

AN ORDINANCE OF THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, AUTHORIZING THE ISSUANCE OF THE TOWN'S GOVERNMENTAL AGENCY BOND IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,300,000; 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. WE-2009-8 1 OF THE TOWN OF HOT SULPHUR SPRINGS 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 Hot Sulphur Springs, 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 Hot Sulphur Springs 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 Hot Sulphur Springs 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 to the Town, acting by and through its Enterprise, an amount not to exceed \$3,300,000 which amount will be funded in whole or in part through the American Recovery and Reinvestment Act ("ARRA") of which it is anticipated that \$2,000,000 of the principal, pursuant to the terms of ARRA, will be forgiven and \$1,300,000 of which will be in the form of a loan payable at 0% interest, all in accordance with the terms of the loan agreement; and

WHEREAS, the Board, acting by and through the Enterprise, has approved a Loan Agreement with the CWRPDA, pursuant to which the CWRPDA will loan to the Town, acting

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 HOT SULPHUR SPRINGS, COLORADO:

**Section 1. 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 therunto enabling, there shall be issued the Town's "Governmental Agency Bond", in the aggregate principal amount of not to exceed \$3,300,000, for the purpose of paying the Project Costs. The accomplishment of the Project is hereby authorized, approved, and ordered and the Town, acting by and through the Enterprise is authorized to undertake and complete the Project as described in the Loan Agreement.

**Section 2. Approval of Town of Hot Sulphur Springs Water Enterprise Actions.** All actions heretofore taken by the Board of the Town of Hot Sulphur Springs Water Enterprise in furtherance of the issuance of the Bond including its Resolution No. WE-2009-8 1 are hereby ratified and approved.

**Section 3. 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 4. 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 of the Bond 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 5. Enterprise Fees and Charges.** The Board of Trustees shall adopt by resolution for and on behalf of the Enterprise the following rates, fees, and charges:

- a. minimum and sufficient water rates;
- b. plant investment fees and/or capital replacement fees; and
- c. other fees and charges as the Board of Trustees deems necessary to cover the cost of inspection, testing fees for engineering design review, operations, maintenance, and extensions of the System.

**Section 6. Water Fund Established.** There is hereby established an enterprise fund, to be known as the "Water Fund", in which shall be deposited all revenues from water billing and other revenues related to the System. All funds received from the water rates shall be used only for the operation, maintenance, debt service, replacement of and additions to the system.

The Enterprise may pledge all or any portion of the Water Fund, including revenues anticipated to be collected, to the payment of principal, interest, premium, if any, and reserves for revenue bonds or any other obligations lawfully issued or otherwise contracted for by the Enterprise for the payment or other financing of costs of the System, or for the purpose of refunding any obligations issued or otherwise contracted for such purpose.

**Section 7. Bond Details.** The Bond shall be in the principal amount of not to exceed \$3,300,000, \$1,300,000 of which shall bear interest at the maximum net effective interest rate of 0% per annum and shall be payable in the time and manner, and shall be subject to optional prepayment, as set forth in the Loan Agreement. 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 8. 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 9. No Recourse Against Officers and Agents.** Pursuant to Section 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 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, capital replacement 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

**Section 14. 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 15. 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 16. 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 17. 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 18. 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.

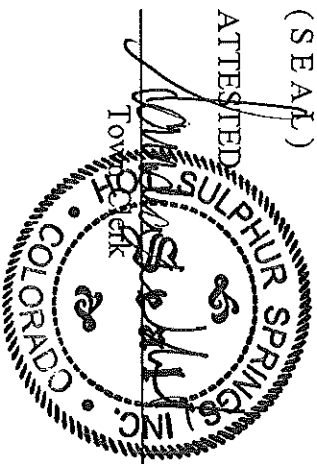
**Section 19. Recording and Authentication.** Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

**Section 20. 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 20th day of August, 2009, and ordered published in accordance with the provisions of Section 31-16-105, C.R.S.

(SEAL)

ATTESTED



  
Mayor

It was thereupon moved by Trustee Kathy Knight and seconded by Trustee Chris Welch 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: Hershal Deputy  
Mayor Pro Tem: Lucy Meirose  
Trustees: Kathy Knight  
Summer Shuster  
Robert Shirley  
Chris Welch  
Robert McVay

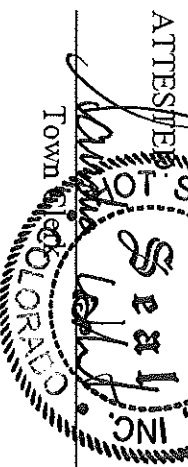
Those voting NO:

All (7) 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)

Hershal Deputy  
Mayor



STATE OF COLORADO )  
 )  
COUNTY OF GRAND )  
 )  
TOWN OF HOT SULPHUR SPRINGS )

The Board of Trustees of the Town of Hot Sulphur Springs, Colorado, met in regular session in full conformity with law and the ordinances and rules of the Town, at 513 Aspen Street, in Hot Sulphur Springs, Colorado, on Thursday, the 20th day of August, 2009, at 6:30 p.m.

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

Mayor: Hershel Deputy  
Mayor Pro Tem: Lucy Meirose  
Trustees: Kathy Knight  
Summer Shuster  
Robert Shirley  
Chris Welch  
Robert McVay Also present:

Town Clerk: Sandy White

Absent:

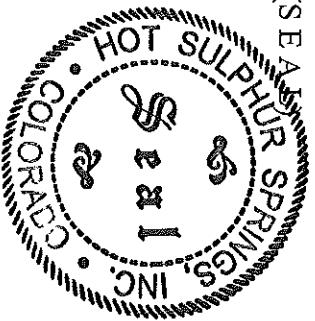
Thereupon Trustee Kathy Knight introduced, and there was read in full, the following Ordinance:

TOWN OF HOT SULPHUR SPRINGS )

I, Sandy White, Town Clerk of the Town of Hot Sulphur Springs, 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 20th day of August, 2009, at 513 Aspen St., in Hot Sulphur Springs, 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 20<sup>th</sup> day of August, 2009.

(S E A L)



Sandy White

Town Clerk



STATE OF COLORADO )  
 )  
COUNTY OF GRAND )  
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TOWN OF HOT SULPHUR SPRINGS )

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Mayor:	Hershal Deputy
Mayor Pro Tem:	Lucy Meirose
Trustees:	Kathy Knight
	Summer Shuster
	Robert Shirley
	Chris Welch
	Robert McVay

Also present:

Town Clerk: Sandy White

Absent:

Thereupon Trustee Kathy Knight introduced, and there was read in full, the following Resolution: