

ORDINANCE NO. 312

AN ORDINANCE OF THE TOWN OF IGNACIO, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, AUTHORIZING THE REFINANCE OF TOWN LOANS AT LOWER INTEREST RATES THROUGH THE ISSUANCE OF REFUNDING BONDS; PRESCRIBING THE FORM OF THE BONDS AND FOR THE PAYMENT OF THE BONDS FROM REVENUES OF THE WATER ACTIVITY ENTERPRISE; ESTABLISHING BOND COVENANTS; AND DECLARING AN EMERGENCY IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the Town of Ignacio, La Plata County, Colorado, is a statutory municipality of the State of Colorado, duly organized and operating under the constitution and laws of the State (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 utility (later defined as the “System”), the operation of which is accounted for in the Water Fund and the Irrigation Fund of the Town, and the System has been established by the Town as a “water activity enterprise” within the meaning of the Water Activity Law; and

WHEREAS, in calendar year 2013 the System is being 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 Board of Trustees hereby determines and reaffirms that the System is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Board is acting hereunder as the governing body of the “Town of Ignacio Water Activity Enterprise” organized under the provisions of Title 37, Article 45.1, Colorado Revised Statutes; and

WHEREAS, the Town has previously entered into a contract with the State of Colorado Water Conservation Board, identified as Contract Number C153630 and dated March 1, 1995, as amended (defined hereafter as the “CWCB Loan”), pursuant to which the State loaned the Town \$180,000, bearing interest at the rate of 5%, for the purpose of funding a raw water pipeline comprising a portion of the System; and

WHEREAS, the Town has previously entered into an Energy / Mineral Impact Assistance Loan with the State of Colorado Department of Local Affairs, identified as EIAF #4936 (defined hereafter as the “DOLA Loan”), pursuant to which the State loaned the Town \$380,000, bearing interest at the rate of 5%, for the purpose of funding the replacement of water main lines comprising a portion of the System; and

WHEREAS, the principal of and interest on the CWCB Loan and the DOLA Loan are payable, at the option of the Town, upon payment of the principal thereof and the accrued interest to the date of redemption; and

WHEREAS, George K. Baum & Company has presented a proposal to the Town for the direct placement of Bonds to refund, on a current basis, the CWCB Loan and the DOLA Loan and the application of the net proceeds derived from the sale of the Bonds for the immediate payment of such obligations in the amounts represented by the State to be due; and

WHEREAS, the Bonds will not be payable from any tax and, pursuant to applicable laws of the State, voter approval is not required for the issuance of revenue bonds by the Town, acting by and through the Town of Ignacio Water Activity Enterprise; and

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

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

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF IGNACIO, COLORADO:

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

“*Board*” means the Board of Trustees of the Town acting as the governing body of the Water Activity Enterprise.

“*Bond*” means the Water Revenue Refunding Bonds, Series 2013, dated as of the Dated Date.

“*Bond Account*” means the “Water Activity Bond Account, 2013” created in Section 9 hereof.

“*Bond Counsel*” means (a) as of the date of issuance of the Bonds, Kutak Rock LLP, of Denver, Colorado; and (b) as of any other date, Kutak Rock LLP or such other attorneys selected by the Town with nationally recognized expertise in the issuance of municipal bonds.

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

“*Capital Improvements*” means the acquisition of land, water or water rights, easements, facilities, and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments, and extensions, for use by or in connection with the System which, under Generally Accepted Accounting Principles for governmental units as

prescribed by the Governmental Accounting Standards Board, are properly chargeable as capital items.

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

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

“*CWCB Loan*” means the Town loan with the State of Colorado Water Conservation Board, identified in the WHEREAS clauses to this Ordinance.

“*Dated Date*” means the dated date for the Bonds set forth in the Sale Certificate.

“*DOLA Loan*” means the Town loan with the State of Colorado Department of Local Affairs, identified in the WHEREAS clauses to this Ordinance.

“*Enabling Laws*” means the Public Securities Refunding Act, the Supplemental Public Securities Act, the Water Activity Law and all other laws of the State of Colorado enabling the actions of the Town as contemplated by the provisions of this Ordinance.

“*Event of Default*” means any of the events specified in Section 20 hereof.

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

“*Gross Revenue*” means all fees, including but not limited to user fees and plant investment fees, charges and revenues directly or indirectly derived by the Town for the services furnished by, or use of, the System, or any part thereof, including all income attributable to any future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the System or its operations; provided however, that there shall be excluded from Gross Revenue (a) moneys borrowed and used for providing Capital Improvements; (b) any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account pledged to the payment of any bonds or other obligations for the purpose of defeasing the same; and (c) any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

“*Interest Payment Date*” means the annual, semiannual or monthly dates set forth in the Sale Certificate for payment of interest on the Bonds.

“*Net Revenue*” means Gross Revenue after deducting Operation and Maintenance Expenses.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses of the Town directly related to the administration of the System; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance or transfers for depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Capital Improvements, and charges for the accumulation of reserves.

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

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

“*Parity Lien Bonds*” means any bonds or other obligations permitted to be issued pursuant to the Section hereof titled “Parity Lien Bonds”, with a lien that is equal and on a parity with the lien of the Bonds on the Net Revenues.

“*Paying Agent*” means the Town Treasurer, or such bank or financial institution identified by the Sale Delegate, which shall act as paying agent, bond registrar, and authenticating agent for the Bonds.

“*Permitted Investments*” means any investment lawfully permitted by applicable State law.

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

“*Principal Payment Date*” means the annual, semiannual or monthly dates set forth in the Sale Certificate for payment of the principal of the Bonds.

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

“*Public Securities Refunding Act*” means Part 1 of Article 56 of Title 11, C.R.S.

“*Purchaser*” means Person identified in the Sale Certificate as the original purchaser of the Bonds.

“*Record Date*” means with respect to each Interest Payment Date, (a) if the Interest Payment Date is the first day of the month, the fifteenth day of the month immediately preceding the month (whether or not such day is a Business Day) in which such Interest Payment Date

occurs; or (b) if the Interest Payment Date is the fifteenth day of the month, the first day of the month (whether or not such day is a Business Day) in which such Interest Payment Date occurs.

“Refunded Loan Requirements” means the principal and interest payoff due in connection with discharging the CWCB Loan and the DOLA Loan, as established by the State.

“Refunding Project” means the refunding of the CWCB Loan and the DOLA Loan and any other purpose for which proceeds of the Bonds may be expended under the Enabling Laws, including, but not limited to, the payment of the costs of issuance of the Bonds and the refunding, paying and discharging of the Refunded Loan Requirements.

“Sale Certificate” means the certificate executed by the Sale Delegate under the authority delegated pursuant to this Ordinance.

“Sale Delegate” means the Mayor of the Town or, in the absence of the Mayor, the Mayor Pro Tem of the Town.

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

“State” means the State of Colorado.

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

“Town” means the Town of Ignacio, La Plata County, Colorado.

“Water Activity Enterprise” means the Town of Ignacio Water Activity Enterprise which has been reaffirmed pursuant to an ordinance of the Town adopted and approved on or about the date of adoption of this Ordinance.

“Water Activity Fund” means the fund or funds of the Town used to account for the financial operations of the Water Activity Enterprise, which operations currently are accounted for in the Water Fund and the Irrigation Fund of the Town, and any additional funds established hereafter for such purpose.

“Water Activity Law” means Title 37, Article 45.1, C.R.S.

Section 2. Authorization and Purpose of the Bonds. Pursuant to and in accordance with the Constitution of the State of Colorado; the Enabling Laws; and all other laws of the State of Colorado thereunto enabling, there shall be issued by the Town, acting by and through the Water Activity Enterprise, the “Water Revenue Refunding Bonds, Series 2013” for the purpose of paying the costs attributable to the Refunding Project.

Section 3. Bond Details.

(a) ***Registered Form, Denominations, Original Dated Date and Numbering.***

The Bonds shall be issued as fully registered bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof, shall be dated as the Dated Date, shall be consecutively numbered in the manner determined by the Paying Agent and shall be registered in the names of the Person or Persons identified in the registration books of the Town maintained by the Paying Agent.

(b) ***Maturity Dates, Principal Amounts and Interest Rates.***

The Board hereby delegates to the Sale Delegate the authority to determine (i) the aggregate principal amount of the Bonds, which amount shall not exceed \$445,000; (ii) the Dated Date of the Bonds; (iii) the price or prices at which the Bonds will be sold; (iv) the amount of principal of the Bonds maturing in any particular year; (v) the rates of interest on the Bonds; (vi) the Interest Payment Date; and (vii) the Principal Payment Date. Notwithstanding any other provision hereof, the maximum net effective interest rate for the Bonds must not exceed 4.25% and the final maturity date for the Bonds must not be later than January 1, 2029. The present value savings as a percentage of the aggregate principal amount of the Refunded Loan Requirements shall be at least two and one-half percent computed based upon the arbitrage yield for the Bonds to the date of delivery of the Bonds.

(c) ***Accrual and Dates of Payment of Interest.***

Bonds shall mature on the Principal Payment Date in the years and in the principal amounts, and shall bear interest at the rates per annum (calculated based on a 360-day year of twelve 30-day months) set forth in the Sale Certificate. Interest on the Bonds shall accrue at the rates set forth in the Sale Certificate from the later of the Dated Date or the latest Interest Payment Date (or in the case of defaulted interest, the latest date) to which interest has been paid in full and shall be payable on each Interest Payment Date.

(d) ***Manner and Form of Payment.***

The final installment of principal and interest on each Bond shall be payable to the Owner thereof upon presentation and surrender of such bond at the principal operations office of the Paying Agent or at such other location as identified by the Paying Agent. Prior to the final installment of principal and interest on each Bond, each Bond shall be payable by check or draft of the Paying Agent mailed on the interest payment date to the Owner thereof as of the Record Date. All payments of the principal of and interest on the Bonds shall be made in lawful money of the United States of America.

Section 4. Form of the Bonds. The Bonds shall be in substantially the form set forth in Appendix A hereto, with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Town executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The Bond shall recite that it is issued under the authority of the Enabling Laws. Such recital shall conclusively impart full compliance with all provisions and limitations of such laws, and such Bond issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value. Although attached as an appendix for the convenience of the reader,

Appendix A is an integral part of this Ordinance and is incorporated herein as if set forth in full in the body of this Ordinance.

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

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

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

(c) **Delivery.** Upon the authentication of the Bonds, the Paying Agent shall deliver the same in accordance with the instructions of the Purchaser upon receipt of the agreed purchase price of the Bonds from the Purchaser and the issuance of the approving opinion of Bond Counsel.

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

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

(b) **Transfer and Exchange.** The Bonds may be transferred or exchanged, at the principal office of the Paying Agent at the location identified in the definition of Paying Agent in Section 1 hereof, for a like aggregate principal amount of Bonds of other authorized denominations of the same maturity and interest rate, upon payment by the transferee of a transfer fee, any tax or governmental charge required to be paid with respect to such transfer or exchange and any cost of printing bonds in connection therewith. Upon surrender for transfer of any Bond, duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his or her attorney duly authorized in writing, the Town shall execute and the Paying Agent shall authenticate and deliver in the name of the transferee a new Bond.

(c) ***Limitations on Transfer.*** The Town and Paying Agent shall not be required to issue or transfer any Bonds during a period beginning at the close of business on the Record Date and ending at the opening of business on the first Business Day following the ensuing interest payment date. The Paying Agent shall not be required to transfer any Bonds selected or called for redemption.

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

Section 8. Redemption of Bonds Prior to Maturity.

(a) ***Optional Redemption.*** The Bonds shall be subject to redemption at the option of the Town, in whole or in part, and if in part in such order of maturities as the Town shall determine and by lot within a maturity on such dates as set forth in the Sale Certificate. The Board hereby delegates to the Sale Delegate the authority to determine the dates on which the Bonds shall be subject to optional redemption and the redemption price or prices at which such redemption may be made.

(b) ***Mandatory Sinking Fund Redemption.*** All or any principal amount of the Bonds may be subject to mandatory sinking fund redemption by lot on the Principal Payment Date in the years and in the principal amounts specified in the Sale Certificate, at a redemption price equal to the principal amount thereof (with no redemption premium), plus accrued interest to the redemption date. The Board hereby delegates to the Sale Delegate the authority to determine the principal amounts and dates on which the Bonds shall be subject to mandatory sinking fund redemption. At its option, to be exercised on or before the forty-fifth day next preceding each sinking fund redemption date, the Town may (i) deliver to the Paying Agent for cancellation any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption, and (ii) receive a credit in respect of its sinking fund redemption obligation for any Bonds with the same maturity date as the Bonds subject to such sinking fund redemption which prior to such date have been redeemed (otherwise than through the operation of the sinking fund) and cancelled by the Paying Agent and not theretofore applied as a credit against any sinking fund redemption obligation. Each Bond so delivered or previously redeemed shall be credited by the Paying Agent at the principal amount thereof to the obligation of the Town on such sinking fund redemption date, and the principal amount of Bonds to be redeemed by operation of such sinking fund on such date shall be accordingly reduced.

(c) ***Redemption Procedures.*** Notice of any redemption of Bonds shall be given by the Paying Agent in the name of the Town by sending a copy of such notice by first-class, postage prepaid mail, not less than 30 days prior to the redemption date, to the Owner of each Bond being redeemed. Such notice shall specify the number or numbers

of the Bonds so to be redeemed (if redemption shall be in part) and the redemption date. If any Bond shall have been duly called for redemption and if, on or before the redemption date, there shall have been deposited with the Paying Agent in accordance with this Ordinance funds sufficient to pay the redemption price of such Bond on the redemption date, then such Bond shall become due and payable at such redemption date, and from and after such date interest will cease to accrue thereon. Failure to deliver any redemption notice or any defect in any redemption notice shall not affect the validity of the proceeding for the redemption of Bonds with respect to which such failure or defect did not occur. Any Bond redeemed prior to its maturity by prior redemption or otherwise shall not be reissued and shall be cancelled.

Section 9. Reaffirmation of Funds; Creation of Accounts.

(a) ***Reaffirmation of Existing Funds.*** The Town hereby reaffirms the establishment of the Water Activity Fund.

(b) ***Creation of Accounts in Water Activity Fund.*** There are hereby created and established within the Water Activity Fund, in addition to other accounts which are established in said fund, the Bond Account. In accordance with generally accepted accounting principles, for the purpose of accounting for the moneys provided for in this Ordinance the Town Treasurer may create offsetting revenue and expense accounts not inconsistent with the provisions hereof, all as may be determined by the Town Treasurer.

Section 10. Application of Bond Proceeds. Upon payment to the Town of the purchase price of the Bonds by the Purchaser, the proceeds received by the Town from the sale of the Bonds shall be applied as a supplemental appropriation of the Town for the payment of the costs of issuance and payment of the Refunded Loan Requirements.

Section 11. Deposit of Gross Revenues. The Town shall deposit to the Water Activity Fund all Gross Revenue immediately upon receipt. The Town shall pay from the Water Activity Fund all Operation and Maintenance Expenses as they become due and payable. After such payments, the Town shall apply the Net Revenues in the following order of priority:

FIRST, to the credit of the Bond Account, the amounts required by the Section hereof titled "Bond Account", and to the credit of any other account established for the payment of the principal of, premium if any, and interest on Parity Lien Bonds, the amounts required by the instruments authorizing or controlling the payment of such Parity Lien Bonds; and

SECOND, to the credit of any other fund or account as may be designated by the Town, to be used for any lawful purpose, any moneys remaining in the Water Activity Fund after the payments and accumulations set forth in First above hereof.

Section 12. Bond Account.

(a) ***Use of Moneys in Bond Account.*** Moneys deposited in the Bond Account shall be used solely for the purpose of paying the principal of, premium, if any, and interest on the Bonds.

(b) ***Deposits to Bond Account.*** On or before the last day of each month, commencing in the month next succeeding the date of issuance of the Bonds, the Town shall deposit to the Bond Account from the Net Revenues, an amount equal to the Pro Rata Portion of the interest and principal to come due on the Bonds on the next succeeding Interest Payment Date and Principal Payment Date, respectively. All deposits to the Bond Account shall first be allocated to the payment of interest to come due on the Bonds.

(c) ***Investments.*** Moneys deposited in the Bond Account may be invested or deposited in securities or obligations which are Permitted Investments. The investment of moneys deposited in the Bond Account shall, however, be subject to the covenants and provisions of the Section hereof titled "Federal Tax Covenants".

Section 13. Pledge and Lien for Payment of Bonds.

(a) ***Pledge of Revenues.*** The Town hereby pledges for the payment of the principal of, premium, if any, and interest on the Bonds at any time outstanding, and grants a lien for such purpose on the Net Revenues and all moneys on deposit from time to time in the Water Activity Fund, subject to the application of the Gross Revenues as provided in the Section hereof titled "Deposit of Gross Revenues". These pledges shall be valid and binding from and after the date of the first delivery of the Bonds, and the moneys, as received by the Town and hereby pledged, shall immediately be subject to the lien of the respective pledges without any physical delivery thereof, any filing, or further act.

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

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

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

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

Section 14. Parity Lien Bonds. The Town shall not issue Parity Lien Bonds having a lien which is on a parity with the lien of the Bonds paragraph (a) of the Section hereof titled “Pledge and Lien for Payment of Bonds” unless all of the following conditions are satisfied:

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

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

(ii) the Net Revenues for any 12 consecutive months in the 18 months immediately preceding the month in which such certification is delivered (referred to in this clause as the “test period”) have been equal to at least 130% of the sum of the maximum amount of principal of and interest due or to become due on the Bonds and any outstanding Parity Lien Bonds, and the proposed Parity Lien Bonds during each calendar year following the date of issuance of the proposed Parity Lien Bonds; provided that in calculating the Net Revenues during the test period, the Town may add an amount by which the Town reasonably estimates the Net Revenues would have been increased during the test period from any increase in rates, fees, and charges for services furnished by or the use of the System during or since said test period, the effect of which is to estimate a sum which would have been realized had the increase been in effect during the entire test period.

(b) The Mayor (or other Town official or employee designated in writing by the Mayor) certifies in writing that no Event of Default has occurred and is continuing.

(c) Nothing herein shall restrict or otherwise limit the right of the Town to enter into a loan contract with the State of Colorado, or any agency thereof, for the purpose of funding Capital Improvements for the System.

Section 15. Additional General Covenants. In addition to the other covenants of the Town contained herein, the Town hereby further covenants for the benefit of Owners of the Bonds that:

(a) ***Maintenance of Water Activity 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 to create Net Revenues in an amount which, when combined with unencumbered moneys in the Water Enterprise Fund, is equal to not less than 120% of the amount necessary to pay when due the principal of and interest on any outstanding Bonds and Parity Lien Bonds coming due during such calendar year. In the event that the Net Revenue and unencumbered moneys are at any time not sufficient to make such payments, the Town shall promptly increase such rates,

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

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

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

(d) ***Sale or Alienation of Property.*** The Town will not sell or alienate any of the property constituting any part or all of the System in any manner or to any extent as might reduce the security provided for the payment of the Bonds, but the Town may sell any portion of such property which shall have been replaced by other similar property of at least equal value, or which shall cease to be necessary for the efficient operations; provided however, that the proceeds of any such sale of System property shall be included as part of the Gross Revenue.

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

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

(g) ***Insurance.*** The Town will carry fire and extended coverage, workers' compensation, public liability, and such other forms of insurance on insurable System property as would ordinarily be carried by utilities having similar properties of equal value, such insurance being in such amounts as will protect the System and its operations. In the event of any loss or damage to the System, or in the event part or all of the System

is taken by the exercise of a power of eminent domain, the insurance proceeds or the condemnation award shall be used for restoring, replacing or repairing the property lost, damaged or taken, and the remainder thereof, if any, shall be considered as Gross Revenue; provided however, that if the Town Board determines that the operation of the System and the security for the Bonds will not be adversely affected thereby, the Town Board may determine not to restore, replace or repair the property lost, damaged or taken and all of the insurance proceeds or condemnation award shall be considered as Gross Revenue.

(h) ***Enterprise Status.*** The Town has and will continue to maintain the System as an “enterprise” within the meaning Article X, Section 20 of the Colorado Constitution, and as a “water activity enterprise” within the meaning of Title 37, Article 45.1, C.R.S.; provided, however, after the current calendar year the Town may disqualify 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 with respect to the Bonds. 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 (i) immediately take all actions necessary to qualify System as an enterprises within the meaning of Article X, Section 20 of the Colorado Constitution; and (ii) permit the enforcement of the covenants made herein.

Section 16. Federal Tax Covenants. For purposes of ensuring that the interest on the Bonds is and remains excluded from gross income for federal income tax purposes, the Town hereby covenants that:

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

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

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

Section 17. Defeasance. Any Bond shall not be deemed to be outstanding hereunder if it shall have been paid and cancelled or if cash or Federal Securities shall have been deposited in trust for the payment thereof (whether upon or prior to the maturity of such Bond, but if such Bond is to be paid prior to maturity, the Town shall have given the Paying Agent irrevocable directions to give notice of redemption as required by this Ordinance, or such notice shall have been given in accordance with this Ordinance). In computing the amount of the deposit described above, the Town may include interest to be earned on the Federal Securities. If less than all the Bonds are to be defeased pursuant to this Section, the Town, in its sole discretion, may select which of the Bonds shall be defeased.

Section 18. Events of Default. With respect to the Bonds, each of the following events constitutes an Event of Default:

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

(b) breach by the Town of any material covenant set forth herein relating to the Bonds or failure by the Town to perform any material duty imposed on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the Town Attorney of the Town of written notice thereof from the Paying Agent or from the Owners of at least 10% in principal amount of the outstanding Bonds; or

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

Section 19. Remedies for Events of Default.

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

operating trustee appointed in any proceedings to protect the rights of Owners of Bonds hereunder may collect, receive and apply all revenues and moneys pledged for the payment of the Bonds pursuant hereto arising after the appointment of such receiver or operating trustee in the same manner as the Town itself might do.

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

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

Section 20. Amendment of Ordinance.

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

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

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

(iii) to facilitate the designation of a substitute securities depository or to terminate the book-entry registration system for the Bonds in accordance with Section 3 hereof;

(iv) to facilitate the issuance of Parity Lien Bonds; and

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

(b) ***Amendments Requiring Notice to and Consent of Owners.*** Except for amendments permitted by Section 20(a) hereof, this Ordinance may only be amended (i) by an ordinance of the Town amending or supplementing this Ordinance (which, after the consents required therefor, shall become a part hereof); and (ii) with the written consent of the Owners of at least 66-2/3% in aggregate principal amount of the Bonds then outstanding; provided that any amendment that makes any of the following changes with respect to any Bond shall not be effective without the written consent of the Owner of such bond: (A) a change in the maturity of such bond; (B) a reduction of the interest rate on such bond; (C) a change in the terms of redemption of such bond; (D) a delay in the payment of principal of, premium, if any, or interest on such bond; (E) the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is superior to the pledge and lien for the payment of such bond hereunder; (F) a relaxation of the conditions to the issuance of Parity Lien Bonds or to the creation of any pledge of or lien upon any revenues or moneys pledged for the payment of such bond hereunder that is equal to or on a parity with the pledge and lien for the payment of such bond hereunder; (G) a reduction of the principal amount or percentage of Bonds whose consent is required for an amendment to this Ordinance; or (H) the establishment of a priority or preference for the payment of any amount due with respect to any other Bond over such bond.

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

Section 21. Findings and Determinations; Limitation of Actions. The Town Board hereby finds, determines and declares that it is in the best interest of the Town and its residents that the Bonds be authorized, sold, issued and delivered at the time, in the manner and for the purposes provided herein. In accordance with Section 11-57-212, Colorado Revised Statutes, no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Bonds more than 30 days after the authorization of such securities.

Section 22. Appointment and Duties of Paying Agent. The Paying Agent is hereby appointed as paying agent, registrar and authenticating agent for the Bonds unless and until the Town removes it as such and appoints a successor Paying Agent, in which event such successor shall automatically succeed to the duties of the Paying Agent hereunder and its predecessor shall immediately turn over all its records regarding the Bonds to such successor. The Paying Agent, by accepting its duties as such, agrees to perform all duties and to take all actions assigned to it hereunder in accordance with the terms hereof. The appointment and acceptance of the duties of Paying Agent hereunder may be affected through the execution of an agreement between the Town and the Paying Agent.

Section 23. Approval of Miscellaneous Documents. The Mayor, the Town Clerk and all other officers of the Town are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the Bonds and the transactions contemplated hereby.

Section 24. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town Board or by the officers and employees of the Town directed toward the issuance of the Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 25. Events Occurring on Days That Are Not Business Days. Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this section, is to be made or is to occur on a day that is not a Business Day shall instead be made or occur on the next succeeding day that is a Business Day.

Section 26. 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 27. Ordinance Irrepealable. After any of the Bonds have been issued, this Ordinance shall constitute a contract between the Owners and the Town, and shall be and remain irrepealable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 28. 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 29. Repealer. All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 30. Emergency Declaration; Effective Date. The Board desires to lock in the interest rate for the Bonds and complete the Refunding Project as soon as possible to effect a greater savings for the Town. The use of an emergency provision in this Ordinance will enable the Town to complete the financing prior to the possibility of increasing interest rates; therefore, it is hereby declared that an emergency exists, that this Ordinance is necessary for the immediate preservation of the public peace, and that this Ordinance shall be in full force and effect immediately after passage, as provided by law.

PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE and ordered published this 10th day of December, 2013.

TOWN OF IGNACIO, COLORADO

By _____
Stella Cox, Mayor

Attest:

By _____
Georgann Valdez, Town Clerk