

TOWN OF DENTON
ORDINANCE NO 721

An Ordinance of the Denton Town Council, authorizing the issuance and sale by the Town of Denton (the “Borrower”) of its general obligation bond in an aggregate principal amount not exceeding Six Hundred Thirty-Three Thousand Three Hundred Eighty-Eight Dollars (\$633,388.00) pursuant to the authority of the Maryland Water Quality Financing Administration Act (codified as Sections 9-1601 to 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland (2014 Replacement Volume and 2020 Supplement); Section 19-301 to 19-309, inclusive, of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume and 2020 Supplement); and Section C6-21 of the Charter of the Town of Denton, the bond, to be designated “Town of Denton Drinking Water Bond” (with such modifications or other designations or titles as may be agreed to by the Borrower and Maryland Water Quality Financing Administration (the “Administration”), the net proceeds of the sale thereof to be used and applied for the public purpose of financing or refinancing costs of a project generally referred to by the Borrower as the **Denton Water Main Replacements Project** as more particularly described herein, together with the acquisition of all necessary property rights and equipment, and related architectural, financial, legal, planning and engineering expenses, whether or not specifically stated; authorizing the execution of a loan agreement between the Borrower and the Administration; prescribing the form and tenor of the bond and the loan agreement and the terms and conditions for the issuance and sale of the bond at private sale to the Administration; providing for the prompt payment of the maturing principal of and interest on the bond; covenanting to levy and collect all taxes necessary to provide for the payment of the principal of and interest on such bond; pledging the full faith and credit of the Borrower to the payment of principal and interest on such bond; and generally relating to the issuance, sale and delivery of the bond.

RECITALS

The Federal Safe Drinking Water Act, as amended (the “Safe Drinking Water Act”) authorizes the United States Environmental Protection Agency to award grants to qualifying states to establish and capitalize drinking water treatment revolving loan funds (“SRFs”) for the purpose of providing loans and certain other forms of financial assistance to finance or refinance, among other things, the construction and improvement of publicly-owned and privately owned water supply systems.

As contemplated by the Safe Drinking Water Act, the General Assembly of Maryland has amended the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland (as replaced, supplemented or amended, the “Act”), establishing the Maryland Water Quality Financing Administration (the “Administration”) and establishing an SRF designated the Maryland Drinking Water Revolving Loan Fund (the “SRF Fund”) to be maintained and administered by the Administration.

Town of Denton, a municipal corporation of the State of Maryland (the “Borrower”), is a “local government” within the meaning of the Act. The Borrower has applied to the Administration for a loan from the Fund to assist in the financing of a certain project of the Borrower which constitutes a “water supply system” within the meaning of the Act. As contemplated by the Act, the Administration and the Borrower will enter into a loan agreement to effect and evidence the loan. The Borrower has determined that it will issue its bond, which bond will constitute a “loan obligation” within the meaning of the Act, to evidence its payment obligations under the loan agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE DENTON TOWN COUNCIL:

Section 1. The Recitals to this Ordinance are deemed a substantive part of this Ordinance and incorporated by reference herein. Capitalized terms used in this Ordinance and not otherwise defined in the Sections of this Ordinance shall have the meanings given to such terms in the Recitals.

Section 2. Pursuant to the authority of the Act, Section 19-301 to 19-309, inclusive, of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume and 2020 Supplement); and Section C6-21 of the Charter of the Town of Denton (collectively the

“Authorizing Laws”), the Borrower, hereby determines to borrow money in an aggregate maximum principal amount not to exceed Six Hundred Thirty-Three Thousand Three Hundred Eighty-Eight Dollars (\$633,388.00) (the “Loan”) and incur indebtedness for the public purpose of financing or refinancing improvements to the water supply system and related architectural, inspection, planning, engineering and related administrative, financial and legal expenses, costs of activities related to any of the foregoing, costs of any borrowing therefore and such other expenses permitted under the Safe Drinking Water Act, generally referred to by the Borrower as the Denton Water Main Replacements Project, as further described in Exhibit A (the “Project”). The Project constitutes a “water supply system” within the meaning of the Act.

Section 3. (a) As contemplated by the Act, the Loan shall be made and incurred in accordance with the provisions of a loan agreement (the “Loan Agreement”) between the Borrower and the Administration. The Loan Agreement is hereby approved in substantially the form set forth in Exhibit B attached hereto and made a part hereof, with such insertions, omissions or variations as may be deemed necessary or desirable and approved by the officers executing the same (their execution of the Loan Agreement to constitute conclusive evidence of such approval), including all terms and conditions set forth therein, such as (without limitation) any late charges and default remedies of the Administration. The Borrower hereby authorizes the execution and delivery of the Loan Agreement in substantially the form set forth in Exhibit B.

(b) To evidence the payment obligations of the Borrower under the Loan Agreement, the Borrower, acting pursuant to the authority of the Authorizing Laws hereby determines to issue and sell, upon its full faith and credit, a general obligation bond, in a maximum principal amount not to exceed Six Hundred Thirty-Three Thousand Three Hundred

Eighty-Eight Dollars (\$633,388.00), to be known as “Town of Denton Drinking Water Bond” (with such modifications or other designations or titles as may be agreed to by the Borrower and the Administration) (the “Bond”). The Bond shall be dated the date of delivery and shall be issued in the form of one fully registered installment bond, without coupons attached, numbered R-1. The Bond, which is tax-exempt, shall bear interest at a rate not to exceed 25% of the average of the Bond Buyer 11-Bond Index for the month preceding the date of delivery. The scheduled payments of principal on the Bond, including the maturity date of the Bond, shall be determined by the Administration with the approval of the Mayor of the Town of Denton (the “Mayor”). Prepayments may be made as provided in the Loan Agreement. Interest due on the unpaid principal amounts advanced under the Loan Agreement shall accrue on the basis of a 30-day month, 360-day year from the date of the respective advances of such principal amount, and interest shall be paid semiannually in each year until the principal amount has been paid. The interest payment dates shall be determined by the Administration with the approval of the Mayor.

(c) The Bond and the Loan Agreement shall be executed in the name of the Borrower and on its behalf by the Mayor. The corporate seal of the Borrower shall be affixed to the Bond and the Loan Agreement, attested by the signature of the Clerk-Treasurer to the Denton Town Council (the “Clerk-Treasurer”). The Bond and the Loan Agreement shall be valid and legally binding obligations of the Borrower enforceable in accordance with their respective terms. The principal of and interest on the Bond shall be paid by the Borrower by electronic funds transfer, check or draft mailed (by depositing such check or draft, correctly addressed and postage prepaid, in the United States mail before the payment date) to the registered owner at its address as it appears on the books kept for that purpose at the office of the Clerk-Treasurer in

Denton, Maryland. In the event any official whose signature appears on the Bond or the Loan Agreement ceases to be an official prior to the delivery of the Bond or the Loan Agreement or shall have become such official after the date of this Ordinance, the Bond and the Loan Agreement shall, nevertheless, each be a valid and legally binding obligation of the Borrower in accordance with their respective terms.

(d) Except as provided hereinafter or in a Resolution or Resolutions of the Borrower adopted prior to the issuance of the Bond, the Bond shall be issued in substantially the form set forth in Exhibit F to the substantially final form of the Loan Agreement that is attached hereto as Exhibit B. Appropriate variations and insertions to provide dates, numbers and amounts shall be made, and modifications not materially altering the substance of this Ordinance may be made by the Mayor. All of the covenants contained in the form of bond attached as Exhibit F to the substantially final form of the Loan Agreement attached hereto as Exhibit B are hereby adopted by the Borrower as and for the form of obligation to be incurred by the Borrower, and the covenants and conditions contained therein are hereby made binding upon the Borrower, including the promise to pay and any restrictions on transfer therein contained.

(e) As authorized by Section 9-1606(d) of the Act and set forth in Exhibit B, the Borrower hereby pledges any moneys that the Borrower is entitled to receive from the State of Maryland (the “State”), including the Borrower’s share of the income tax revenues collected by the State, to secure its obligations under the Loan Agreement, subject to any limitations on such pledge provided for in the Loan Agreements. Such pledge shall be evidenced by and detailed in the Loan Agreement.

Section 4. The Bond shall be sold to the Administration at a private (negotiated) sale, without public bidding, in accordance with the provisions of the Act. The

Mayor is authorized and directed to enter into such agreements with the Administration as she shall deem to be in the best interests of the Borrower in order to accomplish the public purposes of this Ordinance.

Section 5. The Mayor is expressly authorized to execute and deliver from time to time (a) such amendments to the Loan Agreement as shall be deemed necessary or desirable by such officers to cure any defect or ambiguity in the Loan Agreement, to add any provision thereto beneficial to the Borrower or to comply with Administration practices and policy from time to time and (b) such amendments to the Bond (or a new bond or bonds in replacement thereof) in accordance with the Loan Agreement and the Bond as shall be necessary to provide for the reamortization of the principal installments due thereunder, as applicable, in the event that the total amount advanced thereunder shall be less than the maximum principal amount of such Bond, so long as neither the aggregate principal amount of the Bond, the amount of any principal installment thereunder in any year, nor the interest rate thereon shall be increased.

Section 6. The Mayor, the Clerk-Treasurer, the Town Administrator of the Borrower and all other appropriate officials and employees of the Borrower are expressly authorized and empowered to take any and all action necessary or desirable to complete and close the delivery of the Bond. The Mayor, the Clerk-Treasurer, the Town Administrator of the Borrower and all other appropriate officials and employees of the Borrower are expressly authorized to make such changes or modifications in the forms and provisions adopted herein as may be necessary or desirable, including (without limitation) conforming the terms of the Bond and the Loan Agreement to the terms of the financing to be provided to the Borrower by the Administration.

Section 7. The Clerk-Treasurer, or in her absence the Mayor, is hereby designated to receive payment on behalf of the Borrower of the proceeds of the sale of the Bond. Such proceeds shall be used and applied by the Borrower exclusively and solely for the public purposes described in Section 1 of this Ordinance. If the proceeds received from the sale of the Bond exceed the amount needed for such public purposes, the unexpended excess shall be applied as soon as may be practicable to the prepayment of the Bond as provided for in this Ordinance and the Loan Agreement, unless a supplemental resolution is passed and approved by the Denton Town Council to provide for the expenditure of that excess for some other valid purpose authorized by the Authorizing Laws.

Section 8. For the purpose of paying the maturing principal of and interest on the Bond when due, the Borrower has established or shall establish a dedicated source of revenues as described in the Loan Agreement. In the event that such revenues are insufficient to meet the debt service requirements in any fiscal year in which the Bond is outstanding, the Borrower shall levy in such year upon all real and tangible personal property within its corporate limits subject to assessment for taxation ad valorem taxes in rate and amount sufficient to meet and pay promptly the principal of and interest on the Bond in each such fiscal year. If the proceeds from the collection of taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency. The full faith and credit and unlimited taxing power of the Borrower are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as and when they become due and payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of the Bond. The Borrower hereby covenants and agrees with the

registered owners of the Bond to levy and collect the taxes hereinabove described and to take any further action that may be appropriate from time to time during the period that such Bond remains outstanding and unpaid to provide the funds necessary to pay promptly the principal thereof and the interest due thereon.

Section 9. The Mayor shall be the certifying official for the Borrower responsible for the execution and delivery on the date of the issuance of the Bond of a certificate of the Borrower (the "Tax and Section 148 Certificate") that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the applicable regulations thereunder (the "Arbitrage Regulations"). The Mayor is hereby authorized and directed to execute and deliver the Tax and Section 148 Certificate to counsel rendering an opinion on the validity of the Bond on the date of its issuance. The Tax and Section 148 Certificate shall set out the reasonable expectations of the Borrower as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond or of any moneys, securities or other obligations to the credit of any account of the Borrower which may be deemed to be bond proceeds under Section 148 of the Code or the Arbitrage Regulations (collectively, the "Bond Proceeds"). The Borrower covenants with the owner of the Bond that the facts, estimates and circumstances set forth in the Tax and Section 148 Certificate will be based on the Borrower's reasonable expectations on the date of the issuance of the Bond and will be, to the best of the certifying official's knowledge, true, correct and complete as of that date.

Section 10. The Borrower covenants and agrees with the registered owner of the Bond that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the Arbitrage Regulations. The Borrower further

covenants that it will comply with Section 148 of the Code and the regulations thereunder which are applicable to the Bond on the date of its issuance and which may subsequently lawfully be made applicable to the Bond. The Borrower further covenants that it shall make such use of the proceeds of the Bond, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain the excludability from gross income for federal income tax purposes of interest on the Bond. Without limiting the generality of the foregoing, the Borrower further covenants with the registered owner of the Bond that it will not take any action or (to the extent that it exercises control or direction) permit any action to be taken that would cause the Bond (or any portion thereof) to be “federally guaranteed” within the meaning of Section 149(b) of the Code, and that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the proceeds of the Bond (or any portion of such proceeds) that would cause the Bond (or any portion thereof) to be “private loan bond” within the meaning of Section 141(c) of the Code. All officers, employees and agents of the Borrower are hereby authorized and directed to take such actions, and to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bond, as may be necessary or desirable from time to time to comply with, or to evidence the Borrower's compliance with, the covenants set forth in this Section.

Section 11. The Mayor may make such covenants or agreements in connection with the issuance of the Bond on behalf of the Borrower as she shall deem advisable in order to assure the registered owner of the Bond that interest thereon shall be and remain excludable from gross income for federal income tax purposes, and such covenants or agreements shall be binding on the Borrower so long as the observance by the Borrower of any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on

the Bond from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the Borrower regarding compliance with the provisions of the Code as the Mayor shall deem advisable in order to assure the registered owner of the Bond that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of Bond Proceeds, the payment of certain earnings resulting from such investment to the United States, limitations on the times within which, and the purpose for which, Bond Proceeds may be expended, or the use of specified procedures for accounting for and segregating Bond Proceeds. The Mayor may also make such elections on behalf of the Borrower under the Code as she shall deem advisable in connection with the issuance of the Bond. Such covenants, agreements and elections may be set forth in the Tax and Section 148 Certificate.

Section 12. The Borrower hereby covenants and agrees to pay all administrative fees and expenses charged by the Administration under the Loan Agreement, including (without limitation) any late fees or default interest provided therein.

Section 13. This Ordinance shall be effective at the expiration of seven calendar days following passage by the Denton Town Council.

DENTON TOWN COUNCIL

Abigail W. McNinch, Mayor

Lester L. Branson, Council Member

Dallas Lister, Council Member

ATTEST/WITNESS

Walter K. Johnson, Council Member

Karen L. Monteith,
Clerk-Treasurer

Doncella Wilson, Council Member

Approved for legal sufficiency this _____ day of _____, 2021.

Introduced _____
Adopted: _____
Effective _____

Exhibit A to Ordinance

The Project

Most of the existing water mains included in this project are 100+ year old steel pipe fused together with lead joints. These pipes vary from 2-inch to 4-inch. We propose to replace the existing pipes with larger PVC pipes ranging from 6-inch to 10-inch. There is approximately 6,880 feet of water main to be replaced as part of this project. This would include new valves and fire hydrants as well.

The project areas are Franklin Street from First Street to Sixth Street, First Street from Franklin to Randolph Street, Crouse Park Drive from First Street to the end of Crouse Park Drive, Second Street from Gay Street to Market Street and Franklin Street to Randolph Street, the intersection of Gay and Sixth Streets.

Exhibit B to Ordinance

Form of Loan Agreement

[See Attached]