

ORDINANCE NO. 10
(Series 2019)

AN ORDINANCE OF THE TOWN OF GYPSUM, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE HYDROELECTRIC AND RELATED IMPROVEMENTS; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND A BOND TO DOCUMENT THE LOAN; AND PROVIDING FOR PAYMENT OF THE BOND FROM NET REVENUE OF THE WATER SYSTEM.

WHEREAS, the Town of Gypsum, Colorado, is a home rule municipality duly organized and operating under the Constitution and laws of the State of Colorado and the Town's Home Rule Charter effective October 21, 1982 (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, the Town is acting hereunder by and through its Water Activity Enterprise, which has been duly and regularly established pursuant to Chapter 13.14 of the Gypsum Municipal Code (the "Code"), which Enterprise has been and continues to be operated as a "water activity enterprise" within the meaning of Section 37-45.1-102(4), C.R.S., and constitutes a government owned business which is authorized to issue its own revenue bonds and which shall not receive 10% or more of annual revenue in grants from all Colorado state and local governments combined; and

WHEREAS, to finance the estimated costs of water system capital improvements generally consisting of a new powerhouse containing one turbine/generating unit in an existing raw water pipeline prior to entering an existing water treatment plant; a bypass section through a pressure reducing valve and associated appurtenances, the Council has determined to enter into a Loan Agreement with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which CWRPDA is to make a loan to the Town a principal amount not to exceed \$1,528,650; and

WHEREAS, the Town's repayment obligation under the Loan Agreement will be evidenced by a governmental agency bond to be issued by the Town to the CWRPDA, which Bond shall constitute a special revenue obligation of the Town which is to be paid from the income and revenues derived from the operation and use of the water system (but not the sewer system) comprising the Town of Gypsum Water Activity Enterprise less reasonable and necessary current expenses of the Town of operating, maintaining and repairing the water system (but not the sewer system) comprising the Town of Gypsum Water Activity Enterprise and, after consideration, the Town Council has determined that the execution of the Loan Agreement and the issuance of the Bond to the CWRPDA is to the best advantage of the Town; and

WHEREAS, voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution for the execution of the Loan Agreement or the issuance of the Bond; and

WHEREAS, as of the date of adoption of this Ordinance, the Town has an outstanding loan from the State of Colorado (for the benefit of the Department of Natural Resources - Colorado Water Conservation Board) executed on or about July 14, 2009 and identified as Contract No. C150296; and

WHEREAS, the form of the Loan Agreement and the Bond have been presented to the Town and made available to the Council; therefore,

BE IT HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO:

Section 1. Definitions. The following terms shall have the following meanings as used in this Ordinance:

“*Bond*” means the governmental agency bond to be issued by the Town to the CWRPDA pursuant to the Loan Agreement, the form of which is set forth in Exhibit D to the Loan Agreement.

“*Capital Improvements*” means the acquisition of land, easements, facilities and equipment, other than ordinary repairs and replacements, and the construction or reconstruction of improvements, betterments and extensions for use by, or in connection with, the System.

“*Council*” means the Town Council of the Town, acting as the governing body of the Enterprise.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*CWRPDA*” means the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State.

“*Enabling Law*” means the Town’s Home Rule Charter; Part 2, Article 57 of Title 11, Colorado Revised Statutes, as amended; Part 4, Article 35 of Title 31, Colorado Revised Statutes, as amended; Part 1, Article 45.1 of Title 37, Colorado Revised Statutes, as amended, and all other laws of the State establishing the power of the Town to complete the financing contemplated by this Ordinance.

“*Enterprise*” means the government owned business of the Town, as established pursuant to Chapter 13.14 of the Code, which is authorized to issue its own revenue bonds and which receives under 10% of annual revenue in grants from all Colorado state and local governments combined.

“*Financing Documents*” means the Loan Agreement and the Bond.

“*Future Parity Obligations*” means one or more series of additional bonds, notes, interim securities or other obligations issued by the Town having a lien on the Net Revenue which is on a parity with the lien of the Bond.

“*Gross Revenue*” means all income and revenues directly or indirectly derived by the Town from the operation and use of the System, or any part thereof, including without limitation, any rates, fees (including without limitation plant investment fees and availability fees), and charges for the services furnished by, or the use of, the System, and all income attributable to any past or future dispositions of property or rights, or related contracts, settlements or judgments held or obtained in connection with the System or its operations, and including investment income accruing from such moneys; provided however, that there shall be excluded from Gross Revenue any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding fund, escrow account or similar account pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

“*Loan Agreement*” means that certain Loan Agreement between the Town and the CWRPDA pursuant to which the CWRPDA is to make a loan from its Drinking Water Revolving Fund to the Town.

“*Net Revenue*” means the Gross Revenue after deducting Operation and Maintenance Expenses.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining and repairing the System, including without limitation legal and overhead expenses of the Town directly related to the administration of the System, insurance premiums, audits, professional services, salaries and administrative expenses, labor and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Capital Improvements, and expenses that are otherwise paid from ad valorem property taxes.

“*Outstanding Obligation*” means, as of the execution date of the Loan Agreement, the loan from the State of Colorado (for the benefit of the Department of Natural Resources - Colorado Water Conservation Board) executed on or about July 14, 2009 and identified as Contract No. C150296.

“*Prime Rate*” means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announce by Citibank, N.A. as its prime lending rate.

“*Project*” means the construction of a new powerhouse containing one turbine/generating unit in an existing raw water pipeline prior to entering an existing water treatment plant; a bypass section through a pressure reducing valve and associated appurtenances, and other System Capital

Improvements as set forth in the Loan Agreement and as the Project may be later modified by determination of the Council.

“*Project Costs*” means the Town’s costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Enabling Law.

“*Pro Rata Portion*” means when used with respect to a required credit to the accounts or subaccounts established for the payment of the principal of and interest on the Bond, any Future Parity Obligations and the Outstanding Obligation, the dollar amount derived by dividing the amount of principal or interest to come due on the next principal or interest payment date by the number of monthly credits required to be made prior to such payment date.

“*Water Fund*” means the Water Fund, within with the financial operations of the System are currently accounted for, or such other fund as may be determined by Town to account for the financial operations of the System.

“*State*” means the State of Colorado.

“*System*” means the water system of the Town, as more particularly described in the Loan Agreement.

“*Town*” means the Town of Gypsum, Colorado, acting by and through its Water Activity Enterprise.

Section 2. Approval of Loan Agreement and Authorization of Bond. Pursuant to and in accordance with the State Constitution and the Enabling Law, the Bond shall be issued by the Town acting by and through its Water Activity Enterprise. The form of the Loan Agreement setting forth the terms, conditions and details of the Bond and the procedures relating thereto, is incorporated herein by reference and is hereby approved; all Town officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Town under the Financing Documents. The Town shall enter into the Loan Agreement and deliver the Bond in substantially the form presented to the Town at or prior to this meeting of the Council with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered. It is hereby determined that the date of final maturity of the Bond does not exceed the estimated life of the Project.

Section 3. Bond Details. The Bond shall be in substantially the form set forth in Exhibit D to the Loan Agreement with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Town executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The Bond shall be in an aggregate principal amount not to exceed \$1,528,650, shall bear interest at a rate of two and one-half percent (2.5%) per annum, and shall be payable semi-annually and mature not more than thirty years from the date of its issuance as more particularly set forth in the Loan Agreement. The Bond may provide for a late charge (penalty interest rate) in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on late payments; provided however, such late charge rate shall not exceed the maximum

rate permitted by law. For a period not to exceed one year from the effective date of this Ordinance, the Council hereby delegates to the Assistant Town Manager, or in the absence of the Assistant Town Manager the Finance Director, the right to determine, within the parameters established above, the final principal of, and loan term for, the Bond.

Section 4. Pledge for Payment of the Bond.

(a) ***Pledge of Net Revenue.*** Net Revenue is hereby pledged to the payment of the Bond and the amounts due under the Loan Agreement. The Bonds shall constitute a first lien upon the Net Revenue, but not necessarily an exclusive first lien. Pursuant to and in accordance with Section 11-57-208, C.R.S., Net Revenue, as received by or otherwise credited to the Town, shall immediately be subject to the lien of the pledge stated above without any physical delivery, filing, or further act. The lien of each such pledge, and the obligation to perform the contractual provisions made in this Ordinance and the Financing Documents, shall have priority over any or all other obligations and liabilities of the Town except as may be otherwise provided in this Ordinance or in the Financing Documents. The lien of the above 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.

(b) ***Establishment of Accounts.*** There shall be established and maintained by the Town such accounts or subaccounts within the Water Fund necessary or convenient to carry out the terms and provisions of this Ordinance and the Loan Agreement.

(c) ***Flow of Funds.*** The Town shall credit to the Water Fund all Gross Revenue immediately upon receipt. The Town shall pay from the Water Fund all Operation and Maintenance Expenses as they become due and payable. After such payment or the allocation of Gross Revenue to such payment, the Town shall apply the Net Revenue in the following order of priority:

FIRST, to the credit of or deposit in the accounts or subaccounts established for the payment of interest on the Bond, the Outstanding Obligation and any Future Parity Obligations, the Pro Rata Portion equal to the interest coming due on the next succeeding interest payment date for the respective obligations;

SECOND, to the credit of or deposit in the accounts or subaccounts established for the payment of principal of the Bond, the Outstanding Obligation and any Future Parity Obligations, the Pro Rata Portion equal to the principal coming due on the next succeeding principal payment date for the respective obligations;

THIRD, to the credit of any reserve accounts established for the payment of the Bond, the Outstanding Obligation and any Future Parity Obligations, the amounts required in the ordinances or related documents authorizing and controlling the establishment of such reserve accounts; and

FOURTH, to the credit of or deposit in the accounts or subaccounts established for the payment of principal of and interest on other obligations the payment of which is subordinate to the payment of the Bond, the Pro Rata Portion equal to the principal of or interest on such obligations coming due on the next succeeding payment date for the respective obligations; and

FIFTH, to the credit of any other fund or account as may be designated by the Town, to be used for any lawful purpose, any moneys remaining in the Water Fund after the payments and accumulations set forth in FIRST through FOURTH hereof.

(d) ***The Bond Does Not Constitute a Debt.*** The CWRPDA may not look to any general or other fund of the Town for the payment of the principal of or interest on the Bond, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Bond shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the Town.

Section 5. Various Findings, Determinations, Declarations and Covenants. The Council, having been fully informed of and having considered all the pertinent facts and circumstances, hereby affirms the covenants set forth in Section 2.02 of the Loan Agreement and further finds, determines, declares and covenants that:

(a) ***Additional Obligations.*** No bonds, notes, interim securities or other obligations shall be issued payable from the Net Revenue and having a lien thereon which is superior to, on a parity with, or subordinate to the lien of the Bond unless the requirements set forth in EXHIBIT F of the Loan Agreement, under the caption titled “Additional Bonds”, have been met.

(b) ***Maintenance of Rates and Coverage.*** The Town hereby covenants that it will establish, maintain, enforce and collect rates, fees and charges for services furnished by or the use of the System as required in provision set forth in EXHIBIT F of the Loan Agreement under the caption titled “Rate Covenant”. In the event that the Gross Revenue at any time is not sufficient to make the payments required by said provision, the Town covenants to promptly increase such rates, fees and charges to an extent which will ensure compliance with said covenant.

(c) ***Enterprise Status.*** The Council hereby determines that the Enterprise is an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution. The Town has and will continue to maintain the System as part of its “enterprise” within the meaning Article X, Section 20 of the Colorado Constitution, and the meaning of Title 37, Article 45.1, C.R.S.; provided, however, after the current calendar year the Town may disqualify the “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Financing Documents. In the event that the “enterprise” is disqualified and the enforceability of the covenants made by the Town in the Financing Documents are materially, adversely affected, the Town covenants to (i) immediately take all actions necessary to qualify System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.

(d) ***Obligations Currently Secured by Net Revenue.*** Other than the Outstanding Obligation, the Town has no outstanding debt, bonds, loans or other multiple fiscal year obligation which is secured by Net Revenue.

(e) ***Findings of the Council.*** The Council having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants with the CWRPDA that:

(i) the Enterprise has been duly established and is operating during the current calendar year as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution;

(ii) the Council elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Agreement and to the issuance of the Bond;

(iii) the execution of the Loan Agreement and the issuance and delivery of the Bond, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Constitution and the Enabling Law, and all conditions and limitations of the Enabling Law and other applicable law relating to the execution of the Loan Agreement and the issuance and delivery of the Bond have been satisfied; and

(iv) it is in the best interests of the Town and its residents that the Bond be authorized, issued and delivered at the time, in the manner and for the purposes provided in this Ordinance.

Section 6. Approval of Miscellaneous Documents. The Mayor (or in the Mayor’s absence the Mayor Pro Tem) is hereby authorized and directed to execute the Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the financing contemplated by this Ordinance. Additionally, authorized officers and representatives as identified in Exhibit B to the Loan Agreement shall be Jim Hancock, Assistant Town Manager and Mark Silverthorn, Finance Director.

Section 7. Amendment of Ordinance. This Ordinance may be amended only with the prior written consent of the CWRPDA.

Section 8. Limitation of Actions. The Council elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Agreement and to the issuance of the Bond. Pursuant Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Bonds shall be maintained against the Town unless commenced within 30 days after the date of passage of this Ordinance.

Section 9. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or by the officers and employees of the Town directed toward the issuance of the Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 10. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 11. Ordinance Irrepealable. After any Bond has been issued, this Ordinance shall constitute a contract between the CWRPDA 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 12. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 13. Repealer. All orders, bylaws, resolutions and ordinances 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 14. Public Inspection. Copies of this Ordinance are available for public inspection at the office of the Gypsum Town Clerk.

Section 15. Public Hearing. A public hearing of this Ordinance shall be held on the 24th day of September 2019, at 7:00p.m. at the Town of Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado.

Section 16. Effective Date. This Ordinance shall become effective as a permanent ordinance five days after publication, following final adoption after a public hearing held on the 24th day of September 2019, at 7:00p.m. at the Town of Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado.

INTRODUCED, READ AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF GYPSUM ON THE 10TH DAY OF SEPTEMBER 2019, BY A VOTE OF 4 IN FAVOR AND 0 AGAINST.



TOWN OF GYPSUM

By: Tom Edwards
~~Stephen M. Carver, Mayor~~ *Pro Tem*
Tom Edwards

Attest:

Danette Schlegel
Danette Schlegel, Town Clerk

INTRODUCED ON SECOND READING, READ, CONSIDERED AT A PUBLIC HEARING AND FINALLY ADOPTED, PASSED AND APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED POSTED AND PUBLISHED, BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE AND PASSED AT ITS MEETING HELD ON THE 24 DAY OF Sept, 2019, BY A VOTE OF 5 IN FAVOR AND 0 AGAINST.

TOWN OF GYPSUM

By: Stephen M. Carver
Stephen M. Carver, Mayor

Attest:

Danette Schlegel
Danette Schlegel, Town Clerk

(SEAL)

