ORDINANCE NO. 5
SERIES 2019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ACTING BY AND THROUGH ITS ENTERPRISE FUND, APPROVING LOANS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE IMPROVEMENTS TO THE SEWER COLLECTION SYSTEM AND THE WASTEWATER TREATMENT FACILITY; AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS AND BONDS TO DOCUMENT THE LOANS; AND PROVIDING FOR PAYMENT OF THE BONDS FROM NET REVENUE OF THE SEWER SYSTEM.

WHEREAS, the City of Gunnison, Gunnison County, Colorado, is a home rule municipality and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State of Colorado and the City Charter (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, pursuant to Article IX of the City Charter relating to City owned utilities, the City is the owner and operator of a sewer utility (referred to hereafter as the “System”); and

WHEREAS, pursuant to City Ordinance 7, Series 1993, the City combined its electric, water, sewer, refuse and communication funds to thereafter be named the “Enterprise Fund”, with the fiscal activities of such combined purposes accounted for separately as divisions of a singular enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, Section 8.5 of the City Charter provides that the City by ordinance may, without an election, issue securities payable solely from revenues other than the proceeds of ad valorem property taxes; and

WHEREAS, the Council is acting hereunder as the governing body of the Enterprise which constitutes a government owned business authorized to issue its own revenue bonds and which does not receive 10% or more of annual revenue in grants from all Colorado state and local governments combined; and

WHEREAS, to finance the estimated costs of improvements at the existing wastewater treatment facility for the influent pumping, screening, oxidation ditch, secondary clarifiers, UV disinfection, dewatering, composting, SCADA (a software application program for real-time monitoring and control), inflow & infiltration study (I&I), collection line repair and associated appurtenances, the City Council has determined to enter into Loan Agreements with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which CWRPDA is to make two loans to the City in an aggregate principal amount not to exceed $13,500,000; and

WHEREAS, the City’s repayment obligation under the Loan Agreements will be evidenced by governmental agency bonds to be issued by the City to the CWRPDA, which Bonds shall constitute special revenue obligations of the City which are to be paid from the income and revenues derived from the operation and use of the System (solely comprising the sewer division of the Enterprise Fund and no other division) less reasonable and necessary current expenses of the City of operating, maintaining and repairing the System and, after consideration, the City Council has determined that the execution of the Loan Agreements and the issuance of the Bonds to the CWRPDA is to the best advantage of the City; and

WHEREAS, as obligations of the Enterprise voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution for the execution of the Loan Agreements or the issuance of the Bonds; and

WHEREAS, as of the date of adoption of this Ordinance, the City has no outstanding multi-year obligations which are payable from and secured by the Net Revenue; and

WHEREAS, the form of the Loan Agreements and the Bonds have been presented to the City and made available upon request to the City Council;
NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF GUNNISON, COLORADO, THAT:

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

"Bonds" means the respective governmental agency bonds to be issued by the City to
the CWRPDA pursuant to the Loan Agreements, the forms of which are set forth in Exhibit
D to the respective Loan Agreements.

"Capital Improvements" means the acquisition of land, easements, facilities, and
equipment (other than ordinary repairs and replacements), and the construction or
reconstruction of improvements, betterments, and extensions, for use by or in connection
with, the System.

"City" means the City of Gunnison, Colorado, acting by and through its Enterprise
Fund.

"City Charter" means the home rule charter of the City, adopted at a special election
on July 10, 1962, as amended.

"Council" means the City Council of the City, acting as the governing body of the
Enterprise.

"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.

"Enabling Law" means the City Charter, Part 2, Article 57 of Title 11, C.R.S.; and all
other laws of the State establishing the power of the City to complete the financing
contemplated by this Ordinance.

"Enterprise" means the government owned business of the City, as established
pursuant to City Ordinance 7, Series 1993, which is authorized to issue its own revenue
bonds and which receives under 10% of annual revenue in grants from all Colorado state and
local governments combined.

"Financing Documents" means the Loan Agreements and the Bonds.

"Future Parity Obligations" means one or more series of additional bonds, notes,
interim securities or other obligations issued by the City having a lien on the Net Revenue
which is on a parity with the lien of the Bonds.

"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 City, as amended from time to time

"Gross Revenue" means all income and revenues directly or indirectly derived by the
City from the ownership, operation and use of the System, or any part thereof, including
without limitation, any rates, fees, and charges for the services furnished by, the use of the
System, and investment income accruing from moneys held to the credit of the funds or
accounts attributable to the financial operations of the System; provided however, that there
shall be excluded from Gross Revenue (i) borrowed moneys, (ii) any money and securities,
and investment income therefrom, in any escrow or similar account pledged to the payment
of any bonds or other obligations in connection with a defeasance or refunding of such
obligations, and (iii) 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 or services rendered thereby). Notwithstanding anything
contained in the preceding sentence, for purposes of determining the rate covenant referenced
in Section 5(b) of this Ordinance, amounts deposited in a rate stabilization account, if any,
shall not be deemed Gross Revenues in the calendar year deposited and amounts withdrawn
from the rate stabilization account, if any, shall be deemed Gross Revenues in the year
withdrawn.
"Loan Agreements" means the respective Loan Agreements between the City and the CWRPDA pursuant to which the CWRPDA is to make a leveraged loan and a direct (green) loan from its Water Pollution Control Revolving Fund to the City.

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

"Operation and Maintenance Expenses" means for any particular period, all reasonable and necessary current expenses, paid or accrued, of operating, maintaining and repairing the System, but only if such charges are made in conformity with Generally Accepted Accounting Principles. Operation and Maintenance Expenses include, without limiting the generality of the foregoing, expenses for ordinary repairs, renewals and replacements of the System, salaries and wages, employees' health, hospitalization, pension and retirement expenses, fees for services, material and supplies, rents, administrative and general expenses, insurance expenses, legal, engineering, accounting, trustee, paying agent and financial advisory fees and expenses and costs of other consulting and technical services, taxes (except as hereinafter set forth), payments in lieu of taxes and other governmental charges, payments to the United States Treasury pursuant to Section 148(f) of the Tax Code or similar requirement to pay rebate, fuel costs and other current expenses or obligations required to be paid by the City by law, all to the extent properly allocable to the System. Such Operation and Maintenance Expenses do not include depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, interest charges and charges for the payment of principal, or amortization, or bonded or other indebtedness of the City, costs or charges made therefor, for capital additions, replacements, betterments, extensions or improvements to or retirements from the System which under Generally Accepted Accounting Principles are properly chargeable to the capital account or the reserve for depreciation, and do not include losses from the sale, abandonment, reclassification, revaluation or other disposition of any properties of the System or such property items, including taxes and fuels, which are capitalized pursuant to the then existing accounting practice of the City.

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

"Project" means replacing improvements at the existing wastewater treatment facility for the influent pumping, screening, oxidation ditch, secondary clarifiers, UV disinfection, dewatering, composting, SCADA, inflow & infiltration study (I&I), collection line repair and associated appurtenances as set forth in the Loan Agreement and as the Project may be later modified by determination of the City Council.

"Project Costs" means the City'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 Bonds and any Future 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.

"Sewer Department Proprietary Fund" means the sewer division of the Enterprise Fund which is used to account for the fiscal activities and financial operations of the System, and any additional funds established hereafter for such purpose.

"State" means the State of Colorado.

"System" means all of the City's sanitary sewer facilities and properties, now owned or hereafter acquired, whether situated within or without the City boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, as more particularly described in the Loan Agreements.

Section 2. Approval of Loan Agreements and Authorization of Bonds. Pursuant to and in accordance with the State Constitution and the Enabling Law, the Bonds shall be issued by the City acting by and through its Enterprise Fund. The form of the Loan Agreements setting forth the terms, conditions and details of the Bonds and the procedures relating thereto, is incorporated herein by reference and is hereby approved; all City officials
and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the City under the Financing Documents. The City shall enter into the Loan Agreements and deliver the Bonds in substantially the form presented to the City at or prior to this meeting of the City Council 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 Bonds does not exceed the estimated life of the Project.

Section 3. Details for Bonds. The Bonds shall be in substantially the form set forth in Exhibit D to the respective Loan Agreements with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the City executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The Bonds shall be in an aggregate principal amount not to exceed $13,500,000, shall bear interest at a net effective rate not to exceed three and three-quarters percent (3.75%) per annum, and shall be payable semi-annually and mature not more than twenty-one years from the date of its issuance as more particularly set forth in the Loan Agreements. The Bonds 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 City Council 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 respective Bonds.

Section 4. Pledge for Payment of the Bonds.

(a) Pledge of Net Revenue. Net Revenue is hereby pledged to the payment of the Bonds and the amounts due under the respective Loan Agreements. The Bonds 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 or otherwise credited to the City, 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 and the Financing Documents, shall have priority over any or all other obligations and liabilities of the City except as may be otherwise provided in this 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 City irrespective of whether such persons have notice of such liens.

(b) Establishment of Accounts. There is hereby reaffirmed the Sewer Department Proprietary Fund which shall continue to be maintained by the City to carry out the terms and provisions of this Ordinance and the Loan Agreements.

(c) Flow of Funds. The City shall credit to the Sewer Department Proprietary Fund all Gross Revenue immediately upon receipt. The City shall pay from the Sewer Department Proprietary Fund all Operation and Maintenance Expenses as they become due and payable. After such payment or the allocation of Gross Revenue to such payment, the City 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 Bonds and any Future 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 Bonds and any Future 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 Bonds and any Future Parity Obligations, the amounts required in the ordinances or related documents authorizing and controlling the establishment of such reserve
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 Bonds, 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 City, to be used for any lawful purpose, any moneys remaining in the Sewer Department Proprietary Fund after the payments and accumulations set forth in FIRST through FOURTH hereof.

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

Section 5. Various Findings, Determinations, Declarations and Covenants. The City Council, 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 respective Loan Agreements 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 Bonds unless the requirements set forth in EXHIBIT F of the Loan Agreements, under captions titled “Additional Senior, Parity and Subordinate Lien Bonds” and “Additional Bonds”, respectively, have been met.

(b) Maintenance of Rates and Coverage. The City 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 provision set forth in EXHIBIT A and EXHIBIT F of the respective Loan Agreements under the caption titled “Rate Covenant”. In the event that the Gross Revenue at any time is not sufficient to make the payments required by said provision, the City covenants to promptly increase such rates, fees and charges to an extent which will ensure compliance with said covenant.

(c) Enterprise Status. The City Council hereby determines that the Enterprise is an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution. The City has and will continue to maintain the System as part of its “enterprise” within the meaning Article X, Section 20 of the Colorado Constitution and the Enabling Law; provided, however, after the current calendar year the City may disqualify the “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Financing Documents. In the event that the “enterprise” is disqualified and the enforceability of the covenants made by the City in the Financing Documents are materially, adversely affected, the City covenants to (i) immediately take all actions necessary to requalify the Enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.

(d) Obligations Currently Secured by Net Revenue. The City has no outstanding debt, bonds, loans or other multiple fiscal year obligation which is secured by Net Revenue.

(e) Findings of the City Council. The City Council 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 Article X, Section 20 of the Colorado Constitution;

(ii) the City Council elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Agreements and to the issuance of the Bonds;
the execution of the respective Loan Agreements and the issuance and delivery of the respective Bonds, 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 respective Loan Agreements and the issuance and delivery of the respective Bonds have been satisfied; and

it is in the best interests of the City and its residents that the Bonds 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 respective Loans and all documents and certificates necessary or desirable to effectuate the issuance of the respective Bonds and the financing contemplated by this Ordinance. Additionally, authorized officers and representatives as identified in Exhibit B to the respective Loan Agreements shall be Russell Forrest, City Manager, Benjamin Cowan, City Finance Director and David Gardner, Public Works Director.

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 Bonds shall be maintained against the City unless commenced within 30 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 City Council or by the officers and employees of the City directed toward the issuance of the Bonds 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 any Bond has been issued, this Ordinance shall constitute a contract between the CWRPDA and the City, and shall be and remain irrepealable until the respective Bonds 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 City, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED the 9th day of April, 2019, on first reading, and introduced, read, and adopted on second and final reading this 23rd day of April, 2019.
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Mayor

City Clerk