

ENTERPRISE AFFORDING A BOARD OF TRUSTEES AUTHORITY WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, ACTING BY AND THROUGH ITS TOWN OF HOT SULPHUR SPRINGS WATER ENTERPRISE IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,300,000 FOR THE PURPOSE OF FINANCING IMPROVEMENTS TO THE TOWN OF HOT SULPHUR SPRINGS WATER FACILITIES; AUTHORIZING THE FORM AND EXECUTION OF A LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND EVIDENCING THE LOAN; PROVIDING THAT THE GOVERNMENTAL AGENCY BOND SHALL BE PAYABLE ONLY FROM REVENUES OF THE TOWN OF HOT SULPHUR SPRINGS WATER ENTERPRISE; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Town of Hot Sulphur Springs Water Enterprise (the "Enterprise") is a duly created water activity enterprise existing under the provisions of Title 37, Article 45.1, Colorado Revised Statutes ("Water Activity Law"); and

WHEREAS, 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 of Hot Sulphur Springs (the "Board") is acting hereunder as the governing body of the Enterprise; and

WHEREAS, the Enterprise is a government owned business authorized to issue its own revenue bonds and receiving under ten percent (10%) of annual revenue and 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 to acquire and develop certain properties and facilities for the collection, treatment, transmission, and disposition of water (the "Project"), said Project to be operated and maintained as part of the water system of the Town and the Enterprise (the "System"); and

WHEREAS, the Town is authorized by Title 37, Article 45.1, C.R.S., and Article X, Section 20 of the 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

(“ARKKA”) 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 CWRPPDA, PURSUANT TO WHICH THE CWRPPDA WILL LOAN TO THE TOWN, ACTING BY AND THROUGH THE BOARD, THE AMOUNT OF NOT TO EXCEED \$3,300,000 FOR THE PROJECT \$2,000,000 OF WHICH WILL BE FORGIVEN AND \$1,300,000 WILL BE LOANED AT 0% INTEREST; AND

WHEREAS, NONE OF THE MEMBERS OF THE BOARD HAVE ANY POTENTIAL CONFLICTING INTEREST IN 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 RESOLVED BY THE GOVERNING BODY OF THE TOWN OF HOT SULPHUR SPRINGS WATER ENTERPRISE:

**Section 1. Definitions.** As used herein, the capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise, all other capitalized terms shall have the respective meanings set forth in the Loan Agreement.

**Bond:** the Governmental Agency Bond, dated as of the date of issuance, issued in the aggregate principal amount of not to exceed \$3,300,000, as authorized by this Resolution.

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

**Loan Agreement:** That loan agreement between the Colorado Water Resource and Power Development Authority and the Town of Hot Sulphur Springs, Colorado acting by and through its Town of Hot Sulphur Springs Water Enterprise.

**Ordinance or Bond Ordinance:** this ordinance which authorizes the issuance of the Bond, including any amendments properly made hereto.

**Owner:** the owner of the Bond.

**Project:** the acquisition, construction, reconstruction, improvement, betterment, or extension of water facilities and all necessary or appropriate appurtenances, property rights, and

equipment including water treatment plant upgrades, construction of new clearwell, new intake and associated piping and storage improvements.

Resolution or Bond Resolution: Resolution No. WE-2009-8 1 of the Town of Hot Sulphur Springs Water Enterprise.

System: all of the Town's water facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, which comprise the Enterprise.

Water Fund: the fund of the Enterprise designated as the "Water Fund", established by the provisions of this Resolution, and also referred to as the Water Fund Account.

**Section 2. Approval of Loan Agreement.** That Loan Agreement in substantially the form presented herewith between the Colorado Water Resources and Power Development Authority and the Town of Hot Sulphur Springs, Colorado acting by and through its Town of Hot Sulphur Springs Water Enterprise and evidencing a loan from the Colorado Water Resources and Power Development Authority to the Town of Hot Sulphur Springs, Colorado, acting by and through its Town of Hot Sulphur Springs Water Enterprise is hereby approved and the Enterprise is authorized to undertake and complete the Project.

**Section 3. Authorization of Bond.** In accordance with the Constitution, 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 and pursuant to the Loan Agreement, there shall be issued the Town's "Governmental Agency Bond" of the Enterprise, in the aggregate principal amount of not to exceed \$3,300,000, for the purpose of paying the costs of the Project (the "Project Costs"). The accomplishment of the project is hereby authorized, approved, and ordered.

**Section 4. 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 5. 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 (the "Owner") may not look to any general or other fund of the Town for payment of the principal and/or interest on the Bond, except the funds and accounts pledged thereto by this Resolution and the Loan Agreement, 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 revenue pledged to the payment of the Bond 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 6. 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 rate of 0% per annum, shall mature as provided in the Loan Agreement, 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 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 7. 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 8. 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 9. Form and Execution of the Bond.** The Bond shall be executed with a facsimile or manual signature of the Mayor of the Town, sealed with a facsimile or manual impression of the seal of the Town, and attested by the facsimile or manual signature of the Town Clerk. Should any officer whose facsimile or manual signature appear on the Bond cease to be such officer before delivery of the Bond to a purchase, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

**Section 10. Disposition and Investment of Proceeds.** The Bond shall be issued and sold for the purpose of paying the Project Costs. The owner of the Bond (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. 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 effectuate the provisions of this Resolution, including, but not limited to, the execution of such

certificates and affidavits as may be reasonably required. The execution by the Mayor of the Town of any document authorized herein shall be conclusive proof of the approval by the Town of the terms thereof.

**Section 12. Authorized Officer.** Herchel Deputy, Mayor of the Town of Hot Sulphur Springs or his successor, and Lucy Meirose, Mayor Pro Tem or her successor, are hereby authorized to act as the "Authorized Officer" under the Loan Agreement (as such term is therein defined), and to furnish their names to the Authority in accordance with the Loan Agreement.

**Section 13. 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.

**Section 14. 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 Resolution, relating to the authorization, sale, issuance, and delivery of the Bond are hereby ratified, approved, and confirmed.

**Section 15. Resolution Irrepealable.** After the Bond has been issued, this Resolution shall constitute a contract between the Owner and the Enterprise, 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 16. Repealer.** All orders, bylaws, resolutions of the Enterprise, or parts thereof inconsistent or in conflict with this Resolution are hereby repealed to the extent only of such inconsistency or conflict.

**Section 17. Severability.** If any section, paragraph, clause, or provision of this Resolution 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 Resolution, the intent being that the same are severable.

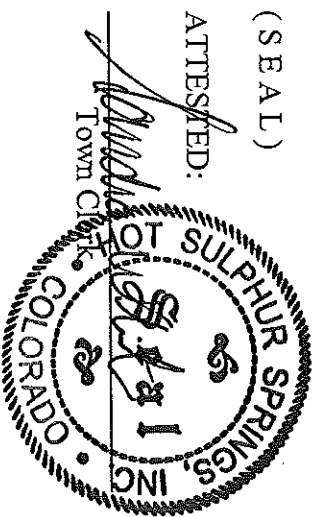
**Section 18. Recording and Authentication.** Upon adoption hereof, this Resolution shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

**Section 19. Effective Date.** This Resolution shall take effect immediately upon adoption.

INTRODUCED, READ AND PASSED AS A RESOLUTION at a regular meeting of the Board of Trustees acting as the governing body of the Town of Hot Sulphur Springs Water Enterprise on the 20th day of August, 2009.

(SEAL)

ATTESTED:



  
\_\_\_\_\_  
Mayor

The question being upon the adoption of the motion, the roll was called and the following result:

Those voting YES:

Mayor:  
Mayor Pro Tem:  
Trustees:

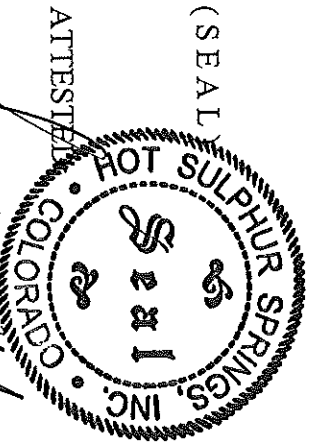
Hershal Deputy  
Lucy Meirose  
Kathy Knight  
Summer Shuster  
Robert Shirley  
Chris Welch  
Robert McVay

Those voting NO:

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All (7) members of the Board of Trustees present having voted in favor of said motion, the presiding officer thereupon declared the motion carried and that the Resolution was passed and adopted.

Thereupon, after consideration of other business to come before the Board, the meeting was adjourned.



*Shirley White*  
Town Clerk

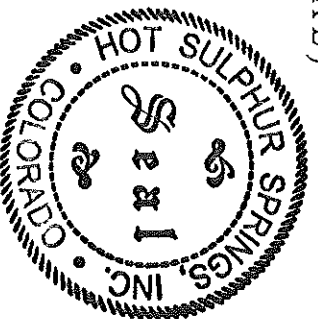
*Hershal Deputy*  
Mayor

STATE OF COLORADO )  
 )  
COUNTY OF GRAND )  
 )  
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 1 to 8, inclusive, constitute a full and correct copy of the record of the proceedings of the Board of Trustees of the Town acting as the governing body of the Town of Hot Sulphur Springs Water Enterprise, taken at a regular meeting thereof, held on Thursday, the 20th day of August, 2009, at 513 Aspen Street, in Hot Sulphur Springs, Colorado, so far as said minutes relate to a Resolution concerning the approving a loan between the Colorado Water Resources and Power Development Authority and the Town of Hot Sulphur Springs, Colorado, acting by and through its Town of Hot Sulphur Springs Water Enterprise for the purpose of financing improvements to the Town of Hot Sulphur Springs water system; that said Resolution 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 Resolution recorded in the Book kept for that purpose in my office.

IN WITNESS WHEREOF, I have herunto subscribed my name and affixed the seal of the Town, this 20<sup>th</sup> day of August, 2009.

(SEAL)



Sandy White  
Town Clerk