ORDINANCE NO. 32-B

AN ORDINANCE OF THE TOWN OF STRATTON, COLORADO, AUTHORIZING THE ISSUANCE OF THE TOWN'S GOVERNMENTAL AGENCY BOND IN THE AGGREGATE PRINCIPAL AMOUNT OF $90,000; PROVIDING FOR THE USE OF THE BOND PROCEEDS TO PAY THE COSTS OF THE PROJECT, PROVIDING FOR THE PAYMENT OF THE BOND FROM THE REVENUE DERIVED FROM THE OPERATION OF THE TOWN'S WATER SYSTEM; MAKING CERTAIN COVENANTS IN CONNECTION THEREWITH; APPROVING RESOLUTION NO. W-2008-1 OF THE TOWN OF STRATTON WATER ENTERPRISE PROVIDING FOR THE FORM, PAYMENT, AND OTHER DETAILS IN CONNECTION WITH THE BOND; AUTHORIZING THE EXECUTION OF CERTAIN AGREEMENTS AND DOCUMENTS IN CONNECTION WITH THE BOND AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Stratton, Colorado (the "Town"), is a statutory town and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State and has created and is operating the Town of Stratton Water Enterprise as a water activity enterprise within the meaning of Title 37, Article 45.1, C.R.S. and Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Town of Stratton Water Enterprise (the "Enterprise") has no authority to levy or collect or use in its operations taxes, whether sales taxes, use taxes or ad valorem taxes; and

WHEREAS, the Board of Trustees of the Town is acting hereunder as the governing body of the Enterprise (the "Board"); and

WHEREAS, the Enterprise is a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined and it is hereby determined that the Enterprise is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Town, acting by and through the Enterprise, has heretofore determined and undertaken to acquire and develop certain properties and facilities for the collection, treatment, transmission, and disposition of water, which facilities are operated and maintained as part of the Water system of the Town and the Enterprise (collectively the "System"); and

WHEREAS, the Town is authorized by Title 37, Article 45.1, C.R.S., and Article X, Section 20, Colorado Constitution, to issue revenue bonds authorized by action of the Board without the approval of the electors of the Town, such bonds to be issued in the manner provided in Part 4 of Article 35 of Title 31, C.R.S.; and

WHEREAS, the Board, acting by and through the Enterprise, has determined and hereby determines that it is in the best interests of the Town, and the residents thereof, to enter into a loan agreement (the "Loan Agreement") with the Colorado Water Resource and Power Development Authority (the "CWRPDA") pursuant to which the CWRPDA will loan the Town, acting by and through its Enterprise, an amount not to exceed $90,000; and

WHEREAS, the Board has approved a Loan Agreement with the CWRPDA, pursuant to which the CWRPDA will loan the Town, acting by and through the Enterprise, the amount of $90,000 for the Project; and

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

WHEREAS, the Board desires to authorize the issuance and sale of the Bond and the execution of the foregoing documents;

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

Section 1. **Definitions**. As used herein, the capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise, all other capitalized terms shall have the respective meanings set forth in the Resolution.

Bond: the Governmental Agency Bond, dated as of the date of issuance, issued in the aggregate principal amount of $90,000, as authorized by this Ordinance.

C.R.S.: the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

Loan Agreement: That loan agreement between the Colorado Water Resource and Power Development Authority and the Town of Stratton, Colorado acting by and through its Town of Stratton Water Enterprise.

Ordinance or Bond Ordinance: this ordinance which authorizes the issuance of the Bond, including any amendments properly made hereto.

Owner: the owner of the Bond.

Project: the acquisition, construction, reconstruction, improvement, betterment, or extension of water facilities and all necessary or appropriate appurtenances, property rights, and equipment.

Resolution or Bond Resolution: Resolution No. W-2008-1 of the Town of Stratton Water Enterprise.

System: all of the Town's water facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, which comprise the Enterprise.

Water Revenue Fund: the fund of the Enterprise designated as the "Water Revenue Fund", established by the provisions of Ordinance No. 30B, and also referred to as the Water Revenue Fund Account.

Section 2. **Authorization**. In accordance with the Constitution of the State of Colorado; Title 31, Article 35, Part 4, C.R.S.; Title 11, Article 57, Part 2, C.R.S.; Title 37, Article 45.1, C.R.S.; and all other laws of the State of Colorado thereunto enabling, there shall be issued the Town's "Governmental Agency Bond", in the aggregate principal amount of $90,000, for the purpose of paying the Project Costs. The accomplishment of the Project is hereby authorized, approved, and ordered.

Section 3. **Approval of Town of Stratton Water Enterprise Actions**. All actions heretofore taken by the Board of the Town of Stratton Water Enterprise in furtherance of the issuance of the Bond including its Resolution No. W-2008-1 are hereby ratified and approved.

Section 4. **Election to Apply Supplemental Act**. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act") provides that a public entity may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply some of the provisions of the Supplemental Act to the Loan Agreement and the Bond.

Section 5. **Special Obligations**. The Bond, together with the interest thereon, shall be payable only out of the Pledged Property, as defined in the Loan Agreement. The Owner may not look to any general or other fund of the Town for the payment of the principal of and interest on the Bond, except the funds and accounts pledged thereto by this Ordinance and the Resolution, and the Bond shall not constitute a debt or an indebtedness of the Town within the meaning of Article XI, Section 6 of the Colorado Constitution or any statutory provision or limitation; nor shall it be considered or held to be a general obligation of the Town. Pursuant to Section 11-57-208 of the Supplemental Act, the revenues pledged to the payment of the Bonds and Loan Agreement (the "Pledged Property" as defined in the Loan Agreement) shall immediately be subject to the lien of the pledge without any physical delivery thereof, filing or further act. The lien of such pledge shall have the priority described in the Loan Agreement and shall be binding and enforceable against all persons having claims of any kind in tort, contract, or otherwise, irrespective of whether such persons have notice of such lien.

Section 6. **Bond Details**. The Bond shall be in the principal amount of $90,000, shall bear interest at the maximum net effective interest rate of 1.75% per annum, calculated as provided in the Loan Agreement, shall mature as provided in the Loan Agreement, and shall be payable in the time and manner, and shall be subject to optional prepayment, as set forth in the

Loan Agreement. The maximum net effective interest rate authorized for the Bond is 1.75% per annum and the actual net effective rate of the Bond does not exceed such maximum rate. The Town, acting by and through the Enterprise, shall execute and deliver to the Authority the Bond pursuant to the Loan Agreement as evidence of the Loan Repayments (as defined in the Loan Agreement). The Bond shall be substantially in the form set forth in the Loan Agreement.

Section 7. **Conclusive Recital**. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond shall contain a recital that it is issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

Section 8. **No Recourse Against Officers and Agents.** Pursuant to §11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the Town or Enterprise acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bond. Such recourse shall not be available either directly or indirectly through the Board, the Town or the Enterprise, or otherwise whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as part of the consideration of its sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 9. **Form and Execution of Bond**. The Bond shall be signed with the facsimile or manual signature of the Mayor of the Town, sealed with a facsimile or manual impression of the seal of the Town, and attested by the facsimile or manual signature of the Town Clerk. Should any officer whose facsimile or manual signature appears on the Bond cease to be such officer before delivery of the Bond to a purchaser, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

The Bond shall be in substantially the form set forth in the Loan Agreement.

Section 10. **Disposition and Investment of Proceeds**. The Bond shall be issued and sold for the purpose of paying the Project Costs. The Owner shall not be responsible for the application or disposal by the Town or any of its officers of the funds derived from the sale thereof.

All or any portion of the Bond proceeds may be temporarily invested or reinvested, pending such use, in securities or obligations which are lawful investments.

Section 11. **Water Enterprise Annual Budget**. The Board shall adopt an annual budget for the Enterprise, separate from the Town's general fund budget.

Section 12. **Maintenance of Rates and Coverage**. The Town hereby covenants that it will establish, maintain, enforce, and collect rates, fees, plant investment fees, availability fees, tolls, and charges for services furnished by or for the use of the System to create revenue each Fiscal Year sufficient to pay Operation and Maintenance Expenses and in an amount: (i) equal to

not less than 110% of the amount necessary to pay when due the principal of and interest on the Bond, and any obligation on parity with or prior in lien or charge of the Bond coming due during such Fiscal Year; and (ii) to pay debt service on all other bonds, notes or other subordinate obligation, otherwise necessary to fulfill its obligations under the Loan Agreement. In the event that the Gross Revenue at any time is not sufficient to make such payments, the Town shall increase such rates, fees, plant investment fees, availability fees, tolls, and charges to an extent which will ensure the payments and accumulations required by this Ordinance and the Resolution.

Section 13. **Authorization to Execute Documents**. The Mayor and Town Clerk shall, and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance, including, but not limited to, the execution of such certificates and affidavits as may be reasonably required. The execution by the Mayor of the Town of any document authorized herein shall be conclusive proof of the approval by the Town of the terms thereof.

Section 14. **Authorized Officer**. The Mayor, Mayor Pro Tem, or the Town Clerk are hereby authorized to act as the "Authorized Officer" under the Loan Agreement (as such term is defined therein), and to furnish their names to the Authority in accordance with the Loan Agreement.

Section 15. **Costs and Expenses**. All costs and expenses incurred in connection with the issuance and payment of the Bond, shall be paid either from the proceeds of the Bond or from legally available moneys of the Town, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 16. **Holidays**. If the date for making any payment or performing any action hereunder shall be a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day which is not a legal holiday or a day on which the principal office of the Paying Agent or Bond Registrar is authorized or required by law to remain closed.

Section 17. **Ratification and Approval of Prior Actions**. All actions heretofore taken by the officers of the Town and the members of the Board, not inconsistent with the provisions of this Ordinance, relating to the authorization, sale, issuance, and delivery of the Bond, are hereby ratified, approved, and confirmed.

Section 18. **Ordinance Irrepealable**. After the Bond has been issued, this Ordinance shall constitute a contract between the Owner and the Town, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 19. **Repealer**. All orders, bylaws, ordinances, and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 20. **Severability**. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 21. **Recording and Authentication**. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 22. **Emergency Declaration**. By reason of the fact that the Town must immediately provide for improvements to the existing water system of the Town and must provide for the funding of the cost of said improvements, it is hereby declared that an emergency exists and that this Ordinance is necessary for the preservation of the public peace, health and safety and that it shall become effective upon adoption.

INTRODUCED, READ AND PASSED AS AN EMERGENCY ORDINANCE at a regular meeting of the Board of Trustees on the 13th day of November, 2008, and ordered published in accordance with the provisions of Section 31-16-105, C.R.S.

(SEAL)

Mayor

ATTEST:

Town Clerk

It was thereupon moved by Trustee Richard Mann and seconded by Trustee Darren Fox that the foregoing Ordinance, introduced at this meeting as aforesaid, be passed and adopted as an emergency ordinance.

The questions being upon the adoption of the motion, the roll was called with the following result:

Those voting YES:

Mayor:	Dana Siekman
Mayor Pro Tem:	Larry Shutte
Trustees:	~~Chris English~~
	Darren Fox
	Mitch Menke
	Richard Mann
	Steven Glenn Holding

Those voting NO: _____

Six (6) members of the Board of Trustees having voted in favor of said motion, such number being at least three-fourths of the members of the Board of Trustees, the presiding officer thereupon declared the motion carried and that the Ordinance was passed and adopted as an emergency ordinance.

Thereupon, after consideration of other business to come before the Board, the meeting was adjourned.

(SEAL)

ATTESTED:

Stella McConnell
Town Clerk

Dana M Siekman
Mayor

STATE OF COLORADO)
)
COUNTY OF KIT CARSON)
)
TOWN OF STRATTON)

I, Paula McConnell, Town Clerk of the Town of Stratton, Colorado, do hereby certify that the foregoing pages numbered 2 to 8 inclusive, constitute a full and correct copy of the record of the proceedings of the Board of Trustees of the Town, taken at a regular meeting thereof, held on Thursday, the 13th day of November, 2008, at 132 Colorado Avenue, in Stratton, Colorado, so far as said minutes relate to an Emergency Ordinance concerning the issuance of a Governmental Agency Bond of the Town; that said Ordinance has been duly authenticated by the signatures of the presiding officer of the Board of Trustees and myself, as Town Clerk of the Town, sealed with the corporate seal of the Town and the Ordinance recorded in the Book of Ordinances kept for that purpose in my office; that said Ordinance was published in accordance with the provisions of Section 31-16-105, C.R.S.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Town, this 13th day of November, 2008.

(SEAL)

Paula McConnell
Town Clerk

STATE OF COLORADO)
)
COUNTY OF KIT CARSON)
)
TOWN OF STRATTON)

The Board of Trustees of the Town of Stratton, Colorado, met in regular session in full conformity with law and the ordinances and rules of the Town, at 132 Colorado Avenue, Stratton, Colorado, on Thursday, the 13th day of November, 2008, at 7:00 p.m.

Upon roll call the following were present, constituting a quorum:

Mayor:	Dana Siekman
Mayor Pro Tem:	Larry Shutte
Trustees:	~~Chris English~~
	Darren Fox
	Mitch Menke
	Richard Mann
	Steven Glenn Holding

Also present:

Town Clerk:	Paula McConnell

Absent: Chris English

Thereupon ~~Trustee~~ Mayor Dana Siekman introduced, and there was read in full, the following Resolution: