

TOWN OF ODESSA, WASHINGTON

ORDINANCE NO. 718

AN ORDINANCE of the Town of Odessa, Washington, relating to the water system of the Town; providing for the issuance of a taxable water revenue bond of the Town in the maximum principal amount of \$499,000, for the purpose of providing funds to pay costs of the acquisition, construction and installation of improvements to the Town's water system; fixing the terms and covenants of the bond; creating, adopting and continuing certain funds and accounts; providing for the issuance of additional bonds; approving the sale and providing for the delivery of the bond to the United States of America, acting through its Department of Agriculture, Rural Utilities Service; and providing for related matters.

PASSED: May 10, 2021

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*\* The cover page, table of contents and section headings of this ordinance are for convenience of reference only, and shall not be used to resolve any question of interpretation of this ordinance.*

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BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ODESSA, as follows:

**Section 1. Definitions**

In addition to the words and terms defined elsewhere in this ordinance, the following words and terms have the following meanings.

(a) "Annual Debt Service" means, with respect to the Bond and any Future Parity Bonds for any calendar year, all the interest due on the Bond and any Future Parity Bonds in such year, plus all principal of the Bond and any Future Parity Bonds (including any such principal scheduled to be paid by means of mandatory redemption and sinking fund payment requirements), that will mature or become due in any such calendar year. For any Future Parity Bonds or for the Bond when the Purchaser is no longer the Registered Owner of the Bond, "Annual Debt Service" means all the principal and interest that will mature or become due in any calendar year (including any such principal scheduled to be paid by means of mandatory redemption and sinking fund payment requirements), less all capitalized interest payable in such year from the proceeds of any such bonds.

(b) "Average Annual Debt Service" means for the Bond and for any issue of Future Parity Bonds, the sum of the Annual Debt Service for the remaining years to the last scheduled maturity of such bonds divided by the number of those years.

(c) "Bond" means the taxable water revenue bond of the Town authorized to be issued pursuant to Section 4 of this Ordinance.

(d) "Bond Counsel" means the firm of Foster Garvey P.C., its successor or any other attorneys or firm of attorneys with a nationally recognized standing as bond counsel in the field of municipal finance selected by the Council.

(e) "Bond Register" means the registration books maintained by the Bond Registrar pursuant to Section 5 of this Ordinance.

(f) "Bond Registrar" means (i) the Treasurer, or (ii) upon a determination by the Treasurer that maintenance of the duties of the Bond Registrar is no longer convenient, a successor

appointed by the Treasurer willing and able to accept the duties of Bond Registrar on reasonable and customary terms and authorized by law to serve as authenticating agent, transfer agent, registrar and paying or other fiscal agent of the Town with respect to the Bond and perform all the duties imposed upon it by this Ordinance.

(g) “Clerk” means the *de facto* or *de jure* Clerk of the Town, or other officer of the Town who is the custodian of the seal of the Town and of the records of the proceedings of the Council, and her successors in functions, if any.

(h) “Code” means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

(i) “Commencement Date” means the date that is 12 months after the Dated Date; *provided*, if the Dated Date is the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> day of the month, the Commencement Date will be the 28<sup>th</sup> day of the twelfth month thereafter.

(j) “Construction Account” means the account of that name referred to in Section 10 of this Ordinance.

(k) “Council” means the Town Council of the Town.

(l) “Dated Date” means the date the Bond is issued and delivered to the Purchaser.

(m) “Debt Service Account” means the account of that name referenced in Section 10 of this Ordinance for the payment of the principal of and interest on the Bond and any Future Parity Bonds.

(n) “Debt Service Reserve Account” means the account of that name referenced in Section 10 of this Ordinance for the purpose of securing the payment of principal of and interest on the Bond and any Future Parity Bonds.

(o) “Draw” means each incremental draw upon the Bond.

(p) “Future Junior Lien Obligations” means any and all revenue obligations of the Town hereafter issued, the payment of which, both principal and interest, constitutes a lien and charge upon Gross Revenue and Water ULID Assessments subordinate to the lien and charge upon Gross Revenue and Water ULID Assessments for the payments required to pay and secure the payment of the Bond.

(q) “Future Parity Bonds” means any and all revenue bonds of the Town hereafter issued, the payment of which, both principal and interest, constitutes a lien and charge upon Gross Revenue and Water ULID Assessments equal in rank with the lien and charge upon Gross Revenue and Water ULID Assessments for the payments required to pay and secure the payment of the Bond.

(r) “Gross Revenue” means all of the earnings and revenues received from the operation and maintenance of the System, and earnings from the investment of money on deposit in the various accounts of the System. Gross Revenue also includes all earnings from the investment of money on deposit in the Debt Service Account; and all System connection and

capital improvement charges. Gross Revenue does not include: (1) principal proceeds of Future Parity Bonds or any other borrowings, (2) amounts collected in respect of Town-imposed utility taxes, (3) earnings or proceeds from any investments in a trust account created to defease or refund revenue obligations of the System or held in a special account for the purpose of paying a rebate under the Code, (4) local improvement district assessments (including Water ULID Assessments), (5) grants, gifts, income and revenue which are restricted or may not legally be pledged for revenue bond debt service, (6) payments received in respect of any bond insurance policy or reserve surety, or insurance or condemnation proceeds used for the replacement of capital projects or equipment, (7) proceeds from the sale of System property; (8) any tax credit subsidy payments; or (9) any revenue from a separate utility system.

(s) “Installment Payment Date” means the Commencement Date and each anniversary thereof to and including the final maturity of the Bond.

(t) “Interest Rate” means the *per annum* interest rate specified by the Purchaser for the Bond pursuant to the Purchaser’s Water and Environmental Program. Such rate is expected to be the lower of (i) the applicable interest rate as of the date the Purchaser mails a signed copy of Form 1940-1 with regard to the Bond to the Town or (ii) the applicable interest rate on the Dated Date.

(u) “Junior Lien Obligations” has the meaning specified in Section 2(b) hereof.

(v) “Letter of Conditions” has the meaning specified in Section 2(c) hereof.

(w) “Loan Resolution” means the RUS Bulletin 1780-27 “Loan Resolution” adopted by the Council as Resolution No. 2021-02 on March 1, 2021, pursuant to the loan conditions established by the Purchaser.

(x) “Maximum Annual Debt Service” means the maximum amount of Annual Debt Service which will become due in any future year on the Bond and on any outstanding Future Parity Bonds.

(y) “Mayor” means the *de facto* or *de jure* Mayor of the Town (including the Mayor *pro tempore* in the Mayor’s absence), or any presiding officer or titular head of the Town and his successors in functions, if any.

(z) “Net Revenue” means Gross Revenue less Operating and Maintenance Expenses.

(aa) “Operating and Maintenance Expenses” means all reasonable expenses incurred by the Town in causing the System to be operated and maintained in good repair, working order and condition, including general maintenance and administrative costs of the Town allocated to the System, but does not include non-cash accounting items (*e.g.*, depreciation, amounts treated as expenses under accounting guidelines with respect to unfunded contributions to pension or other post-employment benefit plans, non-exchange financial guarantees, potential environmental liabilities, or similar items) or capital additions or capital replacements to the System.

(bb) “Ordinance” means this Ordinance passed by the Council and approved by the Mayor on May 10, 2021.

- (cc) “Project” has the meaning specified in Section 3 hereof.
- (dd) “Purchaser” means the United States of America, acting through its Department of Agriculture, Rural Utilities Service.
- (ee) “RCW” means the Revised Code of Washington.
- (ff) “Registered Owner” means the entity or person named as the registered owner of the Bond on the Bond Register, initially the Purchaser.
- (gg) “Reserve Requirement” means, with respect to the Bond, an amount equal to the Annual Debt Service for the Bond, to be accumulated by the tenth anniversary of the Dated Date in approximately equal monthly payments commencing with the first month following the Dated Date. For as long as the Purchaser is the Registered Owner of the Bond and the Bond is outstanding, any ordinance authorizing Future Parity Bonds shall specify the amount no less than equal to the Annual Debt Service for such Future Parity Bonds to be accumulated no later than the tenth anniversary of the date of issue, if any, to be held as a “reserve requirement” for such Future Parity Bonds.
- (hh) “Revenue Fund” means the Town’s existing Water Revenue Fund, which is an enterprise fund of the Town in which Gross Revenue is deposited.
- (ii) “Short-Lived Asset Reserve Account” means the account of that name referenced in Section 10 of this Ordinance.
- (jj) “Short-Lived Assets” means those assets described by the Purchaser as may be in the preliminary engineering report and referenced in the Letter of Conditions.
- (kk) “State” means the State of Washington.
- (ll) “System” means the existing water system of the Town, together with all additions thereto and betterments and extensions thereof at any time made or constructed.
- (mm) “Treasurer” means the *de facto* or *de jure* Treasurer of the Town, and her successors in functions, if any.
- (nn) “Town” means the Town of Odessa, Washington.
- (oo) “Water ULID” means any utility local improvement district of the Town created for the purpose of financing improvements to the System, and if the water and sewer systems of the Town are later combined, any ULID thereafter created for water or sewer improvements, or both.
- (pp) “Water ULID Assessments” means the assessments levied in any Water ULID created pursuant to State law in connection with an improvement to the System financed by the issuance of Future Parity Bonds, the assessments in which are pledged to be paid into the Debt Service Account, including installments thereof and interest and any penalties thereon.

## **Section 2. Recitals**

The Council takes note of the following facts and makes the following findings and determinations:

(a) The Town is a municipal corporation duly organized and existing under the laws of the State. Pursuant to the provisions of chapters 35.92 RCW, the Town is authorized to acquire, construct install, operate and maintain a water system (*i.e.*, the System). The Town has not combined (within the meaning of chapter 35.67 RCW) its water system with either its sewer system or its refuse collection and disposal system. The Town is authorized to conduct proceedings and to issue revenue bonds pursuant to chapters 35.41, 35.92, and 39.46 RCW.

(b) The Town has certain outstanding loans from the State (the “Junior Lien Obligations”). To the extent any of the Junior Lien Obligations are payable from System revenue, such Junior Lien Obligations do not prohibit the Town from issuing revenue obligations having a lien or charge on System revenue prior and superior to that of such Junior Lien Obligations. Upon issuance of the Bond, the lien or charge on System revenue of such Junior Lien Obligations will be subordinate to that of the Bond. Except for the Junior Lien Obligations, the Town has no obligation to make payments on account of money borrowed for System purposes.

(c) The Purchaser provided the Town with a Letter of Conditions dated May 8, 2019 (together with any amendments thereto, the “Letter of Conditions”), establishing the conditions under which the Purchaser would loan money to the Town to finance the acquisition, construction and installation of improvements to the System (*i.e.*, the Project). The Council adopted the Loan Resolution. RCW 39.69.020 authorizes the Town to enter into a loan agreement with the Purchaser and to evidence the Town’s obligation to repay the loan under the terms and conditions of such loan agreement. Chapter 39.48 RCW authorizes the Town to sell the Bond to the Purchaser by private sale at a price of not less than par plus accrued interest. The Purchaser has offered to purchase the Bond according to the terms set forth herein and in the Letter of Conditions.

(d) It is advisable for the Town to acquire, construct and install the Project. In determining the costs of the Project pursuant to RCW 35.41.090, the Council estimates that the total costs of the Project will be at least \$3,551,319. It is advisable for the Town to provide funds for defraying a portion of the cost of the Project from the proceeds of the sale of a revenue bond (*i.e.*, the Bond). The various improvements comprising the Project represent additions to or betterments of the Town’s existing System. Because the Project will not produce electricity for sale and the Bond will not be a general obligation of the Town, neither the Project nor the issuance of the Bond are required to be approved by the Town’s voters under RCW 35.41.030 or RCW 35.92.070.

(e) The Gross Revenue and benefits to be derived from the operation and maintenance of the System, at the rates to be charged for service from the System, will be more than sufficient to meet all Operating and Maintenance Expenses and, together with Water ULID Assessments, will be sufficient to pay the principal of and interest on the Bond when due and to make payments into the reserve accounts. In fixing the amounts to be paid into the Debt Service Account out of the Gross Revenue, the Council has had due regard for Operating and Maintenance Expenses and the payments required to be made for the Bond and other obligations

payable from Gross Revenue. The Council has not obligated the Town to set aside into the Debt Service Account a greater amount of Gross Revenue than, in the Council's judgment, will be available over and above Operating and Maintenance Expenses.

(f) Based on the foregoing, it is in the Town's best interest to authorize: (i) the issuance of the Bond to evidence the Town's obligation to repay the loan from the Purchaser, and (ii) the delivery of the Bond to the Purchaser upon the terms set forth in this Ordinance.

### **Section 3. The Project**

The Town hereby specifies, adopts and authorizes a plan for accomplishing improvements to the Town's water distribution system, including without limitation water main related street and meter improvements, all as more particularly described in the plans and specifications prepared by Century West Engineering, consulting engineers to the Town, and approved by the Town (*i.e.*, the Project). The Council may make such changes prior to or during the actual construction of the Project where, in its judgment, it appears advisable.

### **Section 4. Authorization and Description of the Bond; Designation of Officer to Make Draws**

(a) For the purpose of paying costs of the Project, including paying the costs of issuing the Bond, the Town shall cause to be issued a single, taxable water revenue bond as set forth in this Ordinance. The Bond shall be a special obligation of the Town payable from Net Revenue and Water ULID Assessments. The Bond shall not be a general obligation of the Town. The Town's full faith, credit and resources are not pledged for the payment of the Bond.

(b) The Bond shall be dated its Dated Date; shall be designated as the "Water Revenue Bond, 2021 (Taxable)" of the Town; shall be in the maximum principal amount of \$499,000; shall mature on the Installment Payment Date that occurs on (or immediately before) the 40<sup>th</sup> anniversary of its Dated Date (or such earlier date that the principal of and interest on the Bond is fully paid); shall bear interest from the Dated Date at the Interest Rate on its outstanding principal balance (computed on the basis of a 365-day year for actual number of days elapsed); shall be numbered R-1, with any additional designation as the Bond Registrar deems necessary for purposes of identification; and shall be issued only in registered form as to both principal and interest on the Bond Register. The Town may make monthly Draws upon the Bond from the Dated Date to and including the Commencement Date in an amount equal to the total amount of the costs to be paid from such Draw, and the proceeds of each Draw shall be used as soon as practicable to pay those costs. The Town shall request Draws by submitting a Form RD 440-11 to the Purchaser (or such other documentation as the Purchaser may accept from time to time). The Council hereby delegates to the Treasurer the authority to determine the date and amount of each Draw, and to do all things necessary to make each Draw. Draws shall be recorded on the Draw Record attached to the Bond, or in such other form as the Town and the Purchaser may agree; *provided*, no Draw Record shall be required if the first Draw on the Bond is equal to the maximum principal amount of the Bond. The aggregate amount of all Draws on the Bond shall be limited to the lesser of (i) \$499,000 or (ii) the principal sum of all Draws made on and before the Commencement Date. Principal of and interest on the Bond shall be payable in equal annual amortized installments on each Installment Payment Date, beginning with the Commencement

Date, except that the last such payment shall be in an amount equal to the remaining principal and interest due on the Bond.

### **Section 5. Appointment of Bond Registrar; Registration and Transfer of the Bond**

(a) Pursuant to RCW 39.46.030(4), the Treasurer is appointed as the initial Bond Registrar for the Bond. The Bond Registrar shall keep, or cause to be kept, at its office, sufficient books for purposes of registering the name, mailing address and taxpayer identification number of the Registered Owner, and for registering any transfer of Bond ownership (*i.e.*, the Bond Register). The Bond Register shall at all times be open to inspection by the Town. In addition to maintaining the Bond Register, the Bond Registrar is authorized and directed to perform the following duties with respect to the Bond: (i) to authenticate the Bond upon the initial issuance thereof by executing the Certificate of Authentication contained thereon; (ii) to authenticate and deliver any Bond that is transferred in accordance with the provisions thereof and this Ordinance; (iii) to serve as the Town's paying agent for the Bond; (iv) to imprint on each Bond transferred or exchanged pursuant to this Ordinance the name of the Registered Owner, the principal amount of the Bond, the interest rate borne by the Bond, and the maturity date of the Bond; (v) to cancel the Bond returned to the Bond Registrar upon the payment in full thereof by punching holes through the signatures on the Bond and by writing clearly across the face of such Bond the word "cancelled;" and (vi) to carry out all of the Bond Registrar's duties otherwise described in this Ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bond.

(b) The Bond may be transferred only in whole and only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any transfer shall be without cost to the Registered Owner or transferee and shall be noted in the Bond Register. The Bond Registrar shall not be obligated to transfer the Bond during the 15 days preceding any Installment Payment Date.

### **Section 6. Payment of the Bond**

Installments of principal and interest on the Bond shall be payable in lawful money of the United States of America and shall be paid by check, draft or preauthorized debit of the Bond Registrar and sent to the Registered Owner so that the Registered Owner receives said payments when due at the address appearing on the Bond Register; *provided*, if the Registered Owner is other than the Purchaser, then the last installment of principal and interest on the Bond shall be payable only upon presentation and surrender of the Bond by the Registered Owner at the office of the Bond Registrar. Notwithstanding the foregoing, the Town may engage in any payment program established by the Purchaser from time to time, so long as the Town can engage in such program under State law. The Bond Registrar shall destroy the Bond when surrendered for final payment and furnish the Town a certificate of destruction within 30 days following the surrender and payment in full of the Bond.

### **Section 7. Failure to Pay Installments**

If any installment of principal of and interest on the Bond is not paid when due, the Town shall be obligated to pay interest on that installment at the same rate provided in the Bond from and after its payment date until that installment, both principal and interest, is paid in full.

## **Section 8. Optional Payment; Notice**

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Town. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Bond, shall, after payment of interest, be applied to the principal. Partial prepayment shall not affect the obligation of the Town to pay the remaining installments as scheduled. Notice of any such optional prepayment shall be given at least 10 days prior to the prepayment date by mailing to the Registered Owner a notice fixing such prepayment date and specifying the amount to be prepaid.

## **Section 9. Execution, Issuance and Delivery of the Bond and Related Documents**

(a) The Town will issue and deliver the Bond to the Purchaser on the date the Town makes the first Draw. The Bond shall be prepared in a form consistent with the provisions of this Ordinance and State law, shall be signed by the Mayor and Clerk, either or both of whose signatures may be manual or in facsimile, and shall have the seal of the Town (or a facsimile reproduction thereof) impressed or printed thereon.

(b) No Bond is valid or obligatory for any purpose, or entitled to the benefits of this Ordinance, unless such Bond bears a certificate of authentication manually signed by the Bond Registrar stating: "This Bond is the fully registered Town of Odessa, Washington, Water Revenue Bond, 2021 (Taxable), described in the Bond Ordinance." A minor deviation in the language of such certificate shall not void a certificate of authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a certificate of authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this Ordinance.

(c) The Mayor and the Clerk-Treasurer, or their designees, are severally authorized and directed to: (i) do everything necessary for the execution, issuance and delivery of the Bond; and (ii) execute and deliver any documents, agreements, certificates, receipts and instruments that are necessary or appropriate in their discretion to give effect to this Ordinance and to consummate the borrowing of money authorized herein.

(d) The Town directs Bond Counsel to prepare the Bond and such other documents, agreements, certificates, receipts and instruments as may be necessary and appropriate to properly document the issuance and delivery of the Bond to the Purchaser and the receipt of money by the Town from the Purchaser. Bond Counsel shall coordinate the execution and delivery of such documents on behalf of the Town, and shall compile and distribute to the Town and the Purchaser a transcript containing such documents (or copies thereof) as it deems necessary to support its legal opinions rendered in connection with the issuance of the Bond.

## **Section 10. Creation or Continuance of Funds**

(a) *Creation or Continuance of Funds.* The following fund and accounts shall be created (or if previously created, shall be continued) and maintained in the office of the Treasurer to comply with the provisions of this Ordinance: (i) the Revenue Fund; (ii) a debt service account within the Revenue Fund (the "Debt Service Account"); (iii) a debt service reserve account within the Revenue Fund (the "Debt Service Reserve Account"); (iv) a project account within the Revenue

Fund (the “Construction Account”); and (v) an asset replacement reserve account within the Revenue Fund (the “Short-Lived Asset Reserve Account”). Each fund and account shall be maintained by the Treasurer as a separate and distinct fund or account to be held, managed, invested, disbursed and administered as provided in this Ordinance. All money deposited in the accounts created hereunder shall be used solely for the purposes set forth in this Ordinance. The Treasurer shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with general practices and procedures in effect from time to time. The Treasurer may establish such additional accounts or subaccounts as is deemed necessary or useful, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Ordinance with respect to a deposit or use of money in the funds or accounts.

(b) *Construction Account.* Draws upon the Bond shall be deposited into the Construction Account. The costs of carrying out the Project, including the costs of issuing the Bond, shall be paid from the Construction Account. All withdrawals from the Construction Account shall be approved by the Purchaser.

(c) *Debt Service Account.* The Debt Service Account is to be drawn upon for the sole purpose of paying the principal of and interest on the Bond and any Future Parity Bonds. For so long as any principal of the Bond is outstanding against the Debt Service Account, the Town shall pay into the Debt Service Account all Water ULID Assessments on their collection and, from Net Revenue, pay into the Debt Service Account prior to each Installment Payment Date an amount that is sufficient (together with other money on deposit in the Debt Service Account) to pay the installment of principal and interest falling due on such Installment Payment Date. The Town may (but shall not be required to) transfer any money from any funds or accounts of the Town legally available therefor to meet the required payments to be made into the Debt Service Account.

(d) *Debt Service Reserve Account.* The Debt Service Reserve Account shall be maintained for the purpose of securing the payment of the principal of and interest on the Bond and any Future Parity Bonds, and shall be used solely for the purpose of making up any deficiency existing in the Debt Service Account to meet maturing installments of either principal or interest, as the case may be, on any outstanding bonds payable out of the Debt Service Account. So long as any principal of the Bond is outstanding, the Town shall deposit into the Debt Service Reserve Account the Reserve Requirement for the Bond (at the times and in the amounts described in the definition of “Reserve Requirement” in Section 1 hereof). When the Debt Service Reserve Account is funded at the Reserve Requirement for the Bond, the Town will at all times maintain at least such amount therein (except to the extent withdrawals are made from the Debt Service Reserve Account as authorized by this Ordinance). The amount held in the Debt Service Reserve Account for the Bond shall not be available to fund payments for Future Parity Bonds. Any deficiency created in the Debt Service Reserve Account by reason of a withdrawal therefrom shall then be made up from money derived from Net Revenue first available after making necessary provisions for the required payments into the Debt Service Account. The Town may use any excess money in the Debt Service Reserve Account to make extra payments on the Bond in the manner authorized by Section 8 of this Ordinance. The money and investments in the Debt Service Reserve Account otherwise shall be held intact and may be applied against the last outstanding bonds payable out of the Debt Service Account. For so long as the Purchaser is the Registered Owner of the Bond, the Town shall not disburse or withdraw money from the Debt Service Reserve Account without receiving the prior written consent of the Purchaser; *provided*, the Town may create one or more subaccounts in the

Debt Service Reserve Account in connection with the issuance of Future Parity Bonds and, if such subaccounts are funded from the proceeds of such Future Parity Bonds, from Net Revenue and/or from Water ULID Assessments, may provide in the ordinance(s) authorizing such Future Parity Bonds that money may be withdrawn from such subaccounts without the Purchaser's prior written consent.

(e) *Short-Lived Asset Reserve Account.* The Short-Lived Asset Reserve Account shall be maintained for the exclusive purpose of replacing Short-Lived Assets. The Town shall deposit at least \$1,000 annually into the Short-Lived Asset Reserve Account. The first deposit into the Short-Lived Asset Reserve Account shall be made no later than the Commencement Date. Amounts on deposit from time to time in the Short-Lived Asset Reserve Account are not pledged to the payment of the Bond or any Future Parity Bonds. For so long as the Purchaser is the Registered Owner, the Town shall not disburse or withdraw money from the Short-Lived Asset Reserve Account without receiving prior written consent of the Purchaser.

(f) *Investment of Funds.* The money in the Construction Account and the Short-Lived Asset Reserve Account may be kept in cash or deposited in institutions permitted by law in an amount in each institution not greater than the amount insured by a state or the Federal Government, or may be invested in readily marketable securities backed by the full faith and credit of the United States of America maturing (or subject to sale by the Town) not later than the time such money must be expended from the account so invested. The money in the Debt Service Account and the Debt Service Reserve Account may be invested in any readily marketable investment permitted by law for Town funds. The interest and investment earnings on such accounts shall be used as follows: (i) interest and investment earnings on amounts in the Debt Service Account shall be retained in the Debt Service Account and used to pay debt service on the Bond and any Future Parity Bonds; (ii) interest and investment earnings on amounts in the Debt Service Reserve Account shall be retained in the Debt Service Reserve Account until the total Reserve Requirement has been accumulated therein, after which time such earnings shall be deposited in the Debt Service Account; (iii) interest and investment earnings on amounts in the Construction Account may be retained in such account or, at the Town's discretion, may be deposited into the Debt Service Account; and (iv) interest and investment earnings on amounts in the Short-Lived Asset Reserve Account shall be retained in such account and used for the purposes of such account. Notwithstanding the provisions for the deposit of earnings, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from any such fund or account for deposit in a separate fund or account for that purpose.

## **Section 11. Flow of Funds**

All Water ULID Assessments shall be paid into the Debt Service Account and, if permitted by the ordinance confirming the assessment roll for such Water ULID Assessments, into the Debt Service Reserve Account, as provided by this Ordinance. Gross Revenue shall be allocated to the Revenue Fund, shall be used for the following purposes only, and shall be applied in the following order of priority:

- (a) to pay Operating and Maintenance Expenses;
- (b) to make all deposits required to be made into the Debt Service Account pursuant to this Ordinance and any ordinance authorizing the issuance of Future Parity Bonds;

(c) to make all deposits required to be made into the Debt Service Reserve Account pursuant to this Ordinance and any ordinance authorizing the issuance of Future Parity Bonds;

(d) to make all deposits required to be made into the Short-Lived Asset Reserve Account pursuant to this Ordinance and any ordinance authorizing the issuance of Future Parity Bonds;

(e) to make any other payments, transfers or deposits for System purposes as may be lawful for Gross Revenue; and

(f) to pay debt service on the Junior Lien Obligations and any Future Junior Lien Obligations.

## **Section 12. Pledge of Revenue and Lien Position**

Net Revenue and all Water ULID Assessments are hereby pledged irrevocably by the Town for the payment of the Bond and shall be used and applied in the order of priority provided in Section 11 of this Ordinance. This pledge shall constitute a lien and charge upon Net Revenue and Water ULID Assessments prior and superior to any other lien and charge whatsoever, except such liens and charges as may be created in favor of any Future Parity Bonds on a parity with this pledge in favor of the Bond. The Bond is not a general obligation of the Town, and the Town's full faith, credit and resources are not pledged for the payment of the Bond. The lien created by this Ordinance is declared to be senior to the liens created by the Junior Lien Obligations.

## **Section 13. Covenants**

The Town hereby covenants and agrees with the Registered Owner as follows:

(a) All Water ULID Assessments shall be paid into the Debt Service Account and/or the Debt Service Reserve Account and may be used to pay the principal of and interest on the Bond and any Future Parity Bonds without those Water ULID Assessments being particularly allocated to the payment of the principal of and interest on any particular issue of bonds. Nothing in this Ordinance shall be construed to prohibit the Town from issuing revenue bonds (or incurring other obligations) junior in lien to the Bond and pledging as security for their payment assessments levied in any Water ULIDs which may have been specifically created to pay part of the cost of improvements to the System for which those Future Junior Lien Obligations were specifically issued. Notwithstanding the foregoing, for so long as the Purchaser is the Registered Owner of the Bond, the Town will not issue subordinate lien bonds payable from Net Revenue without receiving the prior written consent of the Purchaser.

(b) The Town will establish, maintain and collect such rates and charges for the commodities and services furnished by the System, which shall be fair and nondiscriminatory, as will produce sufficient Gross Revenue to: (i) meet Operating and Maintenance Expenses; (ii) meet the debt service requirements of the Bond, any Future Parity Bonds and any other obligations payable from Gross Revenue as they come due; (iii) establish and maintain the Debt Service Reserve Account; (iv) for so long as the Purchaser is the Registered Owner, establish and maintain the Short-Lived Asset Reserve Account; and (v) maintain the System in sound financial condition.

(c) The Town will at all times maintain and keep the System in good repair, working order and condition, and also will at all times operate the System and the business in connection therewith in an efficient manner and at a reasonable cost.

(d) The Town will, while the Bond remains outstanding, keep proper and separate accounts and records relating to the operation and financial condition of the System and, for so long as the Purchaser is the Registered Owner, will grant the Purchaser the right at all reasonable times to inspect the System and all records, accounts and data of the Town relating thereto.

(e) The Town will, for so long as the Purchaser is the Registered Owner of the Bond: submit to the Purchaser an annual operating budget relating to the System; submit to the Purchaser audits (or management reports in lieu of audits) relating to the System, as determined by the Purchaser on an annual basis; and provide such additional information and reports as may be reasonably requested by the Purchaser from time to time.

(f) The Town will at all times: (i) provide fidelity bonds (or similar insurance coverage) in an amount not less than the total of the Annual Debt Service and the annual Debt Service Reserve Account payment on the Bond for all persons who will have access to Gross Revenue and the funds created hereunder; (ii) maintain fire and extended coverage insurance in an amount at least equal to the depreciated replacement value for all equipment, machinery and above-ground structures of the System; (iii) maintain reasonable and customary general liability insurance for the System including vehicular coverage; and (iv) maintain worker's compensation insurance.

(g) The Town will not furnish commodities or services of the System to any customer whatsoever free of charge, and the Town will take such legal action as may be feasible to enforce collection of all collectible delinquent accounts.

(h) For so long as the Purchaser is the Registered Owner, the Town will not mortgage, sell, lease or in any manner encumber or dispose of all or any portion of the property of the System without receiving the prior written consent of the Purchaser.

(i) The Town will not borrow money and secure its repayment obligations for such borrowing with a lien and charge on Net Revenue that is prior to the lien thereon in favor of the Bond. The Town will not borrow money and secure its repayment obligations for such borrowing with a lien and charge on Net Revenue that is equal to the lien thereon in favor of the Bond other than pursuant to Section 14 of this Ordinance.

(j) The Town will abide by the Letter of Conditions and Loan Resolution relating to the Bond for so long as the Purchaser is the Registered Owner.

#### **Section 14. Issuance of Future Parity Bonds**

The Town reserves the right to issue Future Parity Bonds that, when issued, shall constitute a lien and charge upon Net Revenue and Water ULID Assessments on a parity with the Bond for the purposes of: (i) acquiring, constructing and installing additions and betterments to, improvements and extensions of, and repairs or capital improvements to, the System; and/or (ii) refunding and retiring at or prior to their maturity any part or all of the outstanding obligations of the Town relating to the System, if the following conditions are met and complied with at the time of issuance of those Future Parity Bonds:

(a) There shall be no deficiency in the Debt Service Account or the Debt Service Reserve Account.

(b) The ordinance providing for the issuance of such Future Parity Bonds shall provide that all assessments and interest thereon that may be levied in any Water ULID created for the purpose of paying, in whole or in part, the principal of and interest on those Future Parity Bonds, shall be paid directly into the Debt Service Account, except for any prepaid assessments permitted by law to be paid into a construction fund or account.

(c) The ordinance providing for the issuance of such Future Parity Bonds shall provide for the payment of the principal thereof and interest thereon out of the Debt Service Account.

(d) The ordinance providing for the issuance of such Future Parity Bonds shall provide for the deposit into the Debt Service Reserve Account of (i) an amount equal to the Reserve Requirement for those Future Parity Bonds from the Future Parity Bond proceeds or other money legally available or (ii) to the extent that the Reserve Requirement is not funded from Future Parity Bond proceeds or other legally available money at the time of issuance of those Future Parity Bonds, within ten years from the date of issue of the Future Parity Bonds from Water ULID Assessments, if any, levied and first collected for the payment of the principal of and interest on those Future Parity Bonds and, to the extent that Water ULID Assessments are insufficient, then from Net Revenue in ten approximately equal annual payments (or such other shorter interval of payments as may be required by the ordinance authorizing such Future Parity Bonds); however, in the case of refunding bonds, the ordinance authorizing the issuance of such refunding Future Parity Bonds may provide that the money in the Debt Service Reserve Account for the bonds to be refunded shall be retained in the Debt Service Reserve Account as a reserve for the refunding bonds, or that the money in any other reserve account or fund for the bonds being refunded may be transferred to the Debt Service Reserve Account, but if such amount does not equal the Reserve Requirement, the Reserve Requirement for the refunding bonds shall be accumulated in the manner and within the same time as set forth herein for Future Parity Bonds.

(e) There shall be on file with the Clerk a certificate from (i) a licensed professional engineer experienced in the design, construction and operation of municipal utilities or (ii) an independent certified public accountant, which certificate may not be dated more than one month before the date such Future Parity Bonds are issued, stating that Net Revenue for any 12 consecutive calendar months out of the immediately preceding 24 calendar months shall be equal to 120% of the Average Annual Debt Service on all outstanding bonds payable from the Debt Service Account (after giving effect to the issuance of such Future Parity Bonds). If Future Parity Bonds proposed to be so issued are for the sole purpose of refunding outstanding bonds payable from the Debt Service Account, such certification of coverage shall not be required if the amount required for the payment of the principal and interest in each year for the refunding bonds is not increased over the amount for that same year required for the bonds or the portion of the bond issue to be refunded thereby and if the maturities of such refunding bonds are not extended beyond the maturities of the bonds to be refunded thereby.

Nothing contained herein shall prevent the Town from issuing revenue bonds or incurring other obligations for borrowed money that are a charge upon Gross Revenue subordinate to the payments required to be made therefrom into the Debt Service Account for the payment of the Bond and any Future Parity Bonds or from pledging the payment of utility local improvement district assessments into a bond redemption fund created for the payment of the principal of and interest on

those Future Junior Lien Obligations as long as such utility local improvement district assessments are levied for improvements constructed from the proceeds of those Future Junior Lien Obligations.

For so long as the Purchaser is the Registered Owner, the Town will not issue Future Parity Bonds or subordinate lien obligations payable from Net Revenue without receiving the prior written consent of the Purchaser.

### **Section 15. Refunding or Defeasance of the Bond**

The Town may issue refunding bonds pursuant to State law or use money available from any other lawful source to carry out a refunding or defeasance plan, which may include (a) paying when due the principal of and interest on the Bond (the “defeased Bond”); (b) redeeming the defeased Bond prior to its maturity; and (c) paying the costs of the refunding or defeasance. If the Town sets aside in a special trust fund or escrow account irrevocably pledged to that redemption or defeasance (the “trust account”), money and/or noncallable “government obligations” (as defined by chapter 39.53 RCW) maturing at a time or times and bearing interest in amounts sufficient to redeem, refund or defease the defeased Bond in accordance with its terms, then all right and interest of the Registered Owner of the defeased Bond in the covenants of this Ordinance and in the funds and accounts obligated to the payment of the defeased Bond shall cease and become void. Thereafter, the Registered Owner of the defeased Bond shall have the right to receive payment of the principal of and interest on the defeased Bond solely from the trust account and the defeased Bond shall be deemed no longer outstanding. In that event, the Town may apply money remaining in any fund or account (other than the trust account) established for the payment or redemption of the defeased Bond to any lawful purpose. NOTWITHSTANDING THE ABOVE, FOR AS LONG AS THE PURCHASER IS THE REGISTERED OWNER, THE TOWN AGREES NOT TO DEFEASE THE BOND.

### **Section 16. Amendments to Ordinance**

(a) The Council may adopt an ordinance supplemental hereto, which ordinance thereafter shall become a part of this Ordinance, for any one or more of all of the following purposes: (i) to add to or delete from the covenants and agreements of the Town in this Ordinance, provided such additions or deletions shall not adversely affect, in any material respect, the interests of any registered owner of the Bond or any Future Parity Bonds; or (ii) to cure, correct or supplement any ambiguous or defective provision contained in this Ordinance, provided such supplemental ordinance shall not adversely affect, in any material respect, the interests of any registered owner of the Bond or any Future Parity Bonds. Any such supplemental ordinance may be adopted without the consent of any registered owner of any then-outstanding bonds, notwithstanding any of the provisions the following paragraph.

(b) With the consent of the Registered Owner, the Council may adopt an ordinance supplemental hereto for the purpose of adding any provisions to, or changing in any manner, or eliminating any of the provisions of this Ordinance or of any supplemental ordinance; provided, however, that no such supplemental ordinance shall extend the fixed maturity of the Bond, or reduce the rate of interest thereon, or extend the time of payments of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owner. It shall not be necessary for the consent of the Registered Owner under this paragraph to approve the particular form of any proposed

supplemental ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Upon the adoption of any supplemental ordinance pursuant to the provisions of this section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the Town under this Ordinance and the Registered Owner hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modification and amendments, and all terms and conditions of any such supplemental ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

(d) Any Bond executed and delivered after the execution of any supplemental ordinance adopted pursuant to the provisions of this section may have a notation as to any matter provided for in such supplemental ordinance, and if such supplemental ordinance shall so provide, any new Bond so modified as to conform in the opinion of the Council to any modification of this Ordinance contained in any such supplemental ordinance, may be prepared and delivered without cost to the Registered Owner, upon surrender for cancellation of the Bond in an equal aggregate principal amount.

**Section 17. Severability; Ratification**

If any provision of this Ordinance is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provisions of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bond. All actions heretofore taken by the Town consistent with the provisions of this Ordinance are ratified, confirmed and approved.

**Section 18. Effective Date of Ordinance**

This Ordinance shall become effective from and after its passage by the Council, approval by the Mayor, and publication of this Ordinance, or a summary thereof, as required by law. The Clerk is directed to cause this Ordinance, or a summary hereof, to be published in the official newspaper of the Town.

PASSED by the Town Council and APPROVED by the Mayor of the Town of Odessa, Washington, on May 10, 2021, at a regular open public meeting thereof.

TOWN OF ODESSA, WASHINGTON

\_\_\_\_\_  
William Crossley, Mayor

ATTEST:

\_\_\_\_\_  
Meri Jane Bohn, Clerk-Treasurer

( S E A L )

C E R T I F I C A T E

I, the undersigned, the Clerk-Treasurer of the Town of Odessa, Washington (the “Town”), hereby certify as follows:

1. The foregoing Ordinance No. 718 (the “Ordinance”) is a full, true and correct copy of the Ordinance duly passed at a regular meeting of the Town Council of the Town (the “Council”) held on May 10, 2021 (the “Meeting”), as that Ordinance appears on the minute book of the Town.

2. The Ordinance is in full force and effect.

3. Pursuant to various proclamations and orders issued by the Governor of the State of Washington options were provided for the public to attend the Meeting remotely, including by telephonic access and, as available, internet access, which options provided the ability for all persons attending the Meeting remotely to hear each other at the same time.

4. The Meeting was duly convened and held in all respects in accordance with law, the public was notified of the access options for remote attendance, a quorum of the members of the Council was present throughout the Meeting and a sufficient number of members of the Council so present voted in the proper manner for the passage of the Ordinance.

IN WITNESS WHEREOF, I have hereunto set my hand on May 10, 2021.

TOWN OF ODESSA, WASHINGTON

\_\_\_\_\_  
Meri Jane Bohn, Clerk-Treasurer

( S E A L )