

ORDINANCE NO. 263

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF EMPIRE, COLORADO, ACTING BY AND THROUGH THE TOWN OF EMPIRE WATER ACTIVITY ENTERPRISE, APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY; AND AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Empire, Colorado (the “Town”), is a legal and regularly created, established, organized and existing municipal corporation under the Constitution and laws of the State of Colorado (the “State”); and

WHEREAS, the members of the Board of Trustees of the Town (the “Board”) have been duly elected and qualified; and

WHEREAS, the Town has acted pursuant to Article X, Section 20 of the Colorado Constitution (“TABOR”) and Title 37, Article 45.1, C.R.S. (the “Enterprise Act”) to create a water activity enterprise (the “Enterprise”) to operate, and maintain its water facilities as a public utility and income-producing project (the “System”); and

WHEREAS, the Board serves as the governing body of the Enterprise; and

WHEREAS, under TABOR, 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

WHEREAS, the Board finds and determines that it is in the best interest of the Town, acting by and through the Enterprise, to make improvements to its water treatment system, including the installation of a new alluvial well and replacing the existing treatment system with a new membrane filtration system (the “Project”); and

WHEREAS, the Town has made an application to the CWRPDA, for funding in order to complete the Project; and

WHEREAS, the Board has determined that in order to finance all or a portion of the costs of the Project, it is necessary and advisable and in the best interests of the Town for the Town to enter into a loan agreement (the “Loan Agreement”) with the Colorado Water Resources Power and Development Authority (“CWRPDA”), pursuant to which the CWRPDA shall loan the Town an amount of not more than \$1,824,000 (the “Loan”) for such purposes; and

WHEREAS, the repayment obligations under the Loan Agreement shall be evidenced by a governmental agency bond (the “Bond”) to be issued by the Town to the CWRPDA; and

WHEREAS, the Town’s obligations under the Loan Agreement and the Bond (collectively referred to as the “Financing Documents”) shall constitute a revenue obligation of the Town payable from the Pledged Property (as defined in the Loan Agreement); and

WHEREAS, pursuant to TABOR, Title 31, Article 35, Part 4, C.R.S. (the “Sewer and Water Systems Act”) and the Enterprise Act, the Financing Documents may be approved by the Board without an election; and

WHEREAS, the forms of the Financing Documents are on file with the Town Clerk; and

WHEREAS, the Board desires to approve the form of the Financing Documents and other documents referenced therein, authorize the execution of the Loan Agreement, and authorize the execution and delivery of the Bond; and

WHEREAS, none of the members of the Board have any financial interest or other potential conflicting interests in connection with the authorization or execution of the Financing Documents, or the use of the proceeds thereof; and

WHEREAS, the Town has previously entered into a Loan Contract dated as of August 29, 2019 with the Colorado Water Conservation Board, pursuant to which the Town issued a promissory note in the aggregate principal amount of \$124,230 (the “Prior Obligation”) in order to acquire the right to use 10 acre-feet of storage in Guanella Reservoir; and

WHEREAS, the Prior Obligation is secured by a lien on the Pledged Property;

WHEREAS, the lien on the Pledged Property securing the Loan will be on a parity to the lien on the Pledged Property securing the Prior Obligation; and

WHEREAS, except to secure the Prior Obligation, the Loan and the Bond, the Town has not pledged nor hypothecated the net revenues derived or to be derived from the operation of the System, or any part thereof, to the payment of any bonds or for any other purpose, with the result that the net revenue may now be pledged lawfully and irrevocably to the payment of the Bond.

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

Section 1. Determinations. The Board hereby finds and determines that the Enterprise constitutes an enterprise under TABOR.

Section 2. Approvals, Authorizations, and Amendments. The forms of the Financing Documents are incorporated herein by reference and are hereby approved. The Town shall enter into and perform its obligations under the Financing Documents in the forms of such documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor of the Town (the “Mayor”). The Mayor and the Town Clerk are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Town thereto, and further to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms

approved pursuant to this Ordinance.

The execution of any instrument or certificate or other document in connection with the matters referred to herein by the Mayor, the Town Clerk or by other appropriate officers of the Town, shall be conclusive evidence of the approval by the Town of such instrument.

Section 3. Election to Apply the 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, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Town hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 4. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Town hereby delegates to the Mayor or the Town Clerk the independent authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 4:

- i. the interest rate on the Loan;
- ii. the principal amount of the Loan;
- iii. the amount of principal of the Loan maturing in any given year and the final maturity of the Loan;
- iv. the dates on which the principal of and interest on the Loan are paid;
- v. the existence and amount of reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 4 shall be subject to the following parameters and restrictions:

- i. the interest rate on the Loan shall not exceed 0.50%;
- ii. the principal amount of the Loan shall not exceed \$1,824,000; and
- iii. the final maturity of the Loan shall not be later than December 31, 2055.
- iv.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond and the Loan Agreement shall contain recitals that the Bond is issued pursuant to certain provisions of 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 6. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond and the Loan Agreement provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The amounts pledged to the payment of the Bond and the Loan Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Agreement. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Town irrespective of whether such persons have notice of such liens.

Section 7. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the

issuance of the Bond.

Section 8. Limited Obligation; Special Obligation. The Loan Agreement and the Bond are payable solely from the Pledged Property (as defined in the Loan Agreement), and the Loan Agreement and the Bond do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

No elected or appointed officers or agents of the Town shall be subject to any pecuniary liability in connection with any agreement, covenant, or undertaking by the Town, or by them, contained in any document executed in connection with the authorization, execution, and delivery of the Financing Documents or this Ordinance or with respect to any action taken or omitted to be taken in good faith with reference thereto.

Section 9. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and, to the extent permitted under federal tax laws, reimbursement to the Town for capital expenditures heretofore incurred and paid from Town funds in anticipation of the incurrence of long-term financing therefor, and all other costs and expenses incident thereto, including without limitation the costs of obtaining the Loan. Neither the CWRPDA nor any subsequent owner(s) of the Loan Agreement shall be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loan and the interest thereon.

Section 10. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor, the Town Clerk, or other officers and directors of the Town as specified in the Loan Agreement are hereby designated as the Authorized Officers (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the Town, the Bonds or the Loan Agreement. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 11. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than the final maturity of the Loan.

Section 12. Direction to Take Authorizing Action. The appropriate officers of the Town and members of the Board are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to such certificates and affidavits as may reasonably be required by the CWRPDA.

Section 13. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Board, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 14. 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 15. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the Town, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 16. Ordinance Irrepealable. After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Town and the CWRPDA, and shall be and remain irrepealable until the Bond and the interest thereon shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution or other measure enacted after the issuance of the Bond shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 17. Recordation. A true copy of this Ordinance, as adopted by the Board, shall be numbered and recorded on the official records of the Town. The adoption and publication of this Ordinance shall be authenticated by the signatures of the Mayor and the Town Clerk, and by a certification of publication.

Section 18. Emergency Declaration. It is hereby found and determined by the Board that: (i) the Project is necessary in the public interest in order to properly and safely serve the Town and its residents; (ii) the long-term financing of the Project by the execution and delivery of the Loan and the Bond is necessary in order to operate the Systems; and (iii) it is necessary to take advantage of the current interest rates, the continuation of which cannot be predicted. As a result of the foregoing, the Board hereby declares that an emergency exists, and that this Ordinance is necessary to the immediate preservation of the public health and safety, all in accordance with §31-16-105, C.R.S.

Section 19. Publication and Effective Date. This Ordinance shall be in full force and effect upon adoption by the affirmative vote of three-fourths (3/4) of the members of the Board pursuant to §31-16-105, C.R.S. This Ordinance, as adopted by the Board, shall be numbered and recorded by the Town Clerk in the official records of the Town. The adoption and publication shall be authenticated by the signatures of the Mayor, or Mayor Pro Tem, and Town Clerk, and by the certificate of publication.

INTRODUCED, READ BY TITLE, PASSED ON FIRST AND FINAL READING AS AN EMERGENCY ORDINANCE, AND ORDERED PUBLISHED THIS 16TH DAY OF NOVEMBER 2021.

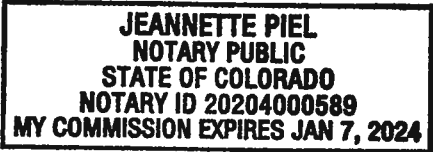
TOWN OF EMPIRE, COLORADO

By: Wendy Koch
Wendy Koch, Mayor

ATTEST:

J Piel
Jeannette Piel, Town Clerk

STATE OF COLORADO)
)
 COUNTY OF CLEAR CREEK) SS.
)
 TOWN OF EMPIRE)



I, Jeannette Piel, the Town Clerk of the Town of Empire, Colorado, do hereby certify:

1. That the foregoing pages are a true, correct and complete copy of the Ordinance adopted by the Board of Trustees constituting the governing board of the Town of Empire (the "Board of Trustees"), by vote had and taken at an open, regular meeting of the Board of Trustees held at the Empire Town Hall, 30 East Park Avenue, Empire Colorado, on November 16th, 2021, convening at the hour of 6:30 p.m. as recorded in the regular book of official records of the proceedings of said Town of Empire kept in my office.

2. That the Ordinance was read by title, duly moved and seconded and the Ordinance was approved by an affirmative vote of three fourths (3/4) of the members of the Board as follows, as follows:

Name	"Yes"	"No"	Absent
Wendy Koch, Mayor	X		
Linda Robertson, Mayor Pro-Tem	X		
Denise Tennant	X		
Lisa Kunze	X		
Susan Owen	X		
Shannon Hickman			X
Lorray Singmaster	X		

3. The members of the Board of Trustees were present at the meeting and voted on the passage of such Ordinance as set forth above.

4. There are no bylaws, rules or regulations of the Board of Trustees which might prohibit the adoption of said Ordinance.

5. The Ordinance was published in full in the Clear Creek Courant a newspaper of general circulation in the Town, on December 8th, 2021, and the affidavit of publication is attached hereto as Exhibit A.

6. Notice of the meeting of November 16th, 2021, in the form attached hereto as Exhibit B was posted at the Empire Town Hall, 30 East Park Avenue, Empire, Colorado, not less than 24 hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Town affixed this November 16th, 2021.



 Town Clerk

(SEAL)

EXHIBIT A
AFFIDAVIT OF PUBLICATION

EXHIBIT B
NOTICE OF MEETING