Bond. The Bond shall be in substantially the form set forth in Exhibit D to the Loan Agreement with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Town executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The Bond shall be in an aggregate principal amount not to exceed $300,150.00, shall bear interest at a net effective rate not to exceed three percent (3.00%) per annum, and shall be payable semi-annually and mature not more than twenty years from the date of its issuance, as more particularly set forth in the Loan Agreement. The Bond may provide for a late charge (penalty interest rate) in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on late payments; provided however, such late charge rate shall not exceed the maximum rate permitted by law. For a period not to exceed one year from the effective date of this Ordinance, the Board of Trustees hereby delegates to the Mayor, or in the absence of the Mayor, the Mayor Pro Tem, the right to determine, within the parameters established above, the final principal of, interest rate for and loan term for the Bond.

Section 4. Pledge for Payment of the Bond.

(a) ***Pledge of Net Revenue.*** The Net Revenue is hereby pledged to the payment of the Bond and the amounts due under the Loan Agreement. The Bond shall constitute a first lien upon the Net Revenue, but not necessarily an exclusive first lien. Pursuant to and in accordance with Section 11-57-208, C.R.S., Net Revenue, as received by or otherwise credited to the Town, shall immediately be subject to the lien of the pledge stated above without any physical delivery, filing, or further act. The lien of each such pledge, and the obligation to perform the contractual provisions made in this Ordinance, the 2018 Ordinance and the Financing Documents, shall have priority over any or all other obligations and liabilities of the Town except as may be otherwise provided in this Ordinance, in the 2018 Ordinance or in the Financing Documents. The lien of the above pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Town irrespective of whether such persons have notice of such liens.

(b) ***Establishment of Accounts.*** There is hereby reaffirmed the Utility Fund, which shall continue to be maintained by the Town to carry out the terms and provisions of this Ordinance and the Loan Agreement.

(c) ***Flow of Funds.*** The Town shall credit to the Utility Fund all Income immediately upon receipt. The Town shall pay from the Utility Fund all Operation and Maintenance Expenses as they become due and payable. After such payment or the allocation of Income to such payment, the Town shall apply the Net Revenue in the following order of priority:

FIRST, to the credit of or deposit in the accounts or subaccounts established for the payment of interest on the Bond, the Series 2018 Note and any Additional Parity Obligations, the Pro Rata Portion equal to the interest coming due on the next succeeding interest payment date for the respective obligations;

SECOND, to the credit of or deposit in the accounts or subaccounts established for the payment of principal of the Bond, the Series 2018 Note and any Additional Parity Obligations, the Pro Rata Portion equal to the principal coming due on the next succeeding principal payment date for the respective obligations;

THIRD, to the credit of any reserve accounts established for the payment of the Bond, the Series 2018 Note and any Additional Parity Obligations, the amounts required in the ordinances or related documents authorizing and controlling the establishment of such reserve accounts; and

FOURTH, to the credit of or deposit in the accounts or subaccounts established for the payment of principal of and interest on other obligations the payment of which is subordinate to the payment of the Bond, the Series 2018 Note and any Additional Parity Obligations, the Pro Rata Portion equal to the principal of or interest on such obligations coming due on the next succeeding payment date for the respective obligations; and

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

(d) ***The Bond Do Not Constitute a Debt.*** The CWRPDA may not look to any general or other fund of the Town for the payment of the principal of or interest on the Bond, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Bond shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the Town.

Section 5. Various Findings, Determinations, Declarations and Covenants. The Board of Trustees, having been fully informed of and having considered all the pertinent facts and circumstances, hereby affirms the covenants set forth in Section 2.02 of the Loan Agreement and further finds, determines, declares and covenants that:

(a) ***Additional Obligations.*** No bonds, notes, interim securities or other obligations shall be issued payable from the Net Revenue and having a lien thereon which is superior to, on a parity with, or subordinate to the lien of the Bond and the Series 2018 Note unless the requirements set forth in EXHIBIT F of the Loan Agreement, under caption titled "Additional Bonds" have been met, as well as any additional requirements set forth in the 2018 Ordinance.

(b) ***Maintenance of Rates and Coverage.*** The Town hereby covenants that it will establish, maintain, enforce and collect rates, fees and charges for services furnished by or the use of the System as required in the provisions set forth in EXHIBIT F of the Loan Agreement under the caption titled "Rate Covenant" as well as any additional requirements provided in the 2018 Ordinance. In the event that the Income at any time is not sufficient to make the payments required by said provisions, the Town covenants to promptly increase such rates, fees and charges to an extent which will ensure compliance with said covenant.

(c) ***Enterprise Status.*** The Town has established, and covenants to continue to maintain, the System as an "enterprise" within the meaning of TABOR; provided, however, after calendar year 2023, the Town may disqualify either the System as an "enterprise" in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made pursuant to this Ordinance. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made pursuant to this Ordinance are materially, adversely affected, the Town covenants to immediately take all actions necessary to (i) qualify the System as an enterprise within the meaning of TABOR and (ii) permit the enforcement of the covenants made herein.

(d) ***Obligations Currently Secured by Net Revenue.*** As of the date of this Ordinance, the Series 2018 Note is the only other Town obligation secured by the Net Revenue.

(e) ***Findings of the Board of Trustees.*** The Board of Trustees having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants with the CWRPDA that:

(i) the Enterprise has been duly established and is operating during the current calendar year as an "enterprise" within the meaning of TABOR;

(ii) the Board of Trustees elects to apply all of the provisions of the Supplemental Public Securities Act to the execution of the Loan Agreement and to the issuance of the Bond;

(iii) the execution of the Loan Agreement and the issuance and delivery of the Bond, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Constitution and the Enabling Law, and all conditions and limitations of the Enabling Law and other applicable law relating to the execution of the Loan Agreement and the issuance and delivery of the Bond have been satisfied; and

(iv) it is in the best interests of the Town and its residents that the Bond be authorized, issued and delivered at the time, in the manner and for the purposes provided in this Ordinance.

Section 6. Approval of Miscellaneous Documents. The Mayor (or in the Mayor's absence, the Mayor Pro Tem) is hereby authorized and directed to execute the Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the financing contemplated by this Ordinance. Additionally, authorized officers and representatives as identified in Exhibit B to the Loan Agreement shall be the Mayor, Frank Just, and the Town Administrator/Clerk, Janell Sciacca.

Section 7. Amendment of Ordinance. This Ordinance may be amended only with the prior written consent of the CWRPDA.

Section 8. Limitation of Actions. Pursuant Section 11-57-212, C.R.S., no action or proceeding concerning the issuance of the Bond shall be maintained against the Town unless commenced within thirty days after the date of passage of this Ordinance.

Section 9. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board of Trustees or by the officers and employees of the Town directed toward the issuance of the Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 10. 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 11. Ordinance Irrepealable. After the Bond has been issued, this Ordinance shall constitute a contract between the CWRPDA and the Town, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 12. 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 13. Repealer. All orders, bylaws, resolutions and ordinances 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 14. Effective Date. This Ordinance shall take effect thirty days after publication following final passage.

READ, APPROVED AND FINALLY ADOPTED AT A REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, THIS 3RD DAY OF JULY, 2023.

Passed by a vote of ____ for and ____ against and ordered published.

TOWN OF FAIRPLAY, COLORADO

By ___________________________________
Frank Just, Mayor

ATTEST:

By ___________________________________
Janell Sciacca, Town Clerk

Published In: _________________________

Date of Publication: ___________________

DRINKING WATER REVOLVING FUND

LOAN AGREEMENT

BETWEEN

COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

AND

TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE

DATED

____

LOAN AGREEMENT

THIS LOAN AGREEMENT is made and entered into as of this ____ day of ______ 2023, by and between **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), a body corporate and political subdivision of the State of Colorado, and the **TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE** (the "Governmental Agency").

WITNESSETH THAT:

WHEREAS, the United States, pursuant to the federal Safe Drinking Water Act of 1996, assists state and local participation in the financing of the costs of drinking water system projects and said federal Drinking Water Act requires each state to establish a drinking water revolving fund to be administered by an instrumentality of the State.

WHEREAS, the Authority was created to initiate, acquire, construct, maintain, repair, and operate or cause to be operated certain water resource projects, and to finance the cost thereof;

WHEREAS, Section 37-95-107.8, Colorado Revised Statutes, has created a Drinking Water Revolving Fund to be administered by the Authority;

WHEREAS, the Authority has determined to loan certain sums to governmental agencies in Colorado to finance all or a portion of the costs of certain water resource projects, which loans are subject to the requirements of applicable federal law, regulations, and guidelines then in effect;

WHEREAS, the Authority has authorized certain funds to be applied through its Drinking Water Revolving Fund to qualified governmental agencies as Principal Forgiveness, as defined below;

WHEREAS, the Colorado Legislature has approved a Project Eligibility List that includes the water resource project proposed by the Governmental Agency to be financed hereunder;

WHEREAS, the Governmental Agency has made timely application to the Drinking Water Revolving Fund for a loan to finance a portion of the cost of a certain water resource project, the Authority has approved the Governmental Agency's application for a loan from available funds in the Drinking Water Revolving Fund in an amount not to exceed the amount of the loan commitment set forth in Exhibit B hereto to finance all or a portion of the cost of such project, and the Authority has approved the application of Principal Forgiveness funds to that portion of the Loan as set forth in Exhibit B;

WHEREAS, the Governmental Agency will issue its bond to the Authority to evidence said loan from the Authority;

NOW THEREFORE, for and in consideration of the award of the loan by the Authority, the Governmental Agency agrees to perform its obligations under this Loan Agreement in accordance with the conditions, covenants and procedures set forth herein and attached hereto as a part hereof, as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meanings:

"Act" means the "Colorado Water Resources and Power Development Authority Act," being Section 37-95-101 et seq. of the Colorado Revised Statutes, as the same may from time to time be amended and supplemented.

"Authority" means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State of Colorado duly created and validly existing under and by virtue of the Act.

"Authorized Officer" means, in the case of the Governmental Agency, the person whose name is set forth in Paragraph (7) of Exhibit B hereto or such other person or persons authorized pursuant to a resolution or ordinance of the governing body of the Governmental Agency to act as an Authorized Officer of the Governmental Agency to perform any act or execute any document relating to the Loan, the Governmental Agency Bond, or this Loan Agreement, whose name is furnished in writing to the Authority.

"Commencement Date" means the date of commencement of the term of this Loan Agreement, as set forth in Paragraph (1) of Exhibit B attached hereto and made a part hereof.

"Cost" means those costs that are eligible to be funded from draws under the Federal Capitalization Agreement capitalizing the Drinking Water Revolving Fund and are reasonable, necessary and allocable to the Project and are permitted by generally accepted accounting principles to be costs of the Project.

"Custodian" means Wells Fargo Bank National Association, or any successor appointed by the Authority as custodian of the direct loan portion of the Drinking Water Revolving Fund.

"Event of Default" means any occurrence or event specified in Section 5.01 hereof.

"Federal Capitalization Agreement" means the instrument or agreement established or entered into by the United States of America Environmental Protection Agency with the Authority to make capitalization grant payments pursuant to the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f et seq.)

"Governmental Agency" means the entity that is a party to and is described in the first paragraph of this Loan Agreement, and its successors and assigns.

"Governmental Agency Bond" means the bond executed and delivered by the Governmental Agency to the Authority to evidence the Loan, the form of which is attached hereto as Exhibit D and made a part hereof.

"Loan" means the loan made by the Authority to the Governmental Agency to finance or refinance a portion of the Cost of the Project pursuant to this Loan Agreement. For all purposes of this Loan Agreement, the amount of the Loan at any time shall be the amount of the loan commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part of this Loan Agreement, less any Principal Forgiveness applied to the Loan by the Authority pursuant to Exhibit B.

"Loan Agreement" means this Loan Agreement, including the Exhibits attached hereto, as it may be supplemented, modified, or amended from time to time in accordance with the terms hereof.

"Loan Closing" means the date upon which the Governmental Agency shall issue and deliver the Governmental Agency Bond.

"Loan Repayments" means the payments payable by the Governmental Agency pursuant to Section 3.03 of this Loan Agreement, including payments payable under the Governmental Agency Bond.

"Loan Term" means the term of this Loan Agreement provided in Paragraph (5) of Exhibit B attached hereto and made a part hereof, subject to the Principal Forgiveness clause set forth in Paragraph (10) of Exhibit B, if applicable. If the Loan is prepaid in its entirety pursuant to Section 3.06, the Loan Term shall automatically terminate.

"Pledged Property" means the source of repayment described in Paragraph (3) of Exhibit A to this Loan Agreement attached hereto and made a part hereof.

"Prime Rate" means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announced by Citibank, N.A. as its prime lending rate.

"Principal Forgiveness" means forgiveness of the Governmental Agency's obligation to repay that portion of the principal amount of the Loan. This may take the form of **"Up-Front Principal Forgiveness"** in the amount identified in Part (4)(a) of Exhibit B, attached hereto and made a part hereof, which amount shall be applied at Closing, or as **"Post-Closing Principal**

Forgiveness" in a manner to be effectuated in the Authority's discretion as provided in paragraph (10) of Exhibit B, or both.

"Project" means the project of the Governmental Agency described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, all or a portion of the Cost of which is financed or refinanced by the Authority through the making of the Loan under this Loan Agreement.

"Project Loan Account" means the Project Loan Account established within the Drinking Water Revolving Fund.

"System" means the water system and wastewater treatment system of the Governmental Agency, described in Paragraph (2) of Exhibit A, including the Project, described in Paragraph (1) of Exhibit A attached hereto and made a part hereof, for which the Governmental Agency is making the borrowing under this Loan Agreement, as such System may be modified, replaced, or expanded from time to time.

Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations, corporations, agencies and districts. Words importing one gender shall include the other gender.

ARTICLE II

REPRESENTATIONS AND COVENANTS OF GOVERNMENTAL AGENCY

SECTION 2.01. Representations of Governmental Agency. The Governmental Agency represents for the benefit of the Authority:

(a) Organization and Authority.

(i) The Governmental Agency is a governmental agency as defined in the Act and as described in the first paragraph of this Loan Agreement.

(ii) The Governmental Agency has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate, and maintain the System, other than licenses and permits relating to the construction and acquisition of the Project that the Governmental Agency expects to receive in the ordinary course of business; to carry on its activities relating thereto; and to undertake and complete the Project. The Governmental Agency has full legal right and authority to execute and deliver this Loan Agreement; to execute, issue, and deliver the Governmental Agency Bond; and to carry out and consummate all transactions contemplated by this Loan Agreement and the Governmental Agency Bond. The Project is on the drinking water project eligibility list approved by the General Assembly of the State of Colorado pursuant to the Act and is a project that the Governmental Agency may undertake pursuant to Colorado law, and for which the Governmental Agency is authorized by law to borrow money.

(iii) The proceedings of the Governmental Agency's governing members and voters, if a referendum is necessary, approving this Loan Agreement and the Governmental Agency Bond, and authorizing their execution, issuance, and delivery on behalf of the Governmental Agency, and authorizing the Governmental Agency to undertake and complete the Project, or to cause the same to be undertaken and completed, have been duly and lawfully adopted and approved in accordance with the laws of Colorado, and such proceedings were duly approved and published, if necessary, in accordance with applicable Colorado law, at a meeting or meetings or election if necessary that were duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout.

(iv) This Loan Agreement has been, and the Governmental Agency Bond when delivered at the Loan Closing will have been, duly authorized, executed, and delivered by an Authorized Officer of the Governmental Agency; and, assuming that the Authority has all the requisite power and authority to authorize, execute, and deliver, and has duly authorized, executed, and delivered, this Loan Agreement, this Loan Agreement constitutes, and the Governmental Agency Bond when delivered to the Authority will constitute, the legal, valid, and binding obligations of the Governmental Agency in accordance with their respective terms; and the information contained under "Description of the Loan" on Exhibit B attached hereto and made a part hereof is true and accurate in all material respects.

(b) Full Disclosure.

There is no fact that the Governmental Agency has not disclosed to the Authority in writing on the Governmental Agency's application for the Loan or otherwise that materially adversely affects the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(c) Pending Litigation.

Except as disclosed to the Authority in writing, there are no proceedings pending, or, to the knowledge of the Governmental Agency threatened, against or affecting the Governmental Agency, in any court, or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(d) Compliance with Existing Laws and Agreements.

The authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions provided for in this Loan Agreement and in the Governmental Agency Bond; the compliance by the Governmental Agency with the provisions of this Loan Agreement and the Governmental Agency Bond; and the undertaking and completion of the Project; will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon, any property or assets of the Governmental Agency pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement, or other instrument (other than the lien and charge of this Loan Agreement and the Governmental Agency Bond) to which the Governmental Agency is a party or by which the Governmental Agency, the System, or any of the property or assets of the Governmental Agency may be bound, and such action will not result in any violation of the provisions of the charter or other document pursuant to which the Governmental Agency was established, or of any laws, ordinances, resolutions, governmental rules, regulations, or court orders to which the Governmental Agency, the System, or the properties or operations of the Governmental Agency, are subject.

(e) No Defaults.

No event has occurred and no condition exists that, upon authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Governmental Agency is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party, or by which it, the System, or its property, may be bound, which violation would materially adversely affect the properties, activities, prospects, or condition (financial or otherwise) of the Governmental Agency or the System, or the ability of the Governmental Agency to make all Loan Repayments, or the ability of the Governmental Agency otherwise to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(f) Governmental Consent.

The Governmental Agency has obtained all permits and approvals required to date by any governmental body or officer for the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or for the undertaking or completion of the Project and the financing or refinancing thereof; and the Governmental Agency has complied with all applicable provisions of law requiring any notification, declaration, filing, or registration with any governmental body or officer in connection with the making, observance, and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond, or with the undertaking or completion of the Project and the financing or refinancing thereof. Other than those relating to the construction and acquisition of the Project, which the Governmental Agency expects to receive in the ordinary course of business, no consent, approval, or authorization of, or filing, registration, or qualification with, any governmental body or officer that has not been obtained is required on the part of the Governmental Agency as a condition to the authorization, execution, and delivery of this Loan Agreement and the Governmental Agency Bond, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

(g) Compliance with Law.

The Governmental Agency:

(i) is in compliance with all laws, ordinances, governmental rules, and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System; and

(ii) has obtained all licenses, permits, franchises, or other governmental authorizations presently necessary for the ownership of its property, or for the conduct of its activities that, if not obtained, would materially adversely affect the ability of the Governmental Agency to conduct its activities or to undertake or complete the Project, or the condition (financial or otherwise) of the Governmental Agency or the System.

(h) Use of Proceeds.

The Governmental Agency will apply the proceeds of the Loan from the Authority as described in Exhibit B attached hereto and made a part hereof (i) to finance all or a portion of the Cost; and (ii) where applicable, to reimburse the Governmental Agency for a portion of the Cost, which portion was paid or incurred in anticipation of reimbursement by the Authority.

SECTION 2.02. Particular Covenants of the Governmental Agency.

(a) Pledge of Source of Repayment.

The Governmental Agency irrevocably pledges and grants a lien upon the source of repayment described in Paragraph (3) of Exhibit A for the punctual payment of the principal of and the interest on the Loan, and all other amounts due under this Loan Agreement and the Governmental Agency Bond according to their respective terms.

(b) Performance Under Loan Agreement.

The Governmental Agency covenants and agrees to maintain the System in good repair and operating condition; to cooperate with the Authority in the observance and performance of the respective duties, covenants, obligations and agreements of the Governmental Agency and the Authority under this Loan Agreement; and, to comply with the covenants described in the Exhibits to this Loan Agreement.

(c) Completion of Project and Provision of Moneys Therefor.

The Governmental Agency covenants and agrees to exercise its best efforts in accordance with prudent water utility practice to complete the Project and to provide from the Pledged Property or other sources available to it all moneys, in excess of the total amount of loan proceeds it receives under the Loan, required to complete the Project.

(d) Disposition of the System.

During the Loan Term, the Governmental Agency shall not sell, lease, abandon, or otherwise dispose of, all or substantially all, or any substantial portion, of the System or any other system that provides revenues to provide for the payment of this Loan Agreement or the Governmental Agency Bond, except on ninety (90) days' prior written notice to the Authority and, in any event, shall not so sell, lease, abandon, or otherwise dispose of the same unless the following conditions are met: (i) the Governmental Agency shall assign this Loan Agreement in accordance with Section 4.02 hereof and its rights and interests hereunder to the purchaser or lessee of the System, and such purchaser or lessee shall expressly assume all duties, covenants, obligations, and agreements of the Governmental Agency under this Loan Agreement in writing; and (ii) the Authority shall by appropriate action determine that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations, and agreements under the Act, the Federal Clean Water Act, the Safe Drinking Water Act, or any agreement between the Authority or the State of Colorado relating to any capitalization grant received by the Authority or the State of Colorado under the Federal Clean Water Act or the Safe Drinking Water Act, and in its sole discretion, approve such sale, lease, abandonment, or other disposition.

(e) Inspections; Information.

The Governmental Agency shall permit the Authority to examine, visit, and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of, any accounts, books, and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments, and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith. In addition, the Governmental Agency shall provide the Authority with copies of any official statements or other forms of offering prospectus relating to any other bonds, notes, or other indebtedness of the Governmental Agency secured from the Pledged Property and issued after the date of this Loan Agreement. At the discretion of the Authority, the

Governmental Agency may be required to provide unaudited quarterly financial reports to the Authority.

(f) Cost of Project.

The Governmental Agency certifies that the Estimated Cost of the Project, as listed in Paragraph (3) of Exhibit B hereto and made a part hereof, is a reasonable and accurate estimation, and that upon direction of the Authority it shall supply the Authority with a certificate from its engineer stating that such cost is a reasonable and accurate estimation, taking into account investment income to be realized during the course of the Project, and other money that would, absent the Loan, have been used to pay the Estimated Cost of the Project.

(g) Reimbursement for Ineligible Costs.

The Governmental Agency shall promptly reimburse the Authority for any portion of the Loan that is determined not to be a Cost of the Project and that would not be eligible for funding from draws under the Drinking Water Revolving Fund. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority.

(h) Advertising.

The Governmental Agency agrees not to advertise the Project for bids until plans and specifications for the Project, if such plans and specifications require approval, have been approved by the State Department of Public Health and Environment.

(i) Commencement of Construction.

Within twelve (12) months after the Loan Closing, the Governmental Agency shall initiate construction of the Project.

(j) Interest in Project Site.

As a condition of the Loan, the Governmental Agency will demonstrate to the satisfaction of the Authority before advertising for bids for construction that the Governmental Agency has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

(k) No Lobbying.

No portion of the Loan shall be used for lobbying or propaganda as prohibited by 18 U.S.C. Section 1913 or Section 607(a) of Public Law 96-74.

(l) Operation and Maintenance of System.

The Governmental Agency covenants and agrees that it shall, in accordance with prudent water and wastewater utility practice: (i) at all times operate the properties of its System and any business in connection therewith in an efficient manner; (ii) maintain its System in good repair, working order and operating condition; (iii) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements with respect to its System so that at all times the business carried on in connection therewith shall be properly and advantageously conducted; provided, however, this covenant shall not be construed as requiring the Governmental Agency to expend any funds that are derived from sources other than the operation of its System or other receipts of such System that are not pledged under subsection (a) of this Section 2.02, and provided further that nothing herein shall be construed as preventing the Governmental Agency from doing so.

(m) Records; Accounts.

During the Loan Term, the Governmental Agency shall keep accurate records and accounts for its System (the "System Records"), separate and distinct from its other records and accounts (the "General Records"). Such System Records shall be maintained in accordance with generally accepted accounting principles, generally accepted government accounting standards related to the reporting of infrastructure assets and System Records and General Records shall be made available for inspection by the Authority at any reasonable time.

(n) Audits.

(i) If the Governmental Agency's System Records or General Records are audited annually by an independent accountant, then it shall furnish a copy of such annual audit(s) including all written comments and recommendations of the accountant preparing the audit to the Authority within 210 days of the close of the fiscal year audited, and the Governmental Agency shall cause its independent auditor to file with the Authority a report to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement, which report may be a part of the annual audit or a separate document.

(ii) If the Governmental Agency's annual revenues are less than $100,000, and the Governmental Agency elects in accordance with Colorado law to file a short form audit exemption in lieu of performing an annual audit, then it shall provide the Authority a copy of the Exemption from Audit Form completed by a person skilled in governmental accounting practices, together with a report, also completed by a person skilled in governmental accounting practices, to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement within 210 days of the close of the fiscal year.

(iii) If the Governmental Agency's annual revenues are more than $100,000, but less than $500,000, and the Governmental Agency elects in accordance with Colorado law to file a long form audit exemption in lieu of performing an annual audit, then it shall provide the Authority a copy of the Exemption from Audit Form completed by an independent accountant with knowledge of governmental accounting practices, together with a report, also completed by an independent accountant with knowledge of governmental accounting practices, to the effect that the Governmental Agency is not in default of its Rate Covenant, Paragraph (1) of Exhibit F; Operations and Maintenance Reserve Fund Covenant, Paragraph (5) of Exhibit F; or Lien Representation, Paragraph (4) of Exhibit F under this Loan Agreement within 210 days of the close of the fiscal year.

(o) Insurance.

During the Loan Term, the Governmental Agency shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs providing against risk of direct physical loss, damage, or destruction of its System, at least to the extent that similar insurance is usually carried by utilities constructing, operating, and maintaining utility system facilities of the nature of the Governmental Agency's System, including liability coverage. The Governmental Agency shall pay all insurance premiums for coverage required hereby from revenues derived from the operation of the System. Nothing herein shall be deemed to preclude the Governmental Agency from asserting against any party, other than the Authority, a defense that may be available to the Governmental Agency, including, without limitation, a defense of governmental immunity.

(p) Notice of Material Adverse Change.

During the Loan Term, (i) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its System, or its ability to observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement; (ii) the Governmental Agency shall promptly notify the Authority of any material adverse change in the activities, prospects, or condition (financial or otherwise) of the Governmental Agency relating to its ability to make all Loan Repayments from the Pledged Property, or its ability to otherwise observe and perform its duties, covenants, obligations, and agreements under this Loan Agreement and the Governmental Agency Bond.

(q) Hiring Requirements.

The Governmental Agency agrees to comply with the requirements found at Title 8, Article 17, and Title 8, Article 17.5, Colorado Revised Statutes.

(r) Additional Covenants and Requirements.

Additional covenants and requirements are included on Exhibit F attached hereto and made a part hereof. The Governmental Agency agrees to observe and comply with each such additional covenant and requirement included on Exhibit F.

(s) Continuing Representations.

The representations of the Governmental Agency contained herein shall be true at the time of the execution of this Loan Agreement and the Governmental Agency covenants not to take any action that would cause them not to be true at all times during the term of this Loan Agreement.

(t) Capacity Development.

The Governmental Agency covenants to maintain its technical, financial, and managerial capability to ensure compliance with the requirements of the Safe Drinking Water Act of 1996 under Section 1452(a)(3)(A)(i).

(u) Archeological Artifacts.

In the event that archeological artifacts or historical resources are unearthed during construction excavation, the Governmental Agency shall stop or cause to be stopped, construction activities and will notify the State Historic Preservation Office and the Authority of such unearthing.

ARTICLE III

LOAN TO GOVERNMENTAL AGENCY; AMOUNTS PAYABLE; GENERAL AGREEMENTS

SECTION 3.01. The Loan. The Authority hereby agrees to loan and disburse to the Governmental Agency in accordance with Section 3.02 hereof, and the Governmental Agency agrees to borrow and accept from the Authority, the Loan in the principal amount equal to the Loan Commitment set forth in Paragraph (4) of Exhibit B attached hereto and made a part hereof as such Loan Commitment may be revised to reflect a reduction in the Cost of the Project prior to the initial Loan Repayment; provided, however, that the Authority shall be under no obligation to make the Loan if (i) the Governmental Agency does not deliver its Governmental Agency Bond to the Authority on the Loan Closing, or (ii) an Event of Default has occurred and is continuing under this Loan Agreement. The Governmental Agency shall use the proceeds of the Loan strictly in accordance with Section 2.01(h) hereof.

SECTION 3.02. Disbursement of the Loan. The Authority has created in the Drinking Water Revolving Fund a Project Loan Account for this Project from which the Costs of the Project shall be paid. Amounts shall be transferred into the Project Loan Account and disbursed to the Governmental Agency upon receipt of a requisition executed by an Authorized Officer, and approved by the Authority and the State Department of Public Health and Environment, in the form set forth in Exhibit G; provided that the Disbursement of the Loan may be withheld if the Governmental Agency is not complying with any of the covenants and conditions in the Loan Agreement.

SECTION 3.03. Amounts Payable.

(a) The Governmental Agency shall repay the principal due on the Loan, after accounting for the reduction in the principal of the Loan due to application of Up-Front Principal Forgiveness at Closing, **semi-annually on May 1st and November 1st** in accordance with the schedule set forth on Exhibit C attached hereto and made a part hereof, as the same may be amended or modified, commencing on the Loan Repayment Commencement Date set forth in Paragraph (8) of Exhibit B.

The Governmental Agency shall execute the Governmental Agency Bond to evidence its obligations to make Loan Repayments and the obligations of the Governmental Agency under the Governmental Agency Bond shall be deemed to be amounts payable under this Section 3.03. Each Loan Repayment shall be deemed to be a credit against the corresponding obligation of the Governmental Agency under this Section 3.03 and shall fulfill the Governmental Agency's obligation to pay such amount hereunder and under the Governmental Agency Bond. Each payment made pursuant to this Section 3.03 shall be applied to the payment of principal as set forth in Exhibit C.

(b) In addition to the payments required by subsection (a) of this Section 3.03, the Governmental Agency shall pay a late charge for any payment that is received by the Authority later than the tenth (10th) day following its due date, in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on such late payment from its due date to the date it is actually paid; provided, however, that such late charge shall not be in excess of the maximum rate permitted by law as of the date hereof.

(c) Loan Repayments pursuant to this Section 3.03 shall be made by electronic means (either by bank wire transfer or by Automated Clearing House "ACH" transfer).

SECTION 3.04. Loan Repayment – Principal Forgiveness. The Authority has determined to apply Up-Front Principal Forgiveness to the principal amount of the Loan in an amount identified in Exhibit B, Part (4)(a). The amount of Up-Front Principal Forgiveness set forth in Exhibit B, Part (4)(a), will not need to be repaid. Further, at the discretion of the Authority, and if such funds are available and the Governmental Agency is deemed eligible, the Loan may be forgiven in an amount up to 100% of the principal amount of the Loan pursuant to the terms and conditions of the current Capitalization Grant, in a manner to be effectuated as set forth in Paragraph 10 of Exhibit B attached hereto and made a part hereof. At the Authority's sole discretion, and subject to Exhibit B, Paragraph 10(c), and only if the amount to be forgiven is 100%, the Authority also may waive payment of any interest accrued on the amount of principal forgiven through the Effective Date of Post-Closing Principal Forgiveness (defined in Exhibit B, Paragraphs 10(a)(i) and (b)(i)).

SECTION 3.05. Unconditional Obligations. The Loan Repayments and all other payments required hereunder are payable solely from the Pledged Property. The obligation of the Governmental Agency to make the Loan Repayments and all other payments required hereunder shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments due under the Loan Agreement remain unpaid regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of the purpose, any change in the laws of the United States of America or of the State of Colorado or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement or any rights of set-off, recoupment, abatement or counterclaim that the Governmental Agency might otherwise have against the Authority or any other party or parties; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 3.06. Disclaimer of Warranties and Indemnification. The Governmental Agency acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability, or fitness for particular purpose, or fitness for any use, of the Project or any portions thereof, or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its agents be liable or responsible for any direct, incidental, indirect, special, or consequential damages in connection with or arising out of this Loan Agreement, or the Project, or the existence, furnishing, functioning, or use of the Project, or any item or products or services provided for in this Loan Agreement; and (iii) to the extent authorized by law, the Governmental Agency shall indemnify, save, and hold harmless the Authority against any and all claims, damages, liability, and court awards, including costs, expenses, and attorney fees incurred as a result of any act or omission by the Governmental Agency, or its employees, agents, or subcontractors pursuant to the terms of this Loan Agreement, provided, however, that the provisions of this clause (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the Colorado Governmental Immunity Act (Section 24-10-101, et seq. C.R.S.), or under the laws of the United States or the State of Colorado.

SECTION 3.07. Option to Prepay Loan Repayments. The Governmental Agency may prepay the Loan Repayments, in whole or in part without penalty upon prior written notice (unless otherwise waived by the Authority) of not less than thirty (30) days. Prepayments shall be applied first to accrued interest and then to principal on the Loan. The Authority will amend Exhibit C to reflect any prepayment of the principal amount of the Loan.

SECTION 3.08. Source of Payment of Governmental Agency's Obligations. The Authority and the Governmental Agency agree that the amounts payable by the Governmental Agency under this Loan Agreement, including, without limitation, the amounts payable by the Governmental Agency pursuant to Section 3.03, Section 3.05, Section 3.06, and Section 5.04 of this Loan Agreement are payable solely from the Pledged Property, and are not payable from any other source whatsoever; provided, however, that the Governmental Agency at its option, may elect to make payment from any source available to it.

SECTION 3.09. Delivery of Documents. Concurrently with the execution and delivery of this Loan Agreement, the Governmental Agency will cause to be delivered to the Authority each of the following items:

(a) an opinion of the Governmental Agency's counsel substantially in the form set forth in Exhibit E-1 hereto (such opinion or portions of such opinion may be given by one or more counsel); provided, however, that the Authority may in its discretion permit variances in such opinion from the form or substance of such Exhibit E-1 if such variances are not to the material detriment of the interests of the Authority;

(b) an opinion of the Governmental Agency's Bond Counsel substantially in the form set forth in Exhibit E-2 hereto. Such opinion must be rendered by Bond Counsel listed in the Directory of Bond Counsel published by the Bond Buyer (the "Red Book");

(c) executed counterparts of this Loan Agreement;

(d) copies of the resolutions or ordinances of the governing body of the Governmental Agency authorizing the execution and delivery of this Loan Agreement and the Governmental Agency Bond, certified by an Authorized Officer of the Governmental Agency; and

(e) such other certificates, documents, opinions, and information as the Authority may require.

Upon receipt of the foregoing documents, the Authority shall obligate the amount of the Loan Commitment set forth in Paragraph (4) of Exhibit B, and make the amount of the Loan available for the Project in accordance with the terms of this Loan Agreement.

ARTICLE IV

ASSIGNMENT

SECTION 4.01. Assignment and Transfer by Authority. The Governmental Agency expressly acknowledges that other than the right, title, and interest of the Authority under Section 3.05, Section 5.04, and Section 5.07, all right, title, and interest of the Authority in, to, and under this Loan Agreement and the Governmental Agency Bond, including, without limitation, the right to receive payments required to be made by the Governmental Agency hereunder, and to compel or otherwise enforce observance and performance by the Governmental Agency of its other duties, covenants, obligations, and agreements hereunder, may be transferred, assigned, and reassigned in whole or in part by the Authority at its sole discretion to one or more assignees or subassignees at any time subsequent to their execution without the necessity of obtaining the consent of, but after giving prior written notice to, the Governmental Agency.

The Authority shall retain the right to compel or otherwise enforce observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements under Section 3.05 and Section 5.04.

SECTION 4.02. Assignment by Governmental Agency. Neither this Loan Agreement nor the Governmental Agency Bond may be assigned by the Governmental Agency for any reason, unless the following conditions shall be satisfied: (i) the Authority shall have approved said assignment in writing; (ii) the assignee shall be a governmental agency as defined by the Act, and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Governmental Agency's duties, covenants, agreements, and obligations under the Loan Agreement; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations, or agreements of the Governmental Agency under the Loan Agreement; and (iv) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Federal Capitalization Agreement or any capitalization grant received by the Authority or the State under the Safe Drinking Water Act.

No assignment shall relieve the Governmental Agency from primary liability for any of its obligations under this Loan Agreement, and in the event of such assignment, the Governmental Agency shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

ARTICLE V

DEFAULTS AND REMEDIES

SECTION 5.01. Event of Default. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

(a) failure by the Governmental Agency to pay, or cause to be paid, any Loan Repayment required to be paid hereunder when due, which failure shall continue for a period of thirty (30) days;

(b) failure by the Governmental Agency to make, or cause to be made, any required payments of interest and principal, redemption premium, if any, and interest on any bonds, notes, or other obligations of the Governmental Agency for borrowed money (other than the Loan and the Governmental Agency Bond), after giving effect to the applicable grace period, the payments of which are secured by the Pledged Property;

(c) failure by the Governmental Agency to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement other than as referred to in Paragraph (a) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Governmental Agency; provided, however, that if the failure stated in such notice is correctable, but cannot be corrected within the applicable period, the Authority may consent to an extension of such time if corrective action is instituted by the Governmental Agency within the applicable period and diligently pursued until the Event of Default is corrected;

(d) any representation made by or on behalf of the Governmental Agency contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement or the Loan, is false or misleading in any material respect; or

(e) (i) a petition is filed by or against the Governmental Agency under any federal or state bankruptcy or insolvency law, or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Governmental Agency such petition shall be dismissed within thirty (30) days after such filing, and such dismissal shall be final and not subject to appeal; or (ii) the Governmental Agency shall become insolvent, or bankrupt or make an assignment for the benefit of its creditors; or (iii) a custodian (including, without limitation, a receiver, liquidator, or trustee of the Governmental Agency or any of its property) shall be appointed by court order, or take possession of the Governmental Agency, or its property or assets, if such order remains in effect, or such possession continues, for more than thirty (30) days.

SECTION 5.02. Notice of Default. The Governmental Agency shall give the Authority prompt telephonic notice of the occurrence of any Event of Default referred to in Section 5.01 at such time as any senior administrative or financial officer of the Governmental Agency becomes aware of the existence thereof. Any telephonic notice pursuant to this Section 5.02 shall be confirmed by the Governmental Agency in writing as soon as practicable.

SECTION 5.03. Remedies on Default. Whenever an Event of Default referred to in Section 5.01 hereof shall have occurred and be continuing, the Authority shall have the right to withhold disbursement of Loan funds remaining, and take such other action at law or in equity as may appear necessary to enforce the performance and observance of any duty, covenant, obligation, or agreement of the Governmental Agency hereunder, including, without limitation, appointment ex parte of a receiver of the System.

SECTION 5.04. Attorney's Fees and Other Expenses. In the Event of Default, the Governmental Agency shall on demand pay to the Authority the reasonable fees and expenses of attorneys, and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan Repayments or any other sum due hereunder, or in the enforcement of the performance or observation of any other duties, covenants, obligations, or agreements of the Governmental Agency.

SECTION 5.05. Application of Moneys. Any moneys collected by the Authority pursuant to Section 5.03 hereof shall be applied (a) first, to pay any attorney's fees, or other fees and expenses owed by the Governmental Agency pursuant to Section 5.04 hereof, (b) second, to pay principal due and payable on the Loan, and (c) third, to pay any other amounts due and payable under this Loan Agreement.

SECTION 5.06. No Remedy Exclusive; Waiver; Notice. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power accruing upon any Event of Default shall impair any such right, remedy, or power, or shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article V.

SECTION 5.07. Retention of Authority's Rights. Notwithstanding any assignment or transfer of this Loan Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Governmental Agency at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Governmental Agency to the Authority pursuant to Section 5.04, Section 3.03, and Section 3.05 hereof.

SECTION 5.08. Default by the Authority. In the event of any default by the Authority under any covenant, agreement, or obligation of this Loan Agreement, the Governmental Agency's remedy for such default shall be limited to injunction, special action, action for specific performance, or any other available equitable remedy, designed to enforce the performance or observance of any duty, covenant, obligation, or agreement of the Authority hereunder, as may be necessary or appropriate. The Authority shall on demand pay to the Governmental Agency the reasonable fees and expenses of attorneys, and other reasonable expenses, in the enforcement of such performance or observation.

ARTICLE VI

MISCELLANEOUS

SECTION 6.01. Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand-delivered or mailed by registered or certified mail, postage prepaid, to the Governmental Agency at the address specified on Exhibit B attached hereto and made a part hereof, and to the Authority, at the following address:

Colorado Water Resources and Power
Development Authority
1580 N. Logan Street, Suite 820
Denver, Colorado 80203
Attention: Executive Director

Such address may be changed by notice in writing.

SECTION 6.02. Binding Effect. This Loan Agreement shall inure to the benefit of, and shall be binding upon, the Authority and the Governmental Agency, and their respective successors and assigns.

SECTION 6.03. Severability. In the event any provision of this Loan Agreement shall be held illegal, invalid, or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable, or otherwise affect, any other provision hereof.

SECTION 6.04. Amendments, Supplements and Modifications. This Loan Agreement may not be amended, supplemented, or modified without the prior written consent of the Authority and the Governmental Agency.

SECTION 6.05. Execution in Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

SECTION 6.06. Applicable Law and Venue. This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, including the Act. Venue for any action seeking to interpret or enforce the provisions of this Loan Agreement shall be in the Denver District Court.

SECTION 6.07. Consents and Approvals. Whenever the written consent or approval of the Authority shall be required under the provisions of this Loan Agreement, such consent or approval may only be given by the Authority unless otherwise provided by law, or by rules, regulations or resolutions of the Authority.

SECTION 6.08. Captions. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit, or describe, the scope or intent of any provisions or sections of this Loan Agreement.

SECTION 6.09. Further Assurances. The Governmental Agency shall, at the request of the Authority, authorize, execute, acknowledge, and deliver, such further resolutions, conveyances, transfers, assurances, financing statements, and other instruments, as may be necessary or desirable for better assuring, conveying, granting, assigning, and confirming, the rights and agreements, granted or intended to be granted, by this Loan Agreement and the Governmental Agency Bond.

SECTION 6.10. Recitals. This Loan Agreement is authorized pursuant to and in accordance with the Constitution of the State of Colorado and all other laws of the State of Colorado thereunto enabling. Specifically, but not by way of limitation, this Loan Agreement is authorized by the Governmental Agency pursuant to Title 37, Article 45.1 C.R.S., and Title 11, Article 57, Part 2, C.R.S and shall so recite in the Governmental Agency Bond. Such recitals shall conclusively impart full compliance with all provisions and limitations of such laws and shall be conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond, and the Governmental Agency Bond delivered by the Governmental Agency to the Authority containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

(SEAL)

By:______________________________________
Executive Director

ATTEST:

By: _________________________
Assistant Secretary

TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE

(SEAL)

By:______________________________________
Mayor

ATTEST:

By: _________________________
Town Clerk

IN WITNESS WHEREOF, the Authority and the Governmental Agency have caused this Loan Agreement to be executed, sealed and delivered, as of the Commencement Date set forth on Exhibit B hereto.

COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

(SEAL)

By:____________________________________
Executive Director

ATTEST:

By: ________________________
Assistant Secretary

TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE

(SEAL)

By:____________________________________
Mayor

ATTEST:

By: ________________________
Town Clerk

EXHIBIT A

(1) Description of the Project

The project consists of adding cartridge filtration to the water treatment plant, upgrading instrumentation and controls, and rehabilitation to the infiltration gallery.

(2) Description of the System

"*System*" shall mean, the combined water and wastewater system owned and operated by the Governmental Agency, comprising the sanitation activities, services and facilities of the Governmental Agency related to collection, pretreatment, treatment, advanced treatment, re-use and discharge of sewerage and wastewaters and the municipal water system of the Governmental Agency, together with all equipment and improvements to the System, including, without limitation, the Project, and any other property or facilities hereafter specifically added to the System by ordinance of the Board of Trustees of the Governmental Agency.

(3) Pledged Property

The Pledged Property shall consist of Net Revenue, as defined below:

"*Net Revenue*" means the Income remaining after deducting the Operation and Maintenance Expenses.

"*Income*" means all income from rates, fees or charges for the services furnished by, or the direct or indirect use of, the System, together with any interest income of the System not specifically excluded from the lien of the Ordinance of the Board of Trustees of the Governmental Agency approving the execution and delivery of this Loan Agreement and the Governmental Agency Bond. To the extent provided by resolution or ordinance of the Governmental Agency, the Income may exclude particular funds or revenues and may also include, for the purpose of determining compliance with the payment, accumulation and coverage requirements hereof, any other funds contributed to the System for use in paying the Loan Repayments, the debt service requirements of any obligations of the Governmental Agency that are on a parity with the Governmental Agency Bond or Operation and Maintenance Expenses.

"*Operation and Maintenance Expenses*" means all reasonable and current expenses of the Governmental Agency, paid or accrued, of operating, maintaining and repairing the System, and shall include, without limiting the generality of the foregoing, legal and overhead expenses of the various Governmental Agency departments directly related and reasonably allocable to the administration of the System, insurance premiums, the reasonable charges of depository banks and paying agents, contractual services, professional services required by the Ordinance of the Board of Trustees of the Governmental Agency approving the execution and delivery of this Loan Agreement and the Governmental Agency Bond or any other applicable requirement, salaries and administrative expenses, labor and the cost of materials and supplies used for current operation, but shall not include any allowance for depreciation, liabilities incurred by the Town as the result of its negligence (as determined by a court of law) in the operation of the System, improvements, extensions, enlargements or betterments or any charges for the accumulation of reserves for capital replacements.

EXHIBIT B

DESCRIPTION OF THE LOAN

(1) Commencement Date:

(2) Name and Address of Governmental Agency:

Town of Fairplay, Colorado, Acting By And Through Its Water and Wastewater Enterprise
901 Main Street; P.O. Box 267
Fairplay, CO 80440

(3) Estimated Cost of the Project: $500,000.00

(4) Maximum Principal Amount of Loan Commitment: $300,150.00

(a) Up-Front Principal Forgiveness to be Applied at Closing: $163,306.13

(b) Maximum Total Principal to be Repaid after Application of Up-Front Principal Forgiveness: $136,843.87

(5) Loan Term: 20 years.

(6) Interest Rate: 3.00% annually

(7) Authorized Officers: Mayor Frank Just and Town Administrator/Clerk Janell Sciacca

(8) Loan Repayment Commencement Date: 11/1/2023

(9) Execution Date:

(10) Principal Forgiveness:

(a) Up-Front Principal Forgiveness: The amount of principal of the Loan identified as Up-Front Principal Forgiveness in Part (4)(a) above will be forgiven at Closing, provided the Governmental Agency has met each of its obligations and covenants necessary to effect Closing. Exhibit C to the Loan Agreement sets forth the repayment schedule after allowing for the reduction of total Loan principal by the amount of Up-Front Principal Forgiveness applied.

(b) Post-Closing Principal Forgiveness: At the discretion of the Authority, and if such funds are available and the Governmental Agency is deemed eligible, the Loan may be forgiven in an amount up to 100% of the outstanding principal amount of the Loan. At the Authority's sole discretion, and subject to subparagraph (10)(b)(i), below, and only if the amount forgiven is 100% of the outstanding principal of the Loan, the Authority also may waive payment of interest accrued on the amount of principal forgiven through the Effective Date of Post-Closing Principal Forgiveness (defined in Paragraph 10(b)(i)). The Authority will provide written notice (the "Notice of Post-Closing Principal

Forgiveness") to the Governmental Agency once the Authority determines to exercise its discretion to grant Post-Closing Principal Forgiveness, that funds are available, and that the Governmental Agency is eligible for such action. The Notice of Post-Closing Principal Forgiveness will set forth the amount, up to 100%, of the outstanding principal amount of the Loan to be forgiven, and whether any accrued interest will be waived. Upon the Governmental Agency's receipt of the Notice of Post-Closing Principal Forgiveness from the Authority, the following terms shall apply:

(i) If 100% of the principal amount of the Loan is forgiven, then:

A. The award of Post-Closing Principal Forgiveness shall be effective as of the date of the Notice of Post-Closing Principal Forgiveness (the "Effective Date of 100% Principal Forgiveness");

B. The Authority shall amend the repayment schedule set forth in Exhibit C to acknowledge the Post-Closing Principal Forgiveness award and the Effective Date of 100% Principal Forgiveness and the waiver of any accrued interest as applicable;

C. The Authority shall amend the Loan Term to extend from the date of Loan Execution until the date the Water Quality Control Division of the Colorado Department of Health and Environment (the "WQCD") issues certification that all required documents have been submitted and the Governmental Agency has met all Project and Loan requirements;

D. The Governmental Agency Bond will be released at the expiration of the Loan Term, as amended; and

E. As of the Effective Date of 100% Principal Forgiveness, the following Loan Agreement sections will no longer apply: Section 2.02. (n) Audits; Section 3.03. Amounts Payable; Exhibit A (3) Pledged Property; Exhibit F (1) Rate Covenant; Exhibit B (5) Loan Term; Exhibit B (6) Interest Rate; Exhibit B (8) Loan Repayment Commencement; Exhibit C Repayment Schedule; and all references thereof.

(ii) If the Governmental Agency receives Post-Closing Principal Forgiveness for less than 100% of the outstanding principal amount of the Loan, then:

A. The effective date of the Post-Closing Principal Forgiveness shall be the date of the Notice of Post-Closing Principal Forgiveness from the Authority (the "Effective Date of Partial Principal Forgiveness"); and

B. Upon the Effective Date of Partial Principal Forgiveness, the Loan Term shall remain as set forth in this Agreement, but the Authority shall amend the Loan Repayment Schedule set forth in Exhibit C to include a revised amortization schedule for the remaining principal amount.

C. If the Effective Date of Principal Forgiveness, either 100% or Partial, occurs after the Loan Repayment Commencement Date, and the Governmental Agency has paid one or more of the scheduled payments, the Post-Closing Principal Forgiveness, as well as any waived interest accrued on the amount of principal forgiven through the Effective Date of Principal Forgiveness, will be net of any such payments. The Authority will not reimburse the Governmental Agency any amount paid by the Governmental Agency.

EXHIBIT C

LOAN REPAYMENT SCHEDULE

EXHIBIT D

GOVERNMENTAL AGENCY BOND

FOR VALUE RECEIVED, the undersigned **TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE** (the "Governmental Agency"), hereby promises to pay to the order of the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority") in the principal amount of Three Hundred Thousand, One Hundred and Fifty and 00/100 Dollars ($300,150), less a $163,306.13 reduction in the total principal of the Loan due to the application of Bipartisan Infrastructure Law ("BIL") Up-Front Principal Forgiveness as in the amount set forth in Exhibit B, Part (4)(a) of the Loan Agreement dated as of____, 2023, by and between the Authority and the Governmental Agency (the "Loan Agreement"), making the Maximum Total Principal to be Repaid after Application of Up-Front Principal Forgiveness One Hundred Thirty Six Thousand Eight Hundred Forty Three and 87/100 Dollars ($136,843.87) as set forth in Exhibit B, Part (4)(b) of the Loan Agreement, or such lesser amount as shall be loaned to the Governmental Agency pursuant to the Loan Agreement, at the times and in the amounts determined as provided in the Loan Agreement, at Three percent interest, subject to late charges on late payments as provided in Section 3.03 (b) of the Loan Agreement, and payable on the dates and in the amounts determined as provided in the Loan Agreement.

This Governmental Agency Bond is issued pursuant to the Loan Agreement and is issued in consideration of the loan made thereunder (the "Loan") and to evidence the obligations of the Governmental Agency set forth in Section 3.03 thereof. This Governmental Agency Bond is subject to assignment or endorsement in accordance with the terms of the Loan Agreement. All of the definitions, terms, conditions, and provisions of the Loan Agreement are, by this reference thereto, incorporated herein as a part of this Governmental Agency Bond.

Pursuant to the Loan Agreement, disbursements to the Governmental Agency shall be made in accordance with written instructions upon the receipt by the Authority of requisitions from the Governmental Agency executed and delivered in accordance with the requirements set forth in Section 3.02 of the Loan Agreement.

This Governmental Agency Bond is entitled to the benefits, and is subject to the conditions, of the Loan Agreement. The obligations of the Governmental Agency to make the payments required hereunder shall be absolute and unconditional without any defense or right of set-off, counterclaim, or recoupment by reason of any default by the Authority under the Loan Agreement, or under any other agreement between the Governmental Agency and the Authority, or out of any indebtedness or liability at any time owing to the Governmental Agency by the Authority, or for any other reason.

This Governmental Agency Bond is subject to optional prepayment under the terms and conditions, and in the amounts, provided in Section 3.07 of the Loan Agreement. The obligation of the Governmental Agency to make payments under the Loan Agreement and this Governmental Agency Bond is payable solely from the Pledged Property, except for reserves created in connection with the Loan.

This Governmental Agency Bond does not constitute a debt or an indebtedness of the Governmental Agency within the meaning of any constitutional or statutory limitation or provision, and shall not be considered or held to be a general obligation of the Governmental Agency. The payment of this Governmental Agency Bond is not secured by an encumbrance, mortgage or other pledge of property except for such property and moneys pledged for the payment of the Governmental Agency Bond.

For the payment of this Governmental Agency Bond, the Governmental Agency shall enforce the Rate Covenant set forth in Paragraph (1) of Exhibit F to the Loan Agreement, shall promptly collect all revenues of the System, and shall take all necessary action to collect any revenues that are in default.

If an "Event of Default" as defined in Section 5.01 of the Loan Agreement occurs, the remedies on default set forth in Section 5.03 of the Loan Agreement shall be available to enforce the obligations of the Governmental Agency that are evidenced by this Governmental Agency Bond.

This Governmental Agency Bond is issued under the authority of and in full conformity with the Constitution and laws of the State of Colorado, including without limitation, Article X, Section 20 of the Constitution, Title 31, Article 35, Part 4, C.R.S.; Title 37, Article 45.1; certain provisions of Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Public Securities Act"), and pursuant to the Loan Agreement. Pursuant to §11-57-210, of the Supplemental Public Securities Act, this recital is conclusive evidence of the validity and regularity of the issuance of the Governmental Agency Bond after its delivery for value. Pursuant to §31-35-413, C.R.S., this recital conclusively imparts full compliance with all the provisions of said statutes, and this Governmental Agency Bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value.

IN WITNESS WHEREOF, the Governmental Agency has caused this Governmental Agency Bond to be duly executed, sealed and delivered, as of this ___ day of __________ 2023.

(SEAL)

TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER **ENTERPRISE**

ATTEST:

By: ______________________________
Mayor

By: _________________________
Town Clerk

EXHIBIT E-1

OPINION OF GOVERNMENTAL AGENCY COUNSEL

[LETTERHEAD OF COUNSEL TO GOVERNMENTAL AGENCY]

[DATED : Closing Date]

Colorado Water Resources and
Power Development Authority

Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as counsel to **TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution and delivery by the Governmental Agency of its Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and the [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

(a) the Loan Agreement, dated as of ___________ (the "Loan Agreement") by and between the Authority and the Governmental Agency;

(b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement and the execution, issuance and delivery thereof on behalf of the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

(c) the Governmental Agency Bond, dated as of _____________ (the "Governmental Agency Bond") issued by the Governmental Agency to the Authority to evidence the Loan(as defined in the Loan Agreement;

(d) the proceedings of the governing body of the Governmental Agency relating to the issuance of the Governmental Agency Bond and the execution, issuance and delivery thereof to the

Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents");

(e) all outstanding instruments relating to the bonds, notes or other indebtedness of or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation and is a (________________) of the State of Colorado with the full legal right and authority to execute the Loan Documents.

(2) The Governmental Agency has the full legal right and authority to carry on the business of the System (as defined in the Loan Agreement) as currently being conducted and as proposed to be conducted, and to undertake and complete the Project.

(3) The proceedings of the Governmental Agency's governing body authorizing the Governmental Agency to undertake and complete the Project were duly and lawfully adopted and approved in accordance with [applicable resolution] applicable Colorado law at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(4) The proceedings of the Governmental Agency's governing body approving the Loan Documents and authorizing their execution, issuance and delivery on behalf of the Governmental Agency have been duly and lawfully adopted and approved in accordance with [the applicable resolution] applicable Colorado law, at meetings duly called pursuant to necessary public notice and held in accordance with applicable Colorado law, and at which quorums were present and acting throughout and were published in accordance with applicable Colorado law.

(5) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, the authorization, execution and delivery of the Loan Documents by the Governmental Agency, the observation and performance by the Governmental Agency of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Governmental Agency or its property or assets

or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust, ordinance, order, or other agreement to which the Governmental Agency is a party or by which it, the System, or its property or assets is bound.

(6) To the best of [insert "my" or "our"] knowledge, after such investigation as [insert "I" or "we"] have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery and performance of the Loan Documents and the undertaking and completion of the Project, other than licenses and permits relating to the construction and acquisition of the Project which [insert "I" or "we"] expect the Governmental Agency to receive in the ordinary course of business, have been obtained or made.

(7) To the best of my knowledge, after such investigation as I have deemed appropriate, except as disclosed in writing to the Authority, there is no litigation or other proceeding pending or threatened in any court or other tribunal of competent jurisdiction (either State or Federal) that (1) questions the creation, organization or existence of the Governmental Agency; or the validity, legality or enforceability of the Loan Documents; or the undertaking or completion of the Project; or (2) if adversely determined, could (a) materially adversely affect (i) the financial position of the Governmental Agency; (ii) the ability of the Governmental Agency to perform its obligations under the Loan Documents; (iii) the security for the Loan Documents; or (iv) the transactions contemplated by the Loan Documents; or (b) impair the ability of the Governmental Agency to maintain and operate its system.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. [insert "I" or "We"] express no opinion as to any matter not set forth in the numbered paragraphs herein.

[insert "I" or "We"] hereby authorize Carlson, Hammond, & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,

EXHIBIT E-2

OPINION OF GOVERNMENTAL AGENCY BOND COUNSEL

[LETTERHEAD OF BOND COUNSEL TO GOVERNMENTAL AGENCY]

[DATED: Closing Date]

Colorado Water Resources and
Power Development Authority

Gentlemen:

[insert "I am an attorney" or "We are attorneys"] admitted to practice in the State of Colorado and [insert "I" or "we"] have acted as bond counsel for **TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS __________ ENTERPRISE** (the "Governmental Agency"), of the State of Colorado, which has entered into a Loan Agreement (as hereinafter defined) with the **COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY** (the "Authority"), and have acted as such in connection with the authorization, execution, and delivery by the Governmental Agency of the Loan Agreement and Governmental Agency Bond (as hereinafter defined).

In so acting [insert "I" or "we"] have examined the Constitution and laws of the State of Colorado and [charter/by-laws/proceedings relating to organization] of the Governmental Agency. [insert "I" or "We"] have also examined originals, or copies certified or otherwise identified to [insert "my" or "our"] satisfaction, of the following:

(a) the Loan Agreement, dated as of _____________ (the "Loan Agreement"), by and between the Authority and the Governmental Agency;

(b) the proceedings of the governing body of the Governmental Agency relating to the approval of the Loan Agreement, and the execution, issuance, and delivery thereof by the Governmental Agency, and the authorization of the undertaking and completion of the Project (as defined in the Loan Agreement);

(c) the Governmental Agency Bond, dated as of _____________ (the "Governmental Agency Bond"), issued by the Governmental Agency to the Authority to evidence the Loan (as defined in the Loan Agreement);

(d) the proceedings of the governing body of the Governmental Agency relating to the issuance, of the Governmental Agency Bond, and the execution, issuance, and delivery thereof to the Authority (the Loan Agreement and the Governmental Agency Bond are referred to herein collectively as the "Loan Documents"); and

(e) all outstanding instruments relating to the bonds, notes, or other indebtedness of, or relating to the Governmental Agency.

[insert "I" or "We"] have also examined and relied upon originals, or copies certified or otherwise authenticated to [insert "my" or "our"] satisfaction, of such other records, documents, certificates, and other instruments, and made such investigation of law as in [insert "my" or "our"] judgment [insert "I" or "we"] have deemed necessary or appropriate to enable [insert "me" or "us"] to render the opinions expressed below.

Based upon the foregoing, [insert "I am" or "we are"] of the opinion that:

(1) The Governmental Agency is a "governmental agency" within the meaning of the Authority's enabling legislation.

(2) The Governmental Agency has full legal right and authority to execute the Loan Documents and the Governmental Agency has full legal right and authority to observe and perform its respective duties, covenants, obligations, and agreements thereunder; subject, however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment, or other similar laws affecting creditors' rights generally (Creditor's Rights Limitations), heretofore or hereafter enacted.

(3) The Governmental Agency has pledged the Pledged Property described in Paragraph (3) of Exhibit A to the Loan Agreement for the punctual payment of the principal on the Loan and all other amounts due under the Loan Documents according to their respective terms, and the Authority has a first lien on such Pledged Property, but not an exclusive first lien. No filings or recordings are required under the Colorado Uniform Commercial Code in order to provide a first lien on such Pledged Property, and all actions have been taken as required under Colorado law to insure the priority, validity, and enforceability of such lien.

(4) The Loan Documents have been duly authorized, executed, and delivered by the authorized officers of the Governmental Agency; and, assuming in the case of the Loan Agreement, that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed, and delivered the Loan Agreement, the Loan Documents constitute the legal, valid, and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to the effect of, and to restrictions and limitations imposed by, or resulting from, Creditor's Rights Limitations or other laws, judicial decisions, and principles of equity relating to the enforcement of contractual obligations generally, provided that no opinion is expressed herein regarding the validity or enforceability of Section 3.05 of the Loan Agreement or any other provision thereof that purports to require the Governmental Agency to indemnify or hold any party harmless.

(5) To the best of our knowledge, after such investigation as we have deemed appropriate, the authorization, execution, and delivery of the Loan Documents by the Governmental Agency, the observance and performance by the Governmental Agency of its duties, covenants, obligations, and agreements thereunder, and the consummation of the transactions contemplated therein, do not and will not contravene any existing law, or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any outstanding

instruments relating to the bonds, notes, or other indebtedness of, or relating to, the Governmental Agency.

(6) To the best of our knowledge, after such investigation as we deemed appropriate, all approvals, consents, or authorizations of, or registrations of or filings with, any governmental or public agency, authority, or person required to date on the part of the Governmental Agency in connection with the authorization, execution, delivery, and performance of the Loan Documents have been obtained or made.

****If the Governmental Agency constitutes an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The execution and delivery of the Loan Documents are not subject to the limitations of Article X, Section 20 of the Colorado Constitution, since the Governmental Agency as defined in the Loan Agreement constitutes an enterprise under said Article X, Section 20 on the date of such execution and delivery. The performance of the Loan Documents is not subject to the limitations of said Article X, Section 20, as long as the Governmental Agency continues to qualify as an enterprise under said Article X, Section 20. If the Governmental Agency ceases to be an enterprise under said Article X, Section 20, during the Loan Term, the Loan Documents will continue to constitute legal, valid and binding obligations of the Governmental Agency enforceable in accordance with their respective terms; subject, however, to (a) Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual rights generally and (b) subject to the next sentence, the revenue and spending limitations of said Article X, Section 20. If the Governmental Agency at any time ceases to be an enterprise under said Article X, Section 20, (i) the **Town** may continue to impose and increase fees, rates and charges without voter approval; (ii) all revenues of the Governmental Agency used to pay Loan Repayments will be included in the Governmental Agency fiscal year spending limit under Section 7(d) of said Article X, Section 20 except that debt service changes and reductions are exceptions to, and not part of, the Governmental Agency revenue and spending bases and limits; and (iii) if the Governmental Agency is required to reduce spending in order to comply with its fiscal year spending limit under Section 7(b) of said Article X, Section 20, the Governmental Agency will first be required to reduce spending for purposes for which it does not have an obligation under law or by contract prior to reducing spending required to comply with the other covenants contained in the Loan Documents.

****If the Governmental Agency does not constitute an Enterprise under TABOR, the following paragraph should be included in the Bond Counsel opinion:**

(7) The Governmental Agency has complied with the requirements of Article x, Section 20 of the Colorado Constitution in connection with the execution and delivery of the loan documents.

This opinion is rendered on the basis of Federal law and the laws of the State of Colorado as enacted and construed on the date hereof. We express no opinion as to any matter not set forth in the numbered paragraphs herein.

[insert "I" or "We"] hereby authorize Carlson, Hammond & Paddock, L.L.C., General Counsel to the Authority, to rely on this opinion as if [insert "I" or "we"] had addressed this opinion to them in addition to you.

Very truly yours,

EXHIBIT F

ADDITIONAL COVENANTS AND REQUIREMENTS

(1) Rate Covenant.

The Governmental Agency shall establish and collect such rates, fees, and charges for the use or the sale of the products and services of the System as, together with other moneys available therefor, are expected to produce Income (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for each calendar year that will be at least sufficient for such calendar year to pay the sum of:

(a) all amounts estimated to be required to pay Operation and Maintenance Expenses (as defined in Paragraph (3) of Exhibit A of this Loan Agreement) during such calendar year;

(b) a sum equal to 110% of the debt service due on the Governmental Agency Bond for such calendar year and debt service coming due during such calendar year on any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property, in each case computed as of the beginning of such calendar year;

(c) the amount, if any, to be paid during such calendar year into any debt service reserve account in connection with any obligations secured by a lien on the Pledged Property which lien is on a parity with the lien of this Loan Agreement on the Pledged Property;

(d) a sum equal to the debt service on any obligations secured by a lien on the Pledged Property which lien is subordinate to the lien of this Loan Agreement on the Pledged Property for such calendar year computed as of the beginning of such calendar year; and

(e) amounts necessary to pay and discharge all charges and liens or other indebtedness not described above payable out of the Income during such calendar year.

(2) Rate Study.

In the event that Income collected during a fiscal year is not sufficient to meet the requirements set forth in the Rate Covenant contained in Paragraph (1) of this Exhibit F to the Loan Agreement, the Governmental Agency shall, within 90 days of the end of such fiscal year, cause an independent firm of accountants or consulting engineers, to prepare a rate study for the purpose of recommending a schedule of rates, fees, and charges for the use of the System that, in the opinion of the firm conducting the study will be sufficient to provide Income to be collected in the next succeeding fiscal year that will provide compliance with the Rate Covenant described in Paragraph (1) of this Exhibit F to this Loan Agreement. Such a study shall be delivered to the Authority. The Governmental Agency shall within six months of receipt of such study, adopt rates, fees, and charges for the use of the System, based upon the recommendations contained in such study, that provide compliance with said Rate Covenant. Notwithstanding the foregoing, the Authority may, from time to time, in its sole and absolute discretion and pursuant to such terms and restrictions it may specify, waive in writing the requirement that a rate study be performed by the Governmental Agency.

(3) Additional Bonds.

(a) Senior Lien Bonds. The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge, on the Pledged Property that is superior to the lien or charge of this Loan Agreement on the Pledged Property.

(b) Parity Lien Bonds. The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge, on the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued was at least equal to the sum of (a) 110% of the maximum annual debt service due in any one year on (i) this Loan Agreement and (ii) all other outstanding obligations of the Governmental Agency payable out of, or secured by a lien or charge on, the Pledged Property that is on a parity with the lien or charge of this Loan Agreement on the Pledged Property, and (iii) such proposed obligations to be issued, and (b) the maximum annual debt service due in any one year on all obligations payable out of, or secured by a lien or charge on the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property.

(c) Subordinate Lien Bonds. The Governmental Agency covenants that it will not issue any obligations payable out of, or secured by a lien or charge on, the Pledged Property that is subordinate to the lien or charge of this Loan Agreement on the Pledged Property, unless the Governmental Agency certifies to the Authority that for any 12 consecutive months out of the 18 months preceding the month in which such obligations are to be issued Net Revenue (as defined in Paragraph (3) of Exhibit A to this Loan Agreement) was at least 100% of the maximum annual debt service due in any one year on (a) all obligations outstanding during such period that are payable out of, or secured by a lien or charge on, the Pledged Property and (b) such proposed obligations to be issued.

(d) Net Revenue Adjustment. In calculating revenue coverage for purposes of the issuance of additional parity or subordinate lien bonds, the Governmental Agency may adjust Net Revenue to reflect any rate increases adopted in connection with the issuance of additional obligations by adding to the actual Net Revenue for the period examined an estimated sum equal to 100% of the estimated increase in Net Revenue that would have been realized during such period had the adopted rate increase been in effect during all of such period.

(e) Refunding Bonds. Notwithstanding the foregoing, the Governmental Agency may issue refunding obligations payable out of, or secured by a lien or charge on, the Pledged Property, without compliance with the requirements stated above, provided that the debt service payments on such refunding obligations do not exceed the debt service payments on the refunded obligations during any calendar year.

(4) Lien Representation.

The Governmental Agency has disclosed the following bonds, notes or other evidence of indebtedness of the Governmental Agency issued, or contractual obligations incurred, having a lien on the Source of Repayment of equal rank with the lien and charge on the Source of Repayment of the Governmental Agency Bond: Town of Fairplay, Colorado, acting by and through its Water and Wastewater Enterprise, Water and Wastewater Enterprise Revenue Note, Series 2018, which Series 2018 Note was issued in the original aggregate principal amount of $3,745,300 to ZB, N.A., dba Vectra Bank Colorado, acting as lender and the initial purchaser of the Series 2018 Note (the "Parity Lien Obligations"). The Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, other than that of the Parity Lien Obligations, that is of equal rank with the obligation of the Governmental Agency Bond. Further, the Source of Repayment is free and clear of any pledge, lien, charge, or encumbrance thereon, or with respect thereto, that is prior to the obligation of the Governmental Agency Bond.

(5) Operation and Maintenance Reserve Fund. The Governmental Agency shall maintain an operation and maintenance reserve in an amount equal to three months of Operation and Maintenance Expenses, excluding depreciation, of the System as set forth in the annual budget for the current fiscal year. Said reserve may be in the form of unobligated fund balances, or other unobligated cash or securities (i.e. capital reserves), or may be in a separate segregated fund and shall be maintained as a continuing reserve for payment of any lawful purpose relating to the System. If the operation and maintenance reserve falls below this requirement, the shortfall shall be made up in 24 substantially equal monthly installments beginning the second month after such shortfall.

(6) Davis Bacon & Related Acts (DBRA). The Governmental Agency will comply with the requirements of the Davis Bacon & Related Acts, codified at 40 U.S.C. §§ 3140 through 3148.

(7) Cost Overruns. Any cost overruns associated with the Project will be the responsibility of the Governmental Agency and any additional costs to defend against contract claims will not be reimbursed through this or any future funding.

(8) Audit Requirements. For each year in which the Governmental Agency requests a disbursement from the Project Loan Subaccount, the Governmental Agency shall conduct its annual audit in accordance with the federal Single Audit Act, 31 U.S.C. 7501 et seq.

(9) American Iron and Steel Requirement. The Governmental Agency will comply with all federal requirements applicable to the Loan, including Section 436 of P.L. 113-76, Consolidated Appropriations Act, 2014, (the "Appropriations Act") and related State Revolving Fund Policy Guidelines, which require that all of the iron and steel products (as defined in the Appropriations Act and Guidelines) used in the Project must be produced in the United States unless the

Governmental Agency has requested and received a waiver from the requirement pursuant to the "waiver process" described in the Appropriations Act and Guidelines.

(10) Construction Schedule.
The Governmental Agency has provided the following estimated dates regarding the project:

a) Advertisement for Bids Publication Date:
b) Construction Contract Award Date:
c) Construction Start Date:
d) Construction Completion Date:

(11) Technical Managerial and Financial Capacity Requirement. As described in the Technical/Managerial/Financial (TMF) Capacity Evaluation Report dated April 4, 2023 **There are no mandatory recommendations**

(12) Build America, Buy America Act. The Governmental Agency will comply with the terms of its waiver issued pursuant to the Build America Buy America Act, enacted as part of the Bipartisan Infrastructure Law, including guidance for implementing the BABA Act provided by the Office of Management and Budget, where applicable. BABA establishes domestic content procurement preference requirements for federal financial assistance provided through the Clean Water and Drinking Water State Revolving Funds including that iron, steel, manufactured products, and construction materials used in covered projects are produced in the United States.

(**13) Bipartisan Infrastructure Law.** The Governmental Agency will comply with all federal requirements applicable to the Bipartisan Infrastructure Law (the Infrastructure Investment and Jobs Act) (Public Law 117-58) and related regulations and guidance, during the Loan Term.

EXHIBIT G
DWRF Form of Requisition

THE TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE (the "Governmental Agency")

Please submit to the following addresses:
Submit Online To:
https://ceos.colorado.gov/CO/CEOS/Public/Client/CO_CIMPLE/Shared/Pages/Main/Login.aspx
If there are any questions or technical issues, please submit your backup document via one of the methods below.

Email To: **cdphe_grantsandloans@state.co.us (preferred backup method)**

Or Mail To: Colorado Department of Public Health and Environment
Grants and Loans Unit WQCD-OA-B2
Attn: Project Manager
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Or Fax To: 303-782-0390 (Call CDPHE Project Manager to confirm delivery)

Cc: CDPHE Project Manager

Cc: E-mail requisition form (Exhibit G) to the Colorado Water Resources and Power Development Authority at **requisitions@cwrpda.com**

This requisition is made in accordance with Section 3.02 of the Loan Agreement executed by the Colorado Water Resources and Power Development Authority on __________, 2023. Terms defined in the Loan Agreement and not otherwise defined herein shall have the same meanings when used herein.

The Governmental Agency hereby states as follows:

1. This is Requisition No____.
2. The amount requisitioned hereunder is ______________________________.
3. The person, firm or corporation to whom the amount requisitioned is due, or to whom a reimbursable and advance has been made, is ______________________.
4. The payee of the requisitioned amount is____________________________.
5. The manner of payment to the payee is to be wire transferred to:

Bank:
ABA No.:
Account No.:
Account Name:
Contact:

6. Attached hereto is the appropriate documentation demonstrating that the amount requisitioned hereunder is currently due or has been advanced by the Governmental Agency.

7. The amount hereby requisitioned is a proper Cost of the Project to be paid only from amounts deposited in the Project Account established for the Governmental Agency in the **Drinking Water Revolving Fund.**

8. On the date hereof, there does not exist any Event of Default under the Loan Agreement nor any condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default thereunder.

9. Estimate of total project completion percentage: ________________%

10. The undersigned is an Authorized Officer of the Governmental Agency duly authorized in the Loan Agreement to submit the Requisition.

11. The Governmental Agency reaffirms that all representations made by it in the Loan Agreement are true and accurate as of the date of this requisition, and that it shall continue to observe and perform all of its duties, covenants, obligations and agreements thereunder, at all times during the entire term of said Loan Agreement.

Dated: _________________.

TOWN OF FAIRPLAY, COLORADO,
ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE

By: _________________________.

Title: _______________________& Authorized Officer

Print Name:___________________

You should receive all payments no later than 10 working days after receipt of requisition unless otherwise notified.

1. The undersigned approves the disbursement of the requisitioned amount from the Project Loan Account established in the **Drinking Water Revolving Fund** Project Account.

COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

By: ______________________________
Finance Director

Dated: ____________________________

For Colorado Department of Public Health and Environment, Water Quality Control Division purposes only:

Payment approved by: _________________________

Dated: ____

MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: New Business Item A – Resolution No. 20 Independent Services Agreement with Kim Wittbrodt

DATE: July 3, 2023

Background:
Town Treasurer Kim Wittbrodt submitted her resignation effective July 31, 2023 and will be permanently relocating to Texas. The Town moved forward to post the position, conduct interviews and select a replacement so that there would be an overlap in service for training purposes. Unfortunately, the timing has not worked out perfectly and Kim's replacement will not be able to start until August. Therefore, Kim will be working for the Town remotely thru July 31 and then will become an independent contractor for the Town on August 1 and will be working with her replacement as needed through the end of 2023 to ensure proper and adequate training and continuity of municipal financial functions. Kim and I spoke and felt that 10 hours per week or up to 40 hours per month would be sufficient and the rate of pay corresponds to an hourly rate of her current salary, or $35.00/hour. As is customary with these types of agreements, the Town or Kim can terminate the agreement earlier if her services are no longer needed, or reduce the number of hours according to the Town's needs, etc. Regardless, the overall payment for services will not exceed a total of 200 hours and $7,000 for the months of August – December.

Recommendation:
Staff recommends approval of Resolution No. 20, Series of 2023, as presented by motion, second and a roll call vote to approve an Independent Services Agreement with Kim Wittbrodt effective August 1, 2023.

Attachments:

- Resolution No. 20, Series of 2023
- Independent Services Agreement

TOWN OF FAIRPLAY, COLORADO

RESOLUTION NO. 20
(Series of 2023)

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, APPROVING AN INDEPENDENT SERVICES AGREEMENT WITH KIM WITTBRODT.

WHEREAS, the Town of Fairplay (the "Town") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, the Town's current Treasurer Kim Wittbrodt (Contractor") will be retiring on July 31, 2023; and

WHEREAS, the candidate that was selected to replace Kim Wittbrodt as Town Treasurer is not able to start until August 7, 2023 and will therefore not be able to train with or ask questions or Wittbrodt; and

WHEREAS, the Town feels that it is in the best interests of the Town and maintenance of fiscal integrity and business continuity to contract with Wittbrodt to provide oversight of accounting and payroll services while also providing training to the incoming Treasurer; and

WHEREAS, Wittbrodt has agreed to provide said services and training through the end of calendar year 2023.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO, THAT:

Section 1. The Board of Trustees hereby approves the Professional Services Agreement attached hereto as "Exhibit A" and authorizes the Mayor to execute same on behalf of the Town.

Section 2. The total amount of payment for services under the agreement shall not exceed $7,000.00.

Section 3. This resolution shall become effective upon adoption.

RESOLVED, APPROVED, and **ADOPTED** this 3rd day of July, 2023.

TOWN OF FAIRPLAY, COLORADO

____
Frank Just, Mayor

ATTEST:

____
Janell Sciacca, Town Clerk

EXHIBIT A

TOWN OF FAIRPLAY
INDEPENDENT SERVICES AGREEMENT

THIS AGREEMENT FOR INDEPENDENT SERVICES (“Agreement”) is made and entered into this 3rd day of July, 2023 by and between the TOWN OF FAIRPLAY, COLORADO, a Colorado municipal corporation (“Town”), and Kim Wittbrodt (Contractor”), whose address is 16287 Big Oak Road, Tyler, TX 75707.

WHEREAS, the Town desires that Contractor perform Accounting and Payroll Services and Training of Town Staff as an independent contractor, in accordance with the provisions of this Agreement, and more fully described in **Section 1** of this Agreement; and

WHEREAS, Contractor is customarily engaged in an independent trade, occupation, profession, or business related to the services to be provided pursuant to this Agreement, and is ready, qualified, willing, and able to provide such services to the Town; and

WHEREAS, Contractor desires to perform such duties pursuant to the terms and conditions provided for in this Agreement; and

WHEREAS, the parties hereto desire to set forth certain understandings regarding the services in writing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Services. The Town agrees to retain Contractor to provide the services set forth herein, further specified as temporary Accounting, Payroll and Training Services (“Services”), and Contractor agrees to so serve. Contractor warrants and represents that it has the requisite authority, capacity, experience, and expertise to perform the Services in compliance with the provisions of this Agreement and all applicable laws and agrees to perform the Services on the terms and conditions set forth herein.

All equipment, tools, materials and supplies required for the performance of services under this Agreement shall be furnished by the Contractor, except that the Town of Fairplay shall furnish the following: Private network or other secure connection for accessing Town programs and files and email account.

2. Compensation. The Town agrees to compensate Contractor, in the following amount/rate/calculation: $35.00 / hour for up to 40 hours per month for August, September, October, November and December, 2023. The Town shall make payment within thirty (30) days of receipt and approval of invoices submitted by Contractor, which invoices shall be submitted to the Town not more frequently than monthly and which shall identify the specific Services performed for which payment is requested.

3. Term. The Term of this Agreement shall be effective as of the date of its execution by both parties, as dated above until the Agreement is terminated pursuant to Section 8 of this Agreement; provided, however, that to the extent that the term of this Agreement exceeds

one fiscal year, the obligations described herein shall be subject to annual appropriation by the Town Council, at its sole discretion.

4. Outside Support Services and Sub-Contractor. Any sub-contractors shall be pre-approved by the Town. A rate sheet for each sub-contractor shall be provided to the Town.

5. Independent Contractor. The parties agree that the Contractor is an independent contractor and shall not be considered an employee, agent, or servant of the Town for any purpose. Contractor is not entitled to workers' compensation benefits from the Town and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement. The parties further agree and understand that as an independent contractor, Contractor does not receive the protections of the Colorado Government Immunity Act, that the Contractor is responsible for their own liability insurance, and that the Town's insurance coverage does not extend to independent contractors or to the Contractor.

6. Insurance Requirements. Contractor shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring Contractor and naming the Town as an additional insured against any liability for personal injury, bodily injury, damages to property, or death arising out of the performance of the Services with at least One Million Dollars ($1,000,000) each occurrence. The limits of said insurance shall not, however, limit the liability of Contractor hereunder.

7. Indemnification. Contractor hereby covenants and agrees to indemnify, save, and hold harmless the Town, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or error and omission or other tortious conduct of Contractor, its officers, subcontractors, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

8. Termination. The term of this contract is August 1, 2023 to December 31, 2023. However, the Town or the Contractor may terminate this Agreement earlier at any time by providing a minimum of thirty (30) calendar days written notice to the other party. If the parties have mutually determined that the work has become infeasible, the parties agree to terminate the Agreement in accordance with this Section. In the event this Agreement is terminated, the Contractor shall be compensated for all work performed to date based on estimated percentage of completion, including the percentage of any and all work items begun but not completed.

9. Entire Agreement. This Agreement, along with any addendums and attachments hereto, constitutes the entire agreement between the parties. The provisions of this Agreement may be amended at any time by the mutual consent of both parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue for any action instituted pursuant to this Agreement shall be in the County of Park, State of Colorado.

K11. Authority. Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

12. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq*.

13. Assignability. Contractor shall not assign this Agreement without the Town's prior written consent.

14. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

15. Survival Clause. The "Indemnification" provision set forth in this Agreement shall survive the completion of the Services and the satisfaction, expiration, or termination of this Agreement.

17. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. Notices. Any written notices required to be given under this Agreement shall be delivered as follows:

To the Town:	Town Administrator Town of Fairplay 901 Main Street Fairplay, CO 80440 719-836-2622
To the Contractor:	Kim Wittbrodt 16287 Big Oak Road Tyler, TX 75707 719-839-5106

18. Authority. Each person signing this Agreement, and any addendums or attachments hereto, represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

19. Attorneys' Fees. Should this Agreement become the subject of litigation between the Town and Contractor, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to attorneys' fees and expert witness fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

TOWN OF FAIRPLAY, COLORADO

By: ____________________________________
Frank Just, Mayor

CONTRACTOR:

By: ____________________________________
Kim Wittbrodt

MEMORANDUM

TO: Mayor and Board of Trustees

FROM: Janell Sciacca, Town Administrator/Clerk

RE: New Business Item B – Resolution No. 21 Revocable Encroachment Agreement for Valiton ADA Ramp, Stairs and Fence Built in Right of Way

DATE: July 3, 2023

Background:
During review of a Certificate of Appropriateness application for a deck to be built at the Valiton located at 500 Main Street, Town Engineer Deron Dircksen pointed out that an ADA ramp, access stairs and split rail fence were built in the Town right of way. During the COA hearing on June 5, 2023, this was brought up and Staff and the Town Attorney recommended a revocable use agreement be put in place for those improvements. The Mayor inquired of the applicant and the applicant's representative if either of them took any exception to such agreement, and neither were opposed.

The drawing attached to the agreement is demonstrative of the location of the improvements and a complete survey is required for obtaining a Building Permit. A copy of that survey will be placed in the agreement file to further document the exact location of the property line and where those improvements lie. The proposed agreement sets forth that the Town acknowledges the improvements were put in place on the Town's property and allows for them to remain there until such time as the Town may need or want to improve or use that property. The agreement is specific to the current owner and does not run with the land.

Recommendation:
Staff recommends approval of Resolution No. 20, Series of 2023, as presented by motion, second and a roll call vote to approve a Revocable License Agreement with Duke, LLC to allow for private improvements put in place at 500 Main Street in the Town's right of way.

Attachments:
- Resolution No. 21, Series of 2023
- Revocable License Agreement

TOWN OF FAIRPLAY, COLORADO

RESOLUTION NO. 21
(Series of 2023)

A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO APPROVING A REVOCABLE LICENSE AGREEMENT WITH DUKE, LLC FOR IMPROVEMENTS LOCATED IN THE TOWN RIGHT OF WAY AT 500 MAIN STREET.

WHEREAS, the Town of Fairplay (the "Town") is a Colorado Statutory Town and has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and

WHEREAS, Duke, LLC (Licensee), is the owner of real property located at 500 Main Street and commonly known as the Valiton; and

WHEREAS, certain improvements associated with the building at 500 Main were constructed in the Town's 5th Street right of way; and

WHEREAS, the Town desires to allow the improvements to remain under a Revocable License Agreement with Duke, LLC and the Town finds that use of said public right-of-way as requested can be accomplished without injury to the public interest or welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES FOR THE TOWN OF FAIRPLAY, COLORADO:

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board of Trustees hereby approves the Revocable License Agreement, a copy of which is attached and fully incorporated herein as "**Exhibit A.**" and authorizes the Mayor to execute same on behalf of the Town.

Section 3. This Resolution shall take effect immediately upon adoption.

RESOLVED, APPROVED, AND ADOPTED this **3rd** day of **JULY**, **2023.**

TOWN OF FAIRPLAY, COLORADO

____
Frank Just, Mayor

ATTEST:

____
Janell Sciacca, Town Clerk

REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT-OF-WAY OR PUBLIC PROPERTY OR PUBLIC PLACE

THIS REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT OF WAY OR PUBLIC PLACE is granted this 3rd day of July, 2023, (the "Effective Date") by the Town of Fairplay, Colorado, a Statutory Town, ("Town"), whose address is 901 Main Street , Fairplay, Colorado 80440, to Duke, LLC, ("Licensee") whose address is 116 Huron Road, Breckenridge, CO 80424.

A. The Town owns the right-of-way/public property/public place which is commonly known and/or described as 5th Street (the "Licensed Premises").

B. Licensee desires to or has erected an ADA Ramp, Building Access Stairs and Split Rail Fence on the Licensed Premises (the "Private Activities/Improvements"). The Private Activities/Improvements and their locations within the Licensed Premises are depicted on **Exhibit A** attached hereto and incorporated herein by this reference.

C. Pursuant to Fairplay Municipal Code ("Town Code") and the laws of the State of Colorado, the Town is vested with power and authority over the use of municipally owned streets, rights-of-way and other public properties and places.

D. The Town is willing to grant a revocable license to Licensee to allow Licensee to install and operate the Private Activities/Improvements as depicted in **Exhibit A**, which Exhibit is incorporated herein by this reference, under certain circumstances and with certain conditions and stipulations.

E. The intent of this License is to authorize, on a temporary and revocable basis, the installation and operation of the Private Activities/Improvements within the Licensed Premises without cost or liability to the Town.

LICENSE

1. **Grant of Revocable License.**

The Town hereby grants to Licensee a non-exclusive, temporary and revocable authorization (the "License") to install and operate the Private Activities/Improvements in the Licensed Premises provided, however, that as conditions to the License, the Licensee shall install and maintain the Private Activities/Improvements only within the boundaries of the area depicted on Exhibit A as being within the Licensed Premises (Town Right-of-Way/Public Property/Public Place).

The rights granted under this License are expressly subject to the rights of the public and any rights granted previously by the Town to any person. The Town may enforce this License either by seeking damages or by specific performance or through any other legal or equitable remedy available to the Town.

2. **Design, Installation, Operation and Maintenance.**

a. The Licensee shall pay all costs of design, installation, operation and maintenance of the Private Activities/Improvements. Upon revocation of the License as provided herein and upon the Town's demand, Licensee shall pay all costs and perform all removal of the Private Activities/Improvements from the Licensed Premises and, as applicable, shall pay all costs of and be responsible for returning the land surface to substantially the same condition that it is on the Effective Date.

b. This License shall not operate or be construed to abridge, limit or restrict the Town in exercising its right to make full use of the Licensed Premises encroached upon as public thoroughfares or public places, nor shall it operate to restrict utility companies or any other Licensees in exercising their rights to construct, remove, operate and maintain their installations within the Licensed Premises (Town Right-of-Way/Public Property/Public Place). Furthermore, Licensee shall operate the Private Activities/Improvements only in accordance with the operating conditions set forth and incorporated herein.

c. Licensee hereby assumes full responsibility for any and all damages incurred to public facilities, utilities or other private activities and/or improvements located within the Licensed Premises due to activities authorized by this License.

d. Licensee shall cooperate with Town officials in the installation, removal, replacement or alteration the Private Activities/Improvements and shall maintain the Private Activities/Improvements in a good and attractive condition during the term of the License.

e. Licensee acknowledges that it is installing, removing, replacing or altering the Private Activities/Improvements at its own peril. Licensee is solely responsible for any damage to the Private Activities/Improvements caused by Town personnel, or the Town's Licensees or sub-licensees, in connection with conducting maintenance or emergency operations within the Licensed Premises.

3. **Repair of Damages**.

Licensee shall promptly repair all damage to the Licensed Premises caused by its activities. If such damage poses a threat to health, safety or welfare of the public or individuals, the Town may cause repairs to be made at Licensees' expense unless the Licensee makes such repairs upon the Town's request.

4. **Term**.

This License shall commence on the Effective Date and shall terminate on such date as the Town may revoke this License, or on such date as the temporary modification of premises expires, or on such date as the Town resumes full use and access of the Licensed Premises or public place, whichever termination trigger shall occur first. This License may also terminate upon Licensee's request so long as Licensee removes all Private Activities/Improvements and returns the Licensed Premises to substantially similar condition as that prior to installation and operation of the Private Activities/Improvements.

This agreement shall run with ownership of such real property. Licensee agrees to notify the Town of any impending transfer of the property and shall make reasonable efforts to notify any prospective purchaser of the existence of this Agreement.

5. **Revocation**.

a. In addition to, and including, the termination triggers mentioned in Section 4, the

Town may also revoke this License upon five (5) calendar days' written notice to Licensee and upon the occurrence of any one or more of the following events:

(i) Breach of this License by Licensee including, without limitation, the failure to maintain the Private Activities/Improvements in a good and attractive condition, after Licensee has failed to cure such breach for a period of two (2) calendar days from receipt of written notice of such breach by Licensee from Town.

(ii) A unilateral decision by the Town Council or the Town Administrator that the Licensed Premises is desired or beneficial for any purpose.

b. Upon revocation, Licensee shall, at Licensee's sole cost, remove the Private Activities/Improvements and restore the Licensed Premises to substantially the same condition that it is in on the Effective Date.

c. Upon revocation, this License shall terminate, be deemed null and void and of no further force and effect.

d. In the event that Licensee fails to remove the Private Activities/Improvements by the 5th day after the Town delivers notice of revocation to the Licensee, the Town may remove or cause the Private Activities/Improvements to be removed. The Town may collect the cost of removal from the Licensee and the Licensee agrees to pay such cost promptly upon written demand therefore. Licensees further agree that, upon the failure to pay such costs within thirty (30) days after written demand therefore, the Town shall have the right to file a lien, in the dollar amount of such cost, against any and all real property owned by the Licensee, which lien may be foreclosed upon in the manner provided in Colorado Statutes for the judicial foreclosure of liens.

6. **Notice**.

Every notice required or permitted hereunder shall be in writing and shall be deemed to have been fully given when personally delivered by hand, or upon delivery when sent by overnight mail, to the party's address set forth in the introductory paragraph of this License or at such other address as a party may designate, in writing, to the other party.

7. **Indemnification and Insurance**

(i) **Indemnification.** The Licensee expressly agrees to, and shall, indemnify and hold harmless the Town and any of its officers, agents, or employees from any and all claims, demands, damages, liability, or court awards, including costs and attorneys' fees that are incurred by the Town or that may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, partnership, or corporation, in connection with or arising out of any act, omission, error, mistake, negligence, or other fault of the Licensee or any of such Licensee's agents, partners, Licensees, sub-licensees, or lessees, in the installation, construction, use, operation or maintenance of the Private Activities/Improvements. In particular and without limiting the scope of the foregoing agreement to indemnify and hold harmless, the Licensee shall indemnify the Town for all claims, damages, liability, or court awards, including costs and attorneys' fees that are incurred by the Town or that may be awarded against the Town as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation,in connection with or arising out of any claim that, in whole or in part, all or any portion of the Private Activities/Improvements and/or the Licensed Premises constitutes a dangerous, hazardous, and/or unsafe condition. Licensee further agrees that should it fail to indemnify the Town as required in this section, the Town shall have the right to file a lien, in the dollar amount for which the Licensee has failed to indemnify the Town, against any and all real property owned by the Licensee, which lien may be foreclosed upon in the manner provided in Colorado Statutes for the judicial foreclosure of liens.

(ii) **Insurance.** Licensee shall procure and maintain, at its own cost, policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Licensee under this Agreement or arising as a result of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law, included, but not limited to: commercial general liability insurance, liquor sales liability insurance, workers' compensation insurance.

(iii) License shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of Licensee's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of Licensee to procure or maintain policies providing the required coverage and conditions shall constitute a material breach of contract upon which Town may immediately terminate this Agreement.

(iv) The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (present or future) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

8. **Competing Uses**.

The Private Activities/Improvements and the Licensee's activities within the Licensed Premises shall not interfere with water facilities, sanitary or storm sewer facilities or other public use of the Licensed Premises. Licensee's Private Activities/Improvements shall be maintained and altered from time to time, if necessary in the reasonable determination of the Town, so as to avoid interference with other property, uses and improvements.

9. **Miscellaneous Provisions**

a. Waiver of Breach. A waiver by any party to this License of the breach of any term or provision of this License shall not operate or be constructed as a waiver of any subsequent breach by any party.

b. Binding Effect. This License shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this License except as otherwise expressly authorized herein.

c. Underlying Intent and Scope. It is the intent of this License that the Town shall incur no cost or expense attributable to or arising from the installation, construction, maintenance, or operation of the Private Activities/Improvements authorized by this License and that, in all instances, the risk of loss, liability, obligation, damages, and claims associated with the Private Activities/Improvements shall be borne by the Licensee. This License does not confer upon the Licensee any other right, permit, license, approval, or consent other than that expressly provided for herein and this License shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance.

d. No Third Party Beneficiaries. Nothing contained in this License is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third-party beneficiaries are intended by this License. Any third party receiving a benefit from this License is an incidental and unintended beneficiary only.

e. Governing Law, Venue, And Enforcement. This License shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this License shall be in the appropriate court for Chaffee County, Colorado.

f. No Waiver of Immunity. Nothing in this License is intended to waive any protection afforded to the Town by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. or any other applicable law providing immunity to the Town, its officials, officers, agents, and employees.

TOWN OF FAIRPLAY, a Colorado Statutory Municipal Corporation

____
By: Frank Just
Its: Mayor

ATTEST:

____
Janell Sciacca, Town Clerk

LICENSEE:

____
By:____
Its: ____

STATE OF COLORADO)
) ss.
COUNTY OF PARK)

The foregoing instrument was acknowledged before me this _______ day of 2022, by _______________________________ as _____________________________________ of ____.

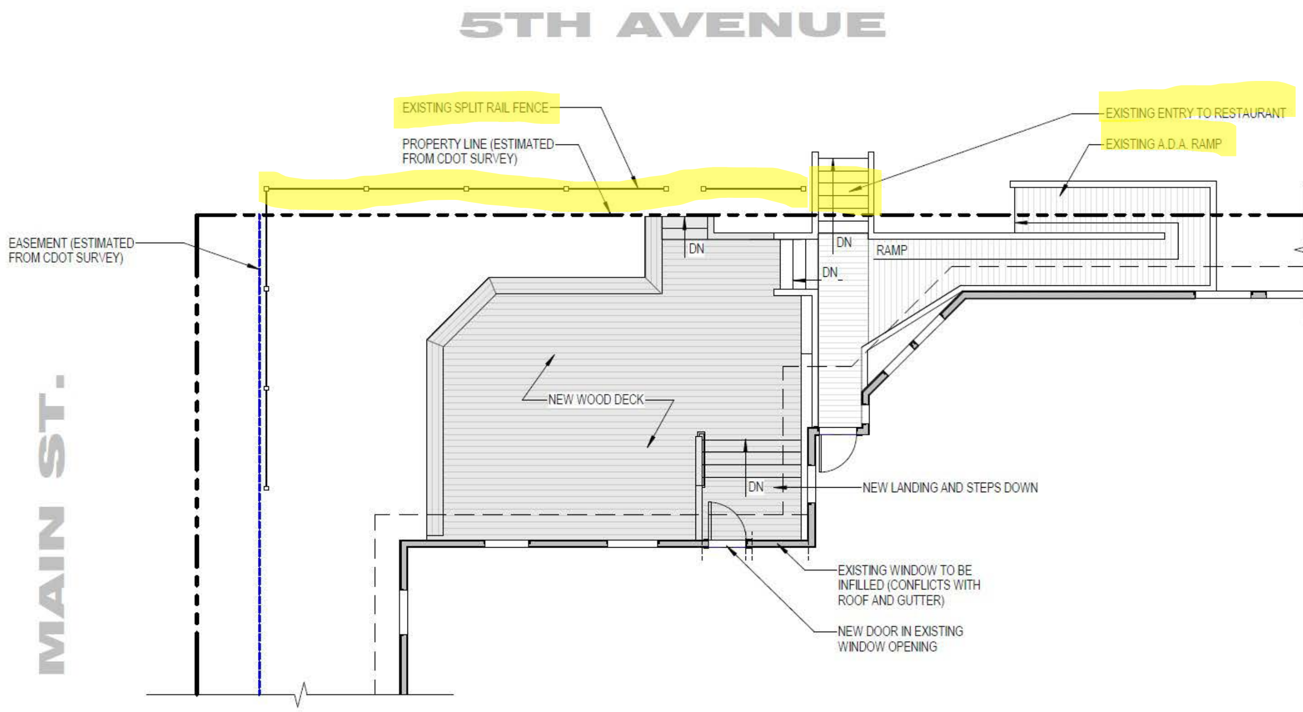
WITNESS my hand and official seal.

My Commission Expires: ______________________

____
Notary Public

EXHIBIT A
Private Improvements

Licensee's Property Extending into Town's Property Highlighted in Yellow



MONTHLY REPORT

TO: Mayor and Board of Trustees
FROM: Janell Sciacca, Town Administrator / Clerk
RE: Monthly Report
DATE: June, 2023 Monthly Report

PROJECTS

1. RIVER PARK PHASE 2
   - The Town received word that almost all clearances have been completed and associated requests for issuance of clearance letters were submitted to CDOT June 28.
   - The Town should be nearing the finish line on the behind-the-scenes processes and can hopefully move to approve a Grant Agreement and go out to bid in July.
2. INFILTRATION GALLERY / WELL #4
   - The Town has received authorization to move forward with approving the Loan Ordinance and Loan Agreement for the Drinking Water Revolving Fund Loan. This will be on the July 3 Board agenda.
   - Staff has received temporary authorization from CDPHE to begin using Well #4 and the Infiltration Gallery.
   - The Town was also notified that the classification for the plant has changed. The system is now a "C" for treatment and a "2" for distribution and has been designated a Community, Ground Water Under Direct Influence of Surface Water (GWUDI) system.
3. 501 MAIN
   - The Town did not receive a Congressionally Directed Spending (CDS) grant and therefore Staff will move forward to begin a submission to the USDA Rural Development Community Facilities Direct Loan program.
   - Alex and I met with a representative from Gordian, a Job Order Contracting company, and have received a quote from one of the pre-screened contractors to repair the vehicle damage. CIRSA reviewed the quote, which was $7,600 under their estimate, and found it to be a good fair market number so Staff is moving forward to get the repairs started since the Town already has already received the insurance money.
   - Staff is also obtaining a quote for the exterior aesthetic improvements and will provide an update to the Board once more on the associated costs are know.
4. TRANSIT PROGRAM
   - Staff has submitted to the CDOT Division of Transit and Rails for FTA 5311 Admin and Operating funds for FY 2024.
   - The second and newer bus, a 2017 Startrans Senator II with just over 20,000 miles on it, was finally delivered earlier this month. This is the RWD bus that does not require a CDL to operate and Staff posted a job opening for Transit drivers.
   - There is no requirement to begin any program this year, but we hope to use the smaller bus for special events and trips between Alma and Fairplay yet this year.

EVENTS AND ACTIVITIES

✓ No additional Short Term Rental permits have been issued and the Town remains at 15 properties being licensed.

✓ After speaking with the Board earlier this month, I did submit correspondence to the Colorado Department of Transportation requesting that a Turbo Roundabout be installed at Platte Drive and US 285. There has been no further word but Mayor Pro Tem Dodge and /or I will plan to attend the next TPR meeting scheduled for Monday, July 10, in Florence, CO to make sure this item is addressed and also continue to request Main Street/Hwy 9 be included in the STIP.

- ✓ There has been no further word on any selection of a location for an Outrider/Bustang/Summit Stage/Town Shuttle Transit Hub. Staff has continued to provide information to AECOM for the completion of an existing conditions report so the Town should hear something in July.
- ✓ PPACG is trying to secure a DOLA grant with help from the City of Woodland Park. The grant would serve as a match for the entire region in going after SS4A funding to complete a Regional Safety Action Plan.
- ✓ Staff is obtaining quotes for replacement of a 4” water line on Hathaway with an 8” line. The Town will plan for and schedule the work to be completed alongside and during the CDOT project work.
- ✓ Two meetings have been held with a set of developers that are seeking to do an affordable housing project in Fairplay in conjunction with CHFA. In one of the meetings, we actually met with a representative of CHFA in order to discuss requirements of the Town to assist a not-for-profit developer with obtaining funding. Staff is making additional related calls and may look to obtain approval from the Board in July to submit a Letter of Interest to CHFA for Prop 123 funding for a project if one materializes.
- ✓ I attended a CDOT Categorial Exclusion Training in Silverthorne on June 6 which helped me to better understand the MMOF grant and its clearance-related processes.
- ✓ The Town hosted a basic alcohol server training with the Colorado Department of Revenue on June 7.
- ✓ I attended a Regional Infrastructure Development Summit on June 13 that was held in Woodland Park where information on current and future BIL funding opportunities were shared on Broadband, Environmental, Energy, Road & Bridge, Water and Transit.
- ✓ Alex is continuing his work on GIS and has taken on the Cohen Park Court sealing and the Cemetery Sign installation. He has also been working on making more online forms, training on utility billing and receipting and also training on taking over the ESTIP and PIIP programs.
- ✓ A retirement party was held for Town Treasurer Wittbrodt on June 11 and it was a great turnout!
- ✓ Mayor Just and Staff conducted interviews with 3 candidates for the Town Treasurer position. The team unanimously felt one candidate was the best fit and best qualified. An offer was extended to that candidate and she has accepted and will begin August 7, 2023. Her name is not being shared publicly at this time due to the fact that letters sent out to the candidates that were not selected may not have been received yet.

DEVELOPMENT / LAND USE / BUILDING

- ✶ Staff held its Development Review Meeting on Wednesday, May 31. There are no new projects of note.
- ✶ The Town Board conducted its Location and Extent review on June 19 for the CDOT Employee Housing project going in at 850 Hathaway. The Board voted unanimously to approve the project.

MEMORANDUM

TO: Town of Fairplay Board of Trustees

FROM: Donovan Graham, Director of Public Works

RE: Public Works Monthly Report

DATE: July 3, 2023

A water leak has popped up on 6th and Bogue. I have been in contact with American Leak Detection and have not been given a time when they will be able to get out to take a look so I will provide an update at the board meeting. The water Loss/Production reports will be provided at the Board Meeting.

Public Works staff has cleaned up the potholes and wash outs on the intersection of 5th and Clark and it is now ready to pave.

Marty is getting together an estimate to repair the lagoon liner for this year. Staff will address plans for dealing with this in the budget for 2024 with the Board.

Crack sealing has been finished for the summer season. We will get the machine back in October and finish up outstanding areas for the year at that time.

The June 23rd Concert went off without any issues. I would like to compliment staff on their hard work as we all worked 17 hours that day without issue.

Public Works staff have added several truckloads of dirt to the fireworks pad to level it out as this year's Independence Day Fireworks show will be bigger and better than before. Safety first!

Staff will be setting up for the Independence Day event on Monday the 3rd and taking it down on Wednesday the 5th in order to reduce fatigue as well as overtime.

To: Fairplay Board of Trustees

From: Police Chief Bo Schlunsen

Date: 3 July, 2023

Re: July report to the Board

For June , we had 23 case reports. We had 57 v.i.n. checks, 7 animal calls, 25 agency assists, 185 directed patrols, 28 traffic stops, 21 traffic citations, 1 arrest, 5 traffic crashes, 159 business checks, 7 citizen assists, 11 code violations, 0 alarms, 5 mental health calls, 11 suspicious vehicle/person calls and a few other type calls.

The Positive Ticketing program is going well. We've made about 20 contacts where we issued gift cards.

I met with a representative of Ute Pass Regional Medicine. They are based in Teller County but are planning on expanding into Park County. Their purpose is to be in contact with people with mental health issues and to connect them with appropriate resources. They are hoping to start here in September. That should take some burden off law enforcement as they are trained clinicians that deal with mental health.

We all completed our yearly required firearms training.

Bo participated in a Mass Casualty exercise put on by the Park County Coroner. Agencies from around the region attended.

Bo attended a two-day Active Shooter class put on through the Park County Sheriff's Department.

WASTEWATER PLANT MONTHLY SUMMARY
PLANT PERFORMANCE
April 2023

INFLUENT MONTHLY FLOW (MG) 2.8
PEAK DAILY FLOW (MG) 0.12
AVERAGE DAILY FLOW (MG) 0.095

BOD: EFFLUENT LIMIT: MONTHLY 30MG/L AVERAGE: PEAK 45MG/L 7-DAY AVERAGE

INFLUENT (mg/l)	239	EFFLUENT (mg/l)	7	%REDUCTION	97.1%

SUSPENDED SOLIDS: EFFLUENT LIMIT: MONTHLY 30 MG/L AVERAGE: PEAK 45 MG/L 7-DAY AVERAGE

INFLUENT (mg/l)	192	EFFLUENT (mg/l)	10	%REDUCTION	94.8%

PHOSPHOROUS: PROJECTED 2035 LIMIT 3.66MG/L

INFLUENT (mg/l)	5.82	EFFLUENT (mg/l)	3.11	%REDUCTION	46.6%

AMMONIA : MONTHLY LIMIT ()MONTH 32 MG/L

INFLUENT (mg/l)	30.31	EFFLUENT (mg/l)	0.08	%REDUCTION	99.7%

TOTAL INORGANIC NITROGEN: PROJECTED 2035 LIMIT 38 MG/L

INFLUENT (mg/l)	30.31	EFFLUENT (mg/l)	14.45	%REDUCTION	52.3%

E-COLI: EFFLUENT LIMIT : 1,920 MPN AVERAGE PER MONTH: PEAK 7 DAY AVERAGE 3,840 MPN

EFFLUENT (MPN) 0

OPERATIONS REPORT:

Mtn Peak controls finished the VFD for blower #2, checked operation.

WASTEWATER PLANT MONTHLY SUMMARY
PLANT PERFORMANCE
June 2023

INFLUENT MONTHLY FLOW (MG) 2.8 (est)
PEAK DAILY FLOW (MG) 0.1
AVERAGE DAILY FLOW (MG) 0.092
BOD: EFFLUENT LIMIT: MONTHLY 30MG/L AVERAGE: PEAK 45MG/L 7-DAY AVERAGE

INFLUENT (mg/l)	0	EFFLUENT (mg/l)	0	%REDUCTION	#DIV/0!

SUSPENDED SOLIDS: EFFLUENT LIMIT: MONTHLY 30 MG/L AVERAGE: PEAK 45 MG/L 7-DAY AVERAGE

INFLUENT (mg/l)	0	EFFLUENT (mg/l)	0	%REDUCTION	#DIV/0!

PHOSPHOROUS: PROJECTED 2035 LIMIT 3.66MG/L

INFLUENT (mg/l)	0	EFFLUENT (mg/l)	0	%REDUCTION	#DIV/0!

AMMONIA : MONTHLY LIMIT ()MONTH 32 MG/L

INFLUENT (mg/l)	0	EFFLUENT (mg/l)	0	%REDUCTION	#DIV/0!

TOTAL INORGANIC NITROGEN: PROJECTED 2035 LIMIT 38 MG/L

INFLUENT (mg/l)	0	EFFLUENT (mg/l)	0	%REDUCTION	#DIV/0!

E-COLI: EFFLUENT LIMIT : 1,920 MPN AVERAGE PER MONTH: PEAK 7 DAY AVERAGE 3,840 MPN

EFFLUENT (MPN) 0

OPERATIONS REPORT:

No lab results for this month yet.

Routine maintenance , oil change and grease motors, on Influent and recycle pumps.

Sludge lagoon needs repair and currently waiting of final costs estimates and options.

Working on GIS maps, making corrections and comments. Waiting on final approval from CDPHE for the final approval for well 4.

CDPHE has reclassified the WTP as Ground water UDI surface water- class C treatment and class 2

Distribution operator.

The CCR has been completed and waiting for final review and public notification.

WASTEWATER PLANT MONTHLY SUMMARY
PLANT PERFORMANCE
May 2023

INFLUENT MONTHLY FLOW (MG)	2.7				
PEAK DAILY FLOW (MG)	1.18	**Rec Cntr dumped the pool**			
AVERAGE DAILY FLOW (MG)	0.08				

BOD: EFFLUENT LIMIT: MONTHLY 30MG/L AVERAGE: PEAK 45MG/L 7-DAY AVERAGE

INFLUENT (mg/l)	343	EFFLUENT (mg/l)	6	%REDUCTION	98.3%

SUSPENDED SOLIDS: EFFLUENT LIMIT: MONTHLY 30 MG/L AVERAGE: PEAK 45 MG/L 7-DAY AVERAGE

INFLUENT (mg/l)	355	EFFLUENT (mg/l)	1	%REDUCTION	99.7%

PHOSPHOROUS: PROJECTED 2035 LIMIT 3.66MG/L

INFLUENT (mg/l)	7.83	EFFLUENT (mg/l)	3.8	%REDUCTION	51.5%

AMMONIA : MONTHLY LIMIT ()MONTH 32 MG/L

INFLUENT (mg/l)	43.66	EFFLUENT (mg/l)	0.38	%REDUCTION	99.1%

TOTAL INORGANIC NITROGEN: PROJECTED 2035 LIMIT 38 MG/L

INFLUENT (mg/l)	43.66	EFFLUENT (mg/l)	12.51	%REDUCTION	71.3%

E-COLI: EFFLUENT LIMIT : 1,920 MPN AVERAGE PER MONTH: PEAK 7 DAY AVERAGE 3,840 MPN

EFFLUENT (MPN)	1

OPERATIONS REPORT:

Rec Center dumped pool all at once, resulting in high influent flow, excessive hydrolic loading.

SGM personal her to continue work on GPS/GIS mapping. The 6" PRV at Dollar General was rebuilt, waiting on parts for the 2" PRV, damaged due to freezing. Rebuilt the PRV at the High Side brewery, both the 6" and the 2". Inspected the PRV at South Park City, leaking, some damage from freezing. currently waiting on parts. The #2 aerator in the sludge lagoon was removed and taken back for repair.

Annual maintenance on the main blowers at the WWTP was done.

FAIRPLAY TOWN OF 2023 Drinking Water Quality Report
Covering Data For Calendar Year 2022

Public Water System ID: CO0147020

Esta es información importante. Si no la pueden leer, necesitan que alguien se la traduzca.

We are pleased to present to you this year's water quality report. Our constant goal is to provide you with a safe and dependable supply of drinking water. Please contact JANELL SCIACCA at 719-836-2622 with any questions or for public participation opportunities that may affect water quality.

General Information

All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (1-800-426-4791) or by visiting epa.gov/ground-water-and-drinking-water.

Some people may be more vulnerable to contaminants in drinking water than the general population. Immunocompromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV-AIDS or other immune system disorders, some elderly, and infants can be particularly at risk of infections. These people should seek advice about drinking water from their health care providers. For more information about contaminants and potential health effects, or to receive a copy of the U.S. Environmental Protection Agency (EPA) and the U.S. Centers for Disease Control (CDC) guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and microbiological contaminants call the EPA Safe Drinking Water Hotline at (1-800-426-4791).

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity. Contaminants that may be present in source water include:

•**Microbial contaminants:** viruses and bacteria that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.
•**Inorganic contaminants:** salts and metals, which can be naturally-occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.
•**Pesticides and herbicides:** may come from a variety of sources, such as agriculture, urban storm water runoff, and residential uses.
•**Radioactive contaminants:** can be naturally occurring or be the result of oil and gas production and mining activities.
•**Organic chemical contaminants:** including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and also may come from gas stations, urban storm water runoff, and septic systems.

In order to ensure that tap water is safe to drink, the Colorado Department of Public Health and Environment prescribes regulations limiting the amount of certain contaminants in water provided by public water systems. The Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

Lead in Drinking Water

Lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. We are responsible for providing high quality drinking water and removing lead pipes, but cannot control the variety of materials used in plumbing components in your home. You share the responsibility for protecting yourself and your family from the lead in your home plumbing. You can take responsibility by identifying and removing lead materials within your home plumbing and taking steps to reduce your family's risk. Before drinking tap water, flush your pipes for several minutes by running your tap, taking a shower, doing laundry or a load of dishes. You can also use a filter certified by an American National Standards Institute accredited certifier to reduce lead in drinking water. If you are concerned about lead in your water and wish to have your water tested, contact JANELL SCIACCA at 719-836-2622. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available at epa.gov/safewater/lead.

Source Water Assessment and Protection (SWAP)

The Colorado Department of Public Health and Environment may have provided us with a Source Water Assessment Report for our water supply. For general information or to obtain a copy of the report please visit wqcdcompliance.com/ccr. The report is located under "Guidance: Source Water Assessment Reports". Search the table using our system name or ID, or by contacting JANELL SCIACCA at 719-836-2622. The Source Water Assessment Report provides a screening-level evaluation of potential contamination that ***could*** occur. It ***does not*** mean that the contamination ***has or will*** occur. We can use this information to evaluate the need to improve our current water treatment capabilities and prepare for future contamination threats. This can help us ensure that quality finished water is delivered to your homes. In addition, the source water assessment results provide a starting point for developing a source water protection plan. Potential sources of contamination in our source water area are listed on the next page.

Please contact us to learn more about what you can do to help protect your drinking water sources, any questions about the Drinking Water Quality Report, to learn more about our system, or to attend scheduled public meetings. We want you, our valued customers, to be informed about the services we provide and the quality water we deliver to you every day.

Our Water Sources

Sources (Water Type - Source Type)	Potential Source(s) of Contamination
WELL NO 1 (Groundwater-Well) WELL 3R (Groundwater-Well) WELL NO 2R (Groundwater-Well)	Commercial/Industrial/Transportation, Deciduous Forest, Evergreen Forest, Septic Systems, Road Miles

Terms and Abbreviations

- **Maximum Contaminant Level (MCL)** − The highest level of a contaminant allowed in drinking water.
- **Treatment Technique (TT)** − A required process intended to reduce the level of a contaminant in drinking water.
- **Health-Based** − A violation of either a MCL or TT.
- **Non-Health-Based** − A violation that is not a MCL or TT.
- **Action Level (AL)** − The concentration of a contaminant which, if exceeded, triggers treatment and other regulatory requirements.
- **Maximum Residual Disinfectant Level (MRDL)** − The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
- **Maximum Contaminant Level Goal (MCLG)** − The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.
- **Maximum Residual Disinfectant Level Goal (MRDLG)** − The level of a drinking water disinfectant, below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
- **Violation (No Abbreviation)** − Failure to meet a Colorado Primary Drinking Water Regulation.
- **Formal Enforcement Action (No Abbreviation)** − Escalated action taken by the State (due to the risk to public health, or number or severity of violations) to bring a non-compliant water system back into compliance.
- **Variance and Exemptions (V/E)** − Department permission not to meet a MCL or treatment technique under certain conditions.
- **Gross Alpha (No Abbreviation)** − Gross alpha particle activity compliance value. It includes radium-226, but excludes radon 222, and uranium.
- **Picocuries per liter (pCi/L)** − Measure of the radioactivity in water.
- **Nephelometric Turbidity Unit (NTU)** − Measure of the clarity or cloudiness of water. Turbidity in excess of 5 NTU is just noticeable to the typical person.
- **Compliance Value (No Abbreviation)** – Single or calculated value used to determine if regulatory contaminant level (e.g. MCL) is met. Examples of calculated values are the 90th Percentile, Running Annual Average (RAA) and Locational Running Annual Average (LRAA).
- **Average (x-bar)** − Typical value.
- **Range (R)** − Lowest value to the highest value.
- **Sample Size (n)** − Number or count of values (i.e. number of water samples collected).
- **Parts per million = Milligrams per liter (ppm = mg/L)** − One part per million corresponds to one minute in two years or a single penny in $10,000.
- **Parts per billion = Micrograms per liter (ppb = ug/L)** − One part per billion corresponds to one minute in 2,000 years, or a single penny in $10,000,000.
- **Not Applicable (N/A)** – Does not apply or not available.
- **Level 1 Assessment** – A study of the water system to identify potential problems and determine (if possible) why total coliform bacteria have been found in our water system.
- **Level 2 Assessment** – A very detailed study of the water system to identify potential problems and determine (if possible) why an E. coli MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

Detected Contaminants

FAIRPLAY TOWN OF routinely monitors for contaminants in your drinking water according to Federal and State laws. The following table(s) show all detections found in the period of January 1 to December 31, 2022 unless otherwise noted. The State of

Colorado requires us to monitor for certain contaminants less than once per year because the concentrations of these contaminants are not expected to vary significantly from year to year, or the system is not considered vulnerable to this type of contamination. Therefore, some of our data, though representative, may be more than one-year-old. Violations and Formal Enforcement Actions, if any, are reported in the next section of this report.

Note: Only detected contaminants sampled within the last 5 years appear in this report. If no tables appear in this section, then no contaminants were detected in the last round of monitoring.

Disinfectants Sampled in the Distribution System
TT Requirement: At least 95% of samples per period (month or quarter) must be at least 0.2 ppm ***OR***
If sample size is less than 40 no more than 1 sample is below 0.2 ppm
Typical Sources: Water additive used to control microbes

Disinfectant Name	Time Period	Results	Number of Samples Below Level	Sample Size	TT Violation	MRDL
Chlorine	December, 2022	Lowest period percentage of samples meeting TT requirement: 100%	0	1	No	4.0 ppm

Lead and Copper Sampled in the Distribution System

Contaminant Name	Time Period	90th Percentile	Sample Size	Unit of Measure	90th Percentile AL	Sample Sites Above AL	90th Percentile AL Exceedance	Typical Sources
Copper	08/25/2021 to 09/29/2021	0.16	10	ppm	1.3	0	No	Corrosion of household plumbing systems; Erosion of natural deposits

Disinfection Byproducts Sampled in the Distribution System

Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Total Trihalomethanes (TTHM)	2022	3.4	3.4 to 3.4	1	ppb	80	N/A	No	Byproduct of drinking water disinfection

Radionuclides Sampled at the Entry Point to the Distribution System

Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Gross Alpha	2021	2.25	2.25 to 2.25	1	pCi/L	15	0	No	Erosion of natural deposits
Combined Uranium	2021	5	5 to 5	1	ppb	30	0	No	Erosion of natural deposits

Inorganic Contaminants Sampled at the Entry Point to the Distribution System

Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Barium	2021	0.05	0.05 to 0.05	1	ppm	2	2	No	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits
Fluoride	2021	0.13	0.13 to 0.13	1	ppm	4	4	No	Erosion of natural deposits; water additive which promotes strong teeth; discharge from fertilizer and aluminum factories

Secondary Contaminants**

**Secondary standards are non-enforceable guidelines for contaminants that may cause cosmetic effects (such as skin, or tooth discoloration) or aesthetic effects (such as taste, odor, or color) in drinking water.

Contaminant Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	Secondary Standard
Sodium	2021	2.9	2.9 to 2.9	1	ppm	N/A

Violations, Significant Deficiencies, and Formal Enforcement Actions

Health-Based Violations

Maximum contaminant level (MCL) violations: Test results for this contaminant show that the level was too high for the time period shown. Please read the information shown below about potential health effects for vulnerable populations. This is likely the same violation that we told you about in a past notice. We are evaluating, or we already completed an evaluation, to find the best way to reduce or remove the contaminant. If the solution will take an extended period of time, we will keep you updated with quarterly notices.

Treatment technique (TT) violations: We failed to complete an action that could affect water quality. Please read the information shown below about potential health effects for vulnerable populations. This is likely the same violation that we told you about in a past notice. We were required to meet a minimum operation/treatment standard, we were required to make upgrades to our system, or we were required to evaluate our system for potential sanitary defects, and we failed to do so in the time period shown below. If the solution will take an extended period of time, we will keep you updated with quarterly notices.

Name	Description	Time Period	Health Effects	Compliance Value	TT Level or MCL
CROSS CONNECTIO N RULE	FAILURE TO MEET CROSS CONNECTION CONTROL AND/OR BACKFLOW PREVENTION REQUIREMENTS - M617	09/08/2022 - 12/08/2022	We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross connections can lead to inadvertent contamination of the drinking water. This is due to one or more of the following: We have permitted an uncontrolled cross connection, AND/OR we have installed or permitted an uncontrolled cross connection, AND/OR we failed to comply with the requirements for surveying our system for cross connections, AND/OR we failed to complete the testing requirements for backflow prevention devices or methods, AND/OR we failed to notify the State Health Dept of a backflow contamination event.	N/A	N/A
CROSS CONNECTIO N RULE	FAILURE TO MEET CROSS CONNECTION CONTROL AND/OR BACKFLOW PREVENTION REQUIREMENTS - M611	09/08/2022 - 09/08/2022	We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross connections can lead to inadvertent contamination of the drinking water. This is due to one or more of the following: We have	N/A	N/A

Health-Based Violations

Maximum contaminant level (MCL) violations: Test results for this contaminant show that the level was too high for the time period shown. Please read the information shown below about potential health effects for vulnerable populations. This is likely the same violation that we told you about in a past notice. We are evaluating, or we already completed an evaluation, to find the best way to reduce or remove the contaminant. If the solution will take an extended period of time, we will keep you updated with quarterly notices.

Treatment technique (TT) violations: We failed to complete an action that could affect water quality. Please read the information shown below about potential health effects for vulnerable populations. This is likely the same violation that we told you about in a past notice. We were required to meet a minimum operation/treatment standard, we were required to make upgrades to our system, or we were required to evaluate our system for potential sanitary defects, and we failed to do so in the time period shown below. If the solution will take an extended period of time, we will keep you updated with quarterly notices.

Name	Description	Time Period	Health Effects	Compliance Value	TT Level or MCL
			permitted an uncontrolled cross connection, AND/OR we have installed or permitted an uncontrolled cross connection, AND/OR we failed to comply with the requirements for surveying our system for cross connections, AND/OR we failed to complete the testing requirements for backflow prevention devices or methods, AND/OR we failed to notify the State Health Dept of a backflow contamination event.		

Additional Violation Information

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

These items have been resolved and documented by CDPHE. No adverse health affects to drinking water supply. All monthly Bacteriological samples taken throughout the system were analyzed as safe.

Non-Health-Based Violations

These violations do not usually mean that there was a problem with the water quality. If there had been, we would have notified you immediately. We missed collecting a sample (water quality is unknown), we reported the sample result after the due date, or we did not complete a report/notice by the required date.

Name	Description	Time Period
STORAGE TANK RULE	FAILURE TO MEET STORAGE TANK REQUIREMENTS - F325	09/08/2022 - 09/08/2022

Non-Health-Based Violations		
These violations do not usually mean that there was a problem with the water quality. If there had been, we would have notified you immediately. We missed collecting a sample (water quality is unknown), we reported the sample result after the due date, or we did not complete a report/notice by the required date.		
Name	**Description**	**Time Period**
REVISED TOTAL COLIFORM RULE (RTCR)	FAILURE TO HAVE ADEQUATE COLIFORM BACTERIA SAMPLE SITES - R518	09/08/2022 - 11/08/2022
PUBLIC NOTICE	FAILURE TO NOTIFY THE PUBLIC/CONSUMERS	11/26/2021 - 01/12/2022
PUBLIC NOTICE	FAILURE TO NOTIFY THE PUBLIC/CONSUMERS	10/09/2022 - 11/02/2022
CROSS CONNECTION RULE	FAILURE TO MEET CROSS CONNECTION CONTROL AND/OR BACKFLOW PREVENTION REQUIREMENTS - M613	09/08/2022 - 09/08/2022
CROSS CONNECTION RULE	FAILURE TO MEET CROSS CONNECTION CONTROL AND/OR BACKFLOW PREVENTION REQUIREMENTS - M610	09/08/2022 - 01/17/2023

Additional Violation Information

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

R518-Additional coliform sampling sites were added to represent the entire distribution system and sampling is being rotated through these sites. Notification letters sent out to customers with their bill.

M613- Annual report for 2019 was not on record. Reports for 2020&2021 were supplied to CDPHE and matter was resolved and documented by CDPHE.

M610- The department has implemented the written plan for 2021 & 2022 and has developed a tracking spreadsheet to accurately identify all backflow devices and their status. Item has been resolved.

F325- Storage tank inspections for 2018, 2019 & 2020 could not be found. Inspection reports for 2021&2022 were supplied. Item has been resolved.

Backflow and Cross-Connection

We have an inadequate backflow prevention and cross-connection control program. Uncontrolled cross connections can lead to inadvertent contamination of the drinking water.

We either have installed or permitted an uncontrolled cross-connection or we experienced a backflow contamination event.

MINUTES OF THE REGULAR MEETING OF THE
FAIRPLAY BOARD OF TRUSTEES
JULY 3, 2023

CALL TO ORDER

A Regular Meeting of the Board of Trustees for the Town of Fairplay was called to order by Mayor Frank Just on Monday, July 3, 2023, at 6:00 p.m. in the Board Room located in the Fairplay Town Hall at 901 Main Street, having previously been posted in accordance with Colorado Open Meetings law.

PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Just proceeded with the pledge of allegiance, followed by the roll call, which was answered by Mayor Frank Just, Mayor Pro Tem Dodge, and Trustees Ray Douglas and Josh Voorhis. Trustee Pete Lynn was excused for a family commitment.

Staff in attendance were Town Administrator / Town Clerk Janell Sciacca, Town Treasurer Kim Wittbrodt, Public Works Director Donovan Graham, and Chief of Police Bo Schlunsen.

APPROVAL OF AGENDA

Motion #1 by Trustee Voorhis, seconded by Trustee Douglas, that the agenda be adopted as written. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye. Motion carried unanimously.

CONSENT AGENDA

A. **APPROVAL OF MINUTES OF PRIOR MEETING** – May 15, 2023 Regular Meeting.
B. **APPROVAL OF EXPENDITURES** – Paid bills for all Town funds from June 16, 2023 through June 28, 2023 in the amount of **$26,028.10.**

Motion #2 by Trustee Douglas, seconded by Trustee Voorhis, that the consent agenda be approved with the minutes as written and the expenditures as stated. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye. Motion carried unanimously.

CITIZEN COMMENTS – None.

PUBLIC HEARINGS

A. **FIRST READING** – Ordinance No. 6, Series of 2023, entitled "**AN ORDINANCE OF THE TOWN OF FAIRPLAY, COLORADO, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ENTERPRISE, AUTHORIZING A COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY LOAN TO FINANCE CAPITAL IMPROVEMENTS TO THE TOWN'S WATER AND WASTEWATER SYSTEM; AUTHORIZING EXECUTION OF A LOAN AGREEMENT AND BOND TO EVIDENCE THE LOAN; AND PROVIDING FOR PAYMENT OF THE BOND FROM THE OPERATION OF THE JOINT WATER AND WASTEWATER SYSTEM.**

Mayor Just introduced the Public Hearing at 6:05 PM and announced the format. Town Administrator Sciacca presented the Staff Report reminding that the loan was for improvements at the Beaver Creek Water Treatment Plant for bringing an Infiltration Gallery and Well #4 online. Sciacca reviewed the projected costs and loan and DOLA grant award figures advising the overall cost to be paid back was anticipated to be around $136,843.87 and she also reminded that the Town would not have to raise its monthly water rates. She recommended approval of Ordinance No. 6 to approve the Colorado Water Resources and Power Development Authority (CWRPDA) Loan and related Agreement. Sciacca advised that Contract Engineer Ken Hardesty was in attendance to answer any questions. Mayor Just opened the floor to public comment. There being no comments for or against the Ordinance, Mayor Just closed the public hearing. He thanked Hardesty, Sciacca, Graham, Deline, Chisholm and all other Town Staff for an incredible job on the project.

Motion #3 by Mayor Pro Tem Dodge, seconded by Trustee Voorhis, to approve Ordinance No. 6, Series of 2023, approving a loan with the Colorado Water Resources and Power Development Authority and authorizing execution of a Loan Agreement and Bond. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye. Motion carried unanimously.

Hardesty suggested that a christening event be held once the project was completed, and Sciacca advised that Colorado Water Resources and Power Development Authority and DOLA representatives would like that and CWRPDA had offered to come to Fairplay to buy Staff and the Board lunch as well.

NEW BUSINESS

A. **FIRST READING** – Resolution No. 20, Series of 2023, entitled "**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, APPROVING AN INDEPENDENT SERVICES AGREEMENT WITH KIM WITTBRODT.**

Town Administrator Sciacca presented an overview of the Staff Report reminding that long-time resident and Town Treasurer Kim Wittbrodt had submitted her resignation and was relocating out of state. She reminded that the opening was posted, interviews were held, and Jennie Danner had been unanimously selected to replace Wittbrodt but could not start until August 7. Therefore, Wittbrodt would not be able to train Danner and had offered to help do this from a distance as a contractor of the Town. Sciacca reviewed some of the logistics and noted the contract was recommended for 10 hours a week or 40 hours per month for August – December, 2023 at a rate of $35.00/hour with a not to exceed total of 200 hours and $7,000 plus $500 for travel expenses for a one-time trip back to Fairplay for on-site training. The insurance requirements were discussed, and it was agreed to amend that section to indicate that the contractor will provide appropriate insurance as approved by the Town Attorney. Sciacca recommended approval of Resolution No. 20 with the insurance provision amended as discussed.

Motion #4 by Mayor Pro Tem Dodge, seconded by Trustee Douglas, to approve Resolution No. 20, Series of 2023, approving an Independent Services Agreement with Kim Wittbrodt as presented and amended. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye. Motion carried unanimously.

B. **FIRST READING** – Resolution No. 21, Series of 2023, entitled "**A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FAIRPLAY, COLORADO, APPROVING A REVOCABLE LICENSE AGREEMENT WITH DUKE, LLC FOR IMPROVEMENTS LOCATED IN THE TOWN RIGHT OF WAY AT 500 MAIN STREET.**

Town Administrator Sciacca presented an overview of the Staff Report. She reminded that the agreement was discussed during the hearing on June 5, 2023 for the Certificate of Appropriateness for the deck being added out front of the Valiton. Sciacca also noted that a complete survey was being required for the deck or any other improvements and that the survey would be put with this agreement when received so that there was documentation showing the exact property line and where all the improvements lie, and that the agreement is specific to the current owner and does not run with the land. She recommended approval of Resolution No. 20 as presented.

Motion #5 by Trustee Douglas, seconded by Trustee Voorhis, to approve Resolution No. 210, Series of 2023, approving a Revocable License Agreement with Duke, LLC to allow for private improvements in the

Town's right of way as presented. A roll call vote was taken: Douglas – aye, Dodge – aye, Just – aye, Voorhis – aye. Motion carried unanimously.

BOARD OF TRUSTEE AND STAFF REPORTS

Chief Schlunsen reviewed the packet report providing some additional information on the Mass Casualty exercise the Department participated in that was hosted by the Coroner.

Town Administrator Sciacca noted her report in the packet and provided additional information and updates on receipt of the Town's second shuttle bus for the planned Transit program, plans moving forward for the replacement of the windows at Town Hall, bids being obtained for the Hathaway water line upgrade, striping of Cohen Park and installation of the hoop, a scope and quote for drainage improvements at Burro Park, installation of the Cemetery sign, and repairs to 501 Main finally being done right after Burro Days. There was a brief discussion about Gunfighters being allowed at Town activities and the Board was in agreement that their past decision to not allow open firing of weapons would stand.

Trustee Douglas provided a report on his attendance at the Colorado Municipal League Conference in June noting multiple sessions were held about affordable housing. He felt Fairplay was ahead of the curve. He also noted that he attended the CIRSA session and felt they were overall wanting to help municipalities and provided all kinds of training for its members. Sciacca advised that Staff did attend trainings when they were offered close by, and the loss control representative would be coming down in August to conduct the Safety Audit. She advised all the municipalities she worked for were members and they did a great job for the cost.

Mayor Just reminded everyone that July 4 was Independence Day and he encouraged everyone to remember what Independence Day stands for and be thankful for the country we get to live in.

A. Report from Warm Springs, LLC regarding 2nd Quarter 2023 Operator in Responsible Charge (ORC) responsibilities and activities.

Operators in Responsible Charge Marty Deline and Keith Chisholm reviewed reports provided in the packet for the April, May and June Wastewater Plant Performance. They also reported on operations and activities including the distribution of the annual Drinking Water Quality Report and CDPHE letters regarding the final plans and specs for construction of the improvements for the gallery and well #4 along with a notice of the Town's revised monitoring schedule requirements.

ADJOURNMENT

There being no further business before the Fairplay Board of Trustees, Mayor Just declared the meeting adjourned at approximately 6:53 p.m.

FAIRPLAY TOWN SEAL COLORADO

BOARD OF TRUSTEES, FAIRPLAY, COLORADO

Frank Just, Mayor

ATTEST:

Janell Sciacca, Town Clerk