

ORDINANCE NO. 29

Series 2017

AN ORDINANCE APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$59,000,000; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AUTHORIZING THE CONSTRUCTION OF A PROJECT; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING THE REFERENCED LOAN AND PROJECT; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

WHEREAS, the Town of Breckenridge (the "Town"), in the County of Summit and State of Colorado, is a duly organized and existing home rule municipality of the State of Colorado (the "State") created and operating under the State Constitution and the Home Rule Charter of the Town (the "Charter"); and

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected, chosen, and qualified; and

WHEREAS, pursuant to C.R.S. §37-45.1-103, the Town owns and operates its municipal water system (the "System"); and

WHEREAS, the Council has determined that the System constitutes an enterprise (the "Enterprise") pursuant to Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Council is the governing body of the Enterprise; and

WHEREAS, the Council has heretofore determined that the interest of the Town and the public interest and necessity demand and require the construction of a new water treatment plant, an intake structure, a pump station facility, raw water pipelines, transmission and distribution pipelines and applicable system appurtenances (the "Project"); and

WHEREAS, the Council has determined that in order to finance the Project, it is necessary and advisable and in the best interests of the Town to enter into a loan agreement (the "Loan Agreement") with the Colorado Water Resources and Power Development Authority ("CWRPDA"), a body corporate and political subdivision of the State, pursuant to which CWRPDA shall loan the Town an amount of not to exceed \$59,000,000 (the "Loan") for such purposes; and

WHEREAS, the CWRPDA will obtain money to fund the Loan to the Town through the issuance of its bonds (the "CWRDPA Bonds"); 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 CWRPDA, and which Bond shall be payable only from revenue of the System; and

WHEREAS, under Section 11.6 of the Charter, the Town is authorized to issue revenue bonds payable solely from the net revenues of the System; and

WHEREAS, Article X, Section 20 of the Colorado Constitution ("TABOR") requires an election to incur any multiple fiscal year obligation unless such obligation is incurred by an enterprise; and

WHEREAS, under TABOR, an 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, in 2016, the Enterprise received grants for the System (as defined in the Loan Agreement) from all State and local governments combined which were less than 10% of the annual revenue of the System; and

WHEREAS, pursuant to TABOR and the Charter, the Bond, and the Loan Agreement (collectively, the "Financing Documents") may be approved by the Council without an election; and

WHEREAS, the Bond and the Loan Agreement shall be revenue obligations of the Town, payable from the net revenues of the System (the "Pledged Property"); and

WHEREAS, except to secure 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; and

WHEREAS, there have been presented to the Council the forms of the Financing Documents; and

WHEREAS, the Council desires to approve the forms of the Financing Documents and authorize the execution thereof.

Section 1. Determinations. The Council hereby finds and determines that the System constitutes an enterprise under all applicable State laws. The adoption of this Ordinance does not adversely impact the enterprise status of the System prior to the date hereof.

Section 2. Approvals, Authorizations, and Amendments. The forms of the Financing Documents presented at this meeting 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 Town Manager of the Town (the "Town Manager") or the Town Director of Finance and Information Technology (the "Finance Director"). The Mayor and Town Clerk of the Town (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 at this meeting.

The execution of any instrument or certificate or other document in connection with the matters referred to herein by the Mayor, the Town Manager, the Finance Director, and 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, the Town Manager, and the Finance Director 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; and
- 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 net effective interest rate on the Loan shall not exceed 3.00%;
- (ii) the principal amount of the Loan shall not exceed \$59,000,000; and
- (iii) the final maturity of the Loan shall not be later than December 31,

2042.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond and the Loan Agreement shall contain a recital 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. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Council, 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 7. 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 8. 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 9. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Property (as defined in the Loan Agreement) and the Financing Documents 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 10. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Bond. Such recourse shall not be available either directly or indirectly through the Council or the Town, 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 a part of the consideration of its sale or purchase, CWRPDA specifically waives any such recourse.

Section 11. 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 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 12. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor, the Town Manager, and the Finance Director 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 Bond, or the Loan Agreement. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 13. 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 14. Direction to Take Authorizing Action. The appropriate officers of the Town and members of the Council 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 CWRPDA.

Section 15. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Council, 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 16. CWRPDA's Official Statement. The appropriate officers and employees of the Town are hereby authorized and directed to furnish and supply information concerning the Town to CWRPDA for use in the preparation of an Official Statement to be used to market the CWRPDA Bonds.

Section 17. 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 18. 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 19. Ordinance Irrepealable. After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Town and 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 20. Declaration of Emergency. In order to effect the Project while favorable market conditions exist, it is hereby declared that an emergency exists and that this Ordinance is immediately necessary for the preservation of the public peace, health, safety, and financial well-being of the Town. This Ordinance is hereby declared, pursuant to Section 6.1(b) of the Charter, to be exempt from referendum.

Section 21. Effective Date, Recording, Authentication, and Publication. In accordance with Section 5.11 of the Charter, this Ordinance shall be in full force and effect immediately upon adoption by the affirmative votes of at least five (5) members of the Council. A true copy of this Ordinance shall be numbered and recorded in the official records of the Town, shall be authenticated by the signatures of the Mayor and the Town Clerk, and shall be published in full within ten (10) days after adoption, or as soon thereafter as possible, as required by Section 5.11 of the Charter.

INTRODUCED, READ BY TITLE, APPROVED AND ADOPTED AS AN EMERGENCY ORDINANCE THIS 24TH DAY OF OCTOBER, 2017.

TOWN OF BRECKENRIDGE

By: \_\_\_\_\_/s/\_\_\_\_\_  
Eric S. Mamula, Mayor

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

APPROVED IN FORM

\_\_\_\_\_/s/\_\_\_\_\_  
Town Attorney



WITNESS my hand and the seal of the Town affixed this October 24, 2017.

*/s/*

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Helen Cospolich, CMC, Town Clerk

(SEAL)

Exhibit A

(Attach Affidavit of Publication)

Exhibit B

(Form of Notice of October 24, 2017 Meeting)