

ORDINANCE NO.

10-10

Series of 2010

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, ACTING BY, THROUGH AND AS THE TOWN OF HUDSON WATER ACTIVITY ENTERPRISE, PROVIDING FOR THE ISSUANCE AND SALE OF A REVENUE BOND ANTICIPATION NOTE TO PROVIDE INTERIM FINANCING FOR IMPROVEMENTS TO THE WASTEWATER COLLECTION AND TREATMENT SYSTEM OF THE TOWN, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,545,000; PROVIDING THE FORM, TERMS AND MATURITY OF SAID NOTE; CREATING A SPECIAL FUND FOR THE PAYMENT OF SAID NOTE; AND APPROVING THE SALE OF THE NOTE TO U.S. BANK NATIONAL ASSOCIATION, AND DECLARING AN EMERGENCY THEREON.

WHEREAS, the Town of Hudson, Colorado (the "Town"), acting by, through and as the Town of Hudson Water Activity Enterprise (the "Enterprise"), owns and operates a wastewater collection and treatment system (the "System") which is in need of upgrades and improvements (the "Improvements"); and

WHEREAS, long-term financing for the Improvements and the refinancing and payment of the loan from the Colorado Water Resources and Power Development Authority to the Town (the "Authority Loan") together (the "Project") are to be funded, in part, by a loan (in the form of a revenue bond, hereinafter defined as the "Bond") from the United States of America, acting through its Department of Agriculture (the "Government"), as evidenced in a Letter of Commitment (the "Letter of Commitment") from the Government, originally dated May 18, 2010; and

WHEREAS, the Bond Anticipation Note Act, Part 1 of Article 14 of Title 29, Colorado Revised Statutes, as amended (the "Bond Anticipation Note Act"), and Part 2 of Article 57 of Title 11, C.R.S., (the "Supplemental Public Securities Act" and together with the Bond Anticipation Note Act, the "Act") authorize any public body to issue from time to time its bond anticipation notes for any purposes lawfully authorized to be undertaken by such public body or to redeem outstanding bond anticipation notes, such bond anticipation notes to be issued in anticipation of the issuance of bonds by the public body; and

WHEREAS, the Town now proposes to undertake the Project and requires a loan to provide interim financing for that portion of the costs of the Project to be funded by the foregoing loan pending receipt of the loan and the issuance of the Bond to the Government; and

WHEREAS, the Town has received the offer of U.S. Bank National Association, Denver, Colorado (the "Bank"), to purchase a revenue bond anticipation note of the Town in the principal amount not to exceed \$3,545,000 under the terms and conditions set forth in such offer and herein and at the price set forth in such offer; and

WHEREAS, by reason of the unstable and fluctuating municipal bond market and the federal securities market, and in order to accomplish the proposed financing described hereto, and to assure the citizens of the Town access to a safe wastewater collection and treatment system at the earliest possible time, it is hereby declared that an emergency exists, that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the Town and its inhabitants, and that this Ordinance shall take effect as an emergency measure upon its adoption.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, as follows:

Section 1. Definitions. As used in this Ordinance, the following words shall have the following meanings:

Acquisition or **Acquire** includes the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, capital lease, condemnation, transfer, option to purchase, other contract, or other acquirement, or any combination thereof.

Authority Loan means loan from the Colorado Water Resources and Power Development Authority to the Town, provided pursuant to the Loan Agreement, dated as of June 17, 2009.

Bank means U.S. Bank National Association, Denver, Colorado or its corporate successor, and any transferee of the Bank approved by the Town.

Board means the duly constituted Board of Trustees as the general legislative body of the Town.

Bond means the wastewater collection and treatment revenue bond of the Town to be issued to the Government for the purpose of providing permanent financing for the Project.

Clerk means the Clerk of the Town, or any successor to the functions of the Clerk.

Code means the Internal Revenue Code of 1986, as amended, and the applicable regulations promulgated thereunder.

Construction Account means the special fund of the Town designated as the "2010 Wastewater Collection and Treatment System Construction Account" authorized to be created pursuant to Section 10 of this Ordinance.

Costs of Maintenance and Operation means all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses of the System, but excludes depreciation, payments for debt service or into reserve accounts and costs of capital additions to or replacements of the System, taxation by the Town or payments in lieu of taxes.

Default Rate means the Interest Rate plus two percent, or 200 basis points, not to exceed 10.00%.

Enterprise means the Town of Hudson, Water Activity Enterprise created by the Town.

Event of Default shall have the meaning provided in Section 22 hereof.

Government means the United States of America acting through its Department of Agriculture.

Gross Revenue means all earnings, revenue and money, received by the Town, acting by, through and as the Enterprise, from or on account of the operation of the System, including

proceeds from the sale, lease or other disposition of any of the properties or facilities of the System, and the income from investments of money in any account described herein. The term "Gross Revenue" does not include grants or bond proceeds, but does include federal or state reimbursements of operating expenses to the extent such expenses are included as Costs of Maintenance and Operation.

Improvements mean the capital improvements to the System, as described in Section 2.

Interest Rate means a rate equal to 80% of the Prime Rate on the date of issue of the Note, not to exceed 8.00%.

Letter of Conditions means the Letter of Conditions from the Government, dated May 18, 2010, as the same has been amended and supplemented.

Net Revenue means Gross Revenue less the Costs of Maintenance and Operation.

Note means the Town of Hudson, Colorado, Water Activity Enterprise Wastewater Collection and Treatment System Revenue Bond Anticipation Note, Series 2010, the sale and issuance of which is authorized herein.

Note Account means the "2010 Wastewater Collection and Treatment System Revenue Bond Anticipation Note Account", created by Section 7 of this Ordinance.

Note Register means the registration books showing the name, address and tax identification number of each registered owner of the Note, maintained pursuant to Section 149(a) of the Code.

Note Registrar initially, means the Clerk. The term Note Registrar also shall include any successor Note Registrar appointed by the Clerk as permitted by law.

Outstanding Principal Amount means on any particular day the aggregate of all funds that the Town has drawn from the Bank under the Note to that day, less the aggregate of all principal payments on the Note made by the Town on or before that day.

Prime Rate means the rate of interest publicly announced from time to time by the Bank as its Prime Rate. The Prime Rate is set by the Bank based on various factors, including the Bank's cost of funds and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans. The Bank may price loans to its customers at, above, or below the Prime Rate. Any change in the Prime Rate will take effect at the opening of business of the day specified in the public announcement of a change in the Bank's Prime Rate.

Project means the acquisition, construction and completion of the Improvements, and the refinancing of the Authority Loan.

Registered Owner means the person named as the registered owner of the Note in the Note Register.

Sale Certificate means the Sale Certificate to be executed by the Mayor or the Town Administrator setting forth the terms and conditions of the Note authorized hereby, subject to the parameters and restrictions set forth herein.

System means the wastewater collection and treatment system and facilities of the Enterprise, as it now exists, including the assets, real and personal, tangible and intangible, as it will be added to by the Acquisition of the Project, and as it may later be added to, improved and extended, and shall include buildings, structures, utilities or other income-producing property from the operation of or in connection with which revenues for the payment of the Note to be issued hereunder will be derived, and the lands appertaining thereto, including, without limitation, any improvement to be Acquired with the proceeds of the Note.

Town means Town of Hudson, Colorado, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Colorado.

Section 2. The Project.

The Town shall apply the proceeds of the Note to refinance the Authority Loan and Acquire the Improvements, which may include, but shall not be limited to, the following:

- (1) Acquisition, construction and installment of improvements to the wastewater collection and treatment plant of the Enterprise and related facilities;
- (2) Installment of improvements and construction of an interceptor system;
- (3) Acquisition and construction of collection system improvements;
- (4) Acquisition and construction of effluent discharge system;
- (5) Acquisition, construction, and installation of necessary improvements and betterments thereto;
- (6) Paying costs of engineering, legal and grant and project administration; together with all the purchase of site and easements therefore and all appurtenance and machinery necessary or useful for said system, all pursuant to the preliminary maps, plans and specifications therefore which are being prepared by and engineer selected by the Board of Trustees; and
- (7) Paying all other costs necessary or convenient to refinance the Authority Loan or Acquire the Improvements.

Section 3. Authorization of Bond. The Town hereby authorizes the issuance of a wastewater collection and treatment revenue bond of the Town, acting by, through and as the Enterprise, to be issued to the Government under the terms and conditions set forth in the Government's Letter of Conditions, dated May 18, 2010 (the "Bond"), as such terms and

conditions may be amended or waived by the Government and the Town. The exact date, form, terms and maturities of the Bond shall be as hereafter fixed by an ordinance of the Town.

Section 4. Authorization of Note. For the purpose of providing interim financing of the Project pending its completion and the issuance of the Bond, the Board hereby authorizes the issuance and sale of its wastewater collection and treatment system revenue bond anticipation note, to be issued in the form of a non-revolving draw down note, in the aggregate principal amount not to exceed \$3,545,000 (the "Note"). The Note shall be designated as the "Town of Hudson, Colorado, Water Activity Enterprise Wastewater Collection and Treatment Revenue Bond Anticipation Note, Series 2010," shall be dated as of the date of its original issue, shall be issued in fully registered form in the denomination set forth in the Sale Certificate, shall be numbered N-1, shall bear interest on unpaid principal from the date of issue at the Interest Rate, and shall mature on the date set forth in the Sale Certificate; *provided that*, while an Event of Default has occurred and is continuing, the Note will bear interest at the Default Rate. The Outstanding Principal Amount shall be due and payable upon the maturity or earlier prepayment of the Note. Interest on the Note shall accrue from the date thereof at the Interest Rate, and shall be payable upon the maturity or earlier prepayment in full of the Note. Interest on the Note shall be calculated on the basis of a 360-day year and twelve 30-day months. The Note shall be in registered form as to both principal and interest.

Both principal of and interest on the Note shall be payable in lawful money of the United States of America. Principal of and interest on the Note shall be payable upon presentation and surrender thereof by the Registered Owner at the office of the Note Registrar.

Section 11-57-204 of the Supplemental Public Securities Act provides that a public entity may elect in an act of issuance to apply all or any of the provisions of the Supplemental Public Securities Act to the issuance of such securities. The Town hereby elects to apply all of the Supplemental Public Securities Act to the issuance of the Note. Section 11-57-205 of the Supplemental Public Securities Act provides that a public entity may delegate to any member of the issuing authority, chief executive officer, or chief financial officer of the public entity the authority to sign a contract for the purchase of the securities or to accept a binding bid for the securities, such delegation to be effective for one year after adoption of the act of issuance. The Board hereby delegates to and authorizes either the Mayor or the Town Administrator the independent authority to execute and deliver the Sale Certificate setting forth the terms on which the Note will be delivered, subject to the parameters and restrictions contained in this Ordinance.

The Note shall mature, bear interest from its dated date to maturity or prior redemption, and shall be sold, all as provided in the Sale Certificate; provided that:

- (i) The maximum net effective interest rate shall not exceed 8.00%.
- (ii) The price at which the Note will be sold to the Bank, provided that the purchase price of the Note shall not be less than 98% of the principal amount of Note.
- (iii) The principal amount of the Note, provided that such principal amount shall not exceed \$3,545,000.

(v) The amount of principal of the Note maturing on any particular date; provided that the Note shall mature no later than December 1, 2012.

Such determinations shall be evidenced by the Sale Certificate signed by the Mayor or the Town Administrator dated and delivered on or before the date of issuance of the Note, which shall not be more than one year from the date of adoption of this Ordinance.

Section 5. Prior Redemption. The Outstanding Principal Amount may be prepaid, in whole or in part, at any time prior to the maturity of the Note at a price equal to the Outstanding Principal Amount plus accrued interest to the prepayment date, without premium. The Town will give the Bank three (3) business days' notice of its intent to make a prepayment.

Section 6. Registration. The Town hereby appoints the Clerk to act as the Note Registrar. The duties of the Note Registrar hereunder shall be limited to authenticating the Note and to remitting money made available by the Town in the Note Account to the Bank on the maturity or prepayment date of the Note. The Note shall not be transferable without the consent of the Town upon meeting the reasonable conditions of the Town to evidence compliance with applicable federal and state law.

The Clerk may determine at any time that she no longer wishes to act as Note Registrar and thereupon appoint a successor Note Registrar, which shall be a financial institution in the State of Colorado authorized under state and federal law to exercise trust powers. The Note Registrar is authorized, on behalf of the Town, to authenticate and deliver the Note and to carry out all of the Note Registrar's powers and duties under this Ordinance.

Section 7. Note Account--Security and Sources of Payment of Note. There is hereby authorized to be established and the Clerk is authorized and requested to establish a special fund of the Town to be known as the "2010 Wastewater Collection and Treatment System Revenue Bond Anticipation Note Account" (the "Note Account"), which account shall be a special fund to be drawn upon only for the payment of the principal of and interest on the Note. The Town, acting by, through and as the Enterprise, hereby further covenants and agrees to deposit on or before the maturity of the Note, proceeds of the Bond, or a refunding bond anticipation note, if any, or Net Revenue (subject to any prior liens thereon), or unencumbered funds remaining in the Construction Account after final acceptance, in a total amount sufficient to discharge the Note or pay the principal of and interest on the Note as the same becomes due.

The Note shall be payable solely from Net Revenue. The Bank may not look to the general fund or any other revenue or fund of the Town for the payment of the Note, except the Note Account pledged therefor. The Note shall not constitute a debt or indebtedness of the Enterprise or the Town within the meaning of any constitutional or statutory provision or limitation, and the Note shall not be considered or held to be a general obligation of the Town but shall constitute a special and limited obligation of the Enterprise. The Note is not payable in whole or in part from the proceeds of general property taxes or any other funds of the Town or the Enterprise except the Net Revenue, and the full faith and credit of the Town is not pledged for payment of the Note.

Section 8. Execution and Delivery of Note. The Note shall be executed on behalf of the Town by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the Clerk. In case any officer whose signature appears on the Note ceases to be an officer before the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, and the Note may be authenticated and delivered as if such officer had remained in office until such delivery.

The Note shall be valid and/or obligatory for any purpose and entitled to the benefits of this Ordinance only if the Certificate of Authentication in the form hereinafter specified in Section 14 has been manually executed by the Note Registrar. The Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this Ordinance.

Section 9. Sale of the Note. The Note shall be sold to the Bank, in accordance with its proposal for purchase, dated November 17, 2010. A loan fee of as set forth in the Sale Certificate, but not to exceed three percent (3%) of the maximum principal amount of the Note, is authorized to be paid to the Bank upon issuance of the Note.

The proper officials of the Town, acting as officers of the Enterprise, are hereby authorized and directed to do all things necessary for the prompt execution and delivery of the Note and the items required to be delivered to the Bank under the terms of its commitment and for proper use and application of the proceeds of sale thereof.

Section 10. Disposition of Note Proceeds - Construction Account. There is hereby authorized to be created by the Clerk a special fund be designated the "2010 Wastewater Collection and Treatment System Construction Project Account" (the "Construction Account"). Proceeds of the Note shall be deposited in the Construction Account and used to pay the Cost of the Project. The Construction Account shall be administered in accordance with a Deposit Agreement between the Town, acting by, through and as the Enterprise, and the Bank, the form of which is on file with the Clerk. The Clerk may invest money in the Construction Account in legal investments for Town funds. Earnings on such investments shall accrue to the benefit of the Construction Account. Any part of the proceeds of the Note remaining in the Construction Account after all Cost of the Project have been paid (including costs of issuance) shall be transferred to the Note Account. The Construction Account shall be maintained as an account with the Bank.

The Deposit Agreement is hereby approved, and the Mayor and the Clerk are hereby authorized to execute and deliver the Deposit Agreement in the form presented to the Board, with such modifications therefrom as the Mayor shall approve which are not inconsistent herewith.

Section 11. Lost, Destroyed or Mutilated Note. In the event the Note is lost, destroyed, or mutilated, the Town will, upon reasonable indemnification, cause to be issued a new Note, substantially similar to the original, to replace the same, in such manner and upon such reasonable terms and conditions as the Note Registrar may from time to time determine.

Section 12. Representations and Warranties. The Town, acting by, through and as the Enterprise, hereby makes the following representations, warranties and agreements.

(a) The Town, acting by, through and as the Enterprise, has full legal right, power and authority; (i) to pass this Ordinance, (ii) to sell, issue and deliver the Note as provided herein and in the Sale Certificate, and (iii) to carry out and consummate all other transactions contemplated by this Ordinance.

(b) By all necessary official action prior to or concurrently herewith, the Town, acting by, through and as the Enterprise, has duly authorized and approved the execution and delivery of, and the performance by the Town, acting by, through and as the Enterprise, of its obligations contained in the Note and this Ordinance and the consummation by it of all other transactions contemplated by this Ordinance in connection with the issuance of the Note, and such authorizations and approvals are in full force and effect and have not been amended, modified or supplemented in any material respect.

(c) This Ordinance constitutes the legal, valid and binding obligation of the Town, acting by, through and as the Enterprise,.

(d) The Note, when issued, authenticated and delivered, will constitute a legal, valid and binding obligation of the Town, acting by, through and as the Enterprise, in accordance with its terms.

(e) The Town is not in breach of or default under any applicable judgment or decree or any loan agreement, ordinance, bond, note, resolution, agreement or other instrument to which the Town is a party or to which the Town or any of its property or assets is otherwise subject where such breach or default would have a material adverse effect on the operations or financial condition of the Enterprise; and (i) the adoption of this Ordinance, and (ii) the sale, issuance and delivery of the Note, and compliance with the provisions on the Town's or the Enterprise's part contained therein, will not conflict with or constitute a breach of or default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, ordinance, resolution agreement or other instrument to which the Town is a party or to which the Town or any of the property or assets of the Enterprise is otherwise subject, nor will any such passage, execution, delivery, sale, issuance or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the System or under the terms of any such law, regulation or instrument, except as provided by the Note and this Ordinance.

Section 13. Covenants of the Town. The Town, acting by, through and as the Enterprise, hereby makes the following covenants with the Bank.

(a) *Reasonable and Legally Available Expenditures.* The Town, acting by, through and as the Enterprise, covenants that the budgeted expenditures, including the engineer's estimate for the acquisition, development and construction of the Improvements are reasonable and within the anticipated revenues, grants and other legally available funds of the System.

(b) *Audited Financials.* The Town hereby covenants to provide the Government Banking Division of the Bank with copies of its annual, audited financial statements within 270 days of the end of each fiscal year for the duration of the Note.

(c) *Punctual Payment of Note.* The Town, acting by, through and as the Enterprise, covenants that amounts on deposit in the Note Account shall be drawn upon solely for the purpose of paying the principal of and interest on the Note. The Town, acting by, through and as the Enterprise, further covenants that it will duly and punctually pay or cause to be paid, solely from the Net Revenue or proceeds of the Bond or refunding bond anticipation note, the principal of and interest on the Note at the place or places, on the date or dates and in the manner provided in the Note and herein. The Town, acting by, through and as the Enterprise, further covenants and agrees that it will deposit the Net Revenue as required herein for the payment of the Note. The Town, acting by, through and as the Enterprise, will, following the final approval of the completion of the Project by the Government and its authorizing for loan closing, proceed promptly to issue and deliver the Bond in order to repay its obligations under the Note.

(d) *Note to Remain Tax Exempt, Nonarbitrage Covenant.* The Town covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exemption from federal income taxation of the interest on the Note and will take or require to be taken such acts as may reasonably be within its ability and as may from time to time be required under applicable law to continue the exemption from federal income taxation of the interest on the Note. Without limiting the generality of the foregoing, the Town covenants that it will not take any action or fail to take any action with respect to the investment of the proceeds of the Note or other that would result in constituting the Note an "arbitrage bond" within the meaning of such term as used in Section 148 of the Code. The Town represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is a bond issuer whose arbitrage certifications may not be relied upon.

(e) *Insurance.* The Town covenants that it will acquire and maintain throughout the term of the Note the policies of insurance and fidelity bonds specified in the Letter of Commitment.

(f) *Rate Maintenance Covenant.* The Town covenants that it will prescribe, revise and collect rates, fees and charges or any combination thereof which may be imposed for the use of the System, which shall produce Gross Revenues sufficient to comply with paragraph 13(j) hereof and pay interest on the Note as the same shall become due and payable. In the event that such rates, fees and charges at any time should not be sufficient to make all of the payments and accumulations required by this Section, the Board will increase its rates, fees and charges for the System to such extent as to insure the payments and accumulations required by the provisions of this Section.

(g) *Defense of Legality of Net Revenue.* The Town shall, to the extent permitted by law, defend the validity and legality of this Ordinance and all amendments thereto against all claims, suits and proceedings which would diminish or impair the Net Revenue. Except as specified in this Ordinance, the Town has not assigned or pledged the Net Revenue.

(h) *Performance of Duties.* The Town, acting by, through and as the Enterprise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Net Revenue and the System required by the Constitution and laws of the State and the various resolutions and contracts which relate to the Enterprise, including, without limitation, the proper segregation of the proceeds of the Note and the Net Revenue and its application from time to time to the respective funds provided therefor.

(i) *Records.* The Town will keep proper books of record and account, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the proceeds of the Gross Revenue, the Net Revenue and the funds and accounts established herein and payments made from said funds and accounts, and the Bank shall have the right at all reasonable times to inspect the same.

(j) *Efficient Operation and Maintenance.* The Town, acting by and through the Enterprise, shall at all times operate the System properly and in a sound and economical manner consistent with prudent municipal utility practice. The Town shall not provide or allow free service from the System. Nothing herein shall be construed to prevent the Town from establishing different rates for residents and non-residents of the Town or for any other classification the Town deems to be reasonable and appropriate. The Town shall maintain, preserve and keep the System properly or cause the same so to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof in good condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the maintenance of the System may be properly and advantageously conducted. All salaries, fees, wages and other compensation paid by the Town in connection with the maintenance and operation of the System shall be reasonable and no more than would be paid by reasonable municipal corporations for similar services. The Town shall include in its annual budgets and appropriations measures for the Enterprise, amounts sufficient to pay for all service so furnished. The Town shall employ experienced and competent management personnel for operation of the System.

(k) *Protection of Security.* The Town, acting by and through the Enterprise, its officers, directors, agents and employees, shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Note and any other securities payable from the Net Revenue according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of the Bank or the owners of any other security payable from Net Revenue would be prejudicially and materially impaired or diminished.

(l) *Rules, Regulations and Other Details.* The Town, acting by, through and as the Enterprise, shall establish and enforce reasonable rules and regulations governing the construction, operation, care, repair, maintenance, management, control, use and services of the System. The Town shall observe and perform all of the terms and conditions contained in this Ordinance and shall comply with all valid acts, rules, regulations, orders and directives of any legislative, executive, administrative or judicial body applicable to the System or to the Enterprise.

(m) *Payment of Governmental Charges.* The Town shall pay or cause to be paid all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System or its facilities, or upon any part thereof, or upon any portion of the Net Revenue, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to the System or any part thereof, except for any period during which the same are being contested in good faith by proper legal proceedings. The Town shall not create or suffer to be created any lien or charge upon the System, or any part thereof, or upon the Net Revenue, except the pledge and lien created by this Ordinance for the payment of the Note prior to the repayment of the Note, and except as herein otherwise permitted. The foregoing shall not limit the Town's ability to take all steps necessary to authorize, execute and deliver the Bond, provided that the Bond shall not be executed and delivered unless proceeds therefrom, when combined with other available amounts provided by or on behalf of the Town, shall be sufficient to pay the full principal of and interest on the Note. The Town shall pay or cause to be discharged or shall make adequate provision to satisfy and to discharge, within ninety (90) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the System or any part thereof, or upon the Net Revenue; but nothing herein requires the Enterprise to pay or to cause to be discharged or to make provision for any such tax, assessment, lien or charge, so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

(n). *Additional Securities.* The Enterprise shall not hereafter issue any bonds or securities payable from Net Revenue other than the Note prior to the discharge of the Note. Other than as provided herein, upon the refunding of the Authority Loan as contemplated hereby, there will be no other liens or encumbrances of any nature whatsoever on or against the Net Revenue .

(o) *Disposal of System Prohibited.* Neither all nor a substantial part of the System shall be sold, mortgaged, pledged, encumbered, alienated or otherwise disposed of, until the Note has been paid in full; provided, however, that the Town may sell, exchange, lease or grant an easement across at any time and from time to time any property or facilities constituting part of the System and not useful in the construction, reconstruction or operation thereof and which does not in any manner impair the generation of revenues therefrom; but any proceeds of any such sale, lease, easement or exchange received and not used to replace such property so sold, leased, encumbered or exchanged shall be Gross Revenues of the System.

(p) *Commitment.* The Town shall take all reasonable action necessary to comply with the terms and conditions of the Letter of Conditions.

(q) *Yield Protection.* If, on or after the date of this Ordinance, the adoption of and governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation, promulgation, implementation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof including, notwithstanding the foregoing, all requests, rules, guidelines or directives in connection with Dodd-Frank Wall Street Reform and Consumer Protection Act regardless of the date enacted,

adopted or issued, or compliance by any lender or applicable lending institution or the Bank with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

- (a) subjects the Bank to any taxes, or changes the basis of taxation of payments to the Bank in respect of its loans, letters of credit or participations therein, or
- (b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank (other than reserves and assessments taken into account in determining the interest rate applicable to advances or loans denominated in Euros), or
- (c) imposes any other condition the result of which is to increase the cost to the Bank of making, funding or maintaining its loans, or of issuing or participating in letters of credit, or reduces any amount receivable by the Bank in connection with its loans or letters of credit or participations therein, or the Bank to make any payment calculated by reference to the amount of loans or letters of credit or participations therein held or interest or letter of credit fees received by it, by an amount deemed material by the Bank,

and the result of any of the foregoing is to increase the cost to the Bank, of making or maintaining its loans or of issuing or participating in letters of credit or to reduce the return received by the Bank, in connection with such loans, letters of credit or participations therein, then, within 15 days of demand by the Bank, the Town shall pay to the Bank, but solely from Net Revenue, such additional amount or amounts as will compensate the Bank, for such increased cost or reduction in amount received.

(r) *Changes in Capital Adequacy Regulations.* If the Bank determines the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank is increased as a result of a Change (as herein defined) in capital adequacy regulations then, within 15 days of demand by the Bank, the Town shall pay to the Bank, but solely from Net Revenue, the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which the Bank determines is attributable to this Ordinance or the Note (after taking into account the Bank's policies as to capital adequacy). "Change" means (i) any change after the date of this Ordinance in the Risk-Based Capital Guidelines (as defined herein) or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof after the date of this Ordinance which affects the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank. Notwithstanding the foregoing, for purposes of this Ordinance, all requests, rules, guidelines or directives in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act shall be deemed to be a Change regardless of the date enacted, adopted or issued and all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United

States financial regulatory authorities shall be deemed to be a Change regardless of the date adopted, issued, promulgated or implemented. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Ordinance, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the date of this Ordinance.

Section 14. Form of Note. The Note shall be in substantially the following form:

THIS NOTE IS NOT A NEGOTIABLE INSTRUMENT, AND MAY ONLY BE TRANSFERRED WITH THE WRITTEN CONSENT OF THE TOWN. ANY ATTEMPT TO TRANSFER THIS NOTE IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

UNITED STATES OF AMERICA

No. N-1

\$ _____

STATE OF COLORADO
TOWN OF HUDSON WATER ACTIVITY ENTERPRISE
WASTEWATER COLLECTION AND TREATMENT SYSTEM REVENUE BOND
ANTICIPATION NOTE, SERIES 2010

MATURITY DATE: _____ 2012

REGISTERED OWNER: U.S. BANK NATIONAL ASSOCIATION
Denver, Colorado

INTEREST RATE: _____ %

TAXPAYER IDENT. NO.:

PRINCIPAL AMOUNT:

_____ **THOUSAND AND 00/100 DOLLARS**

The Town of Hudson, Colorado (the "Town"), a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of Colorado, acting by, through and as the Town of Hudson Water Activity Enterprise (the "Enterprise"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner on the Maturity Date indicated above, the Principal Amount indicated above.

The Principal Amount shall bear interest at the rate specified above. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. Interest on the Principal Amount shall be payable on the Maturity Date.

This note (this "Note") is issued in the maximum principal amount of _____ and 00/100 Dollars (\$ _____), under and pursuant to the Constitution and laws of the State of Colorado, including particularly the Bond Anticipation Note Act, Part 1 of Article 14, Title 29, Colorado Revised Statutes, as amended (the "Bond Anticipation Note Act"), and Part 2 of Article 57 of Title 11, C.R.S., (the "Supplemental Public Securities Act" and together with the Bond Anticipation Note Act, the "Act"); and pursuant to the Note Ordinance, approved by the Board of Trustees on _____, 2010, for the purpose of providing interim financing for