

**TOWN OF LAKE CITY, COLORADO**  
**ORDINANCE NO. 2019-02**

AN ORDINANCE OF THE TOWN OF LAKE CITY APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY IN A PRINCIPAL AMOUNT NOT TO EXCEED \$900,000.00; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Town of Lake City (the “Town”), in the County of Hinsdale and State of Colorado, is a statutory town duly organized and existing under the Constitution and the laws of the State of Colorado; and

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

WHEREAS, the Town has heretofore determined and undertaken to operate and maintain its water and sewer facilities as a public utility and income-producing project (the “System”) and to account for the financial operations of the System in the Town’s Water and Sewer Enterprise Fund; and

WHEREAS, the Town has heretofore determined and hereby determines that the System is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution (“TABOR”); and

WHEREAS, the Board has heretofore determined and hereby determines that the interest of the Town and the public interest and necessity demand and require the acquisition, construction and completion of improvements to the System, including design, engineering, legal, financing and administrative costs relating thereto, and any other costs incidental thereto (the “Project”); and

WHEREAS, the Town has made application to the Colorado Water Resources and Power Development Authority (the “CWRPDA”) for a loan or loans to finance all or a portion of the cost of the Project; and

WHEREAS, the Board has determined that in order to finance a portion of the cost of the Project, it is necessary and advisable and in the best interests of the Town, acting by and through its Water and Sewer Enterprise, to enter into a loan agreement (the “Loan Agreement”) with the CWRPDA pursuant to which CWRPDA will loan the Town an amount of \$900,000.00 at one percent (1%) interest (the “Loan”) for such purposes; and

WHEREAS, the repayment obligations under the Loan Agreement will be evidenced by a governmental agency bond (the “Bond”) to be issued by the Town, acting by and through its Water and Sewer Enterprise, to CWRPDA; and

WHEREAS, the Town's obligations under the Bond and the Loan Agreement (collectively, the Financing Documents") shall constitute revenue obligations of the Town payable from the Pledged Property, which consists of the Net Revenues of the System (as defined in the Loan Agreement) and shall not constitute a debt of the Town within the meaning of any constitutional or statutory limitations; and

WHEREAS, pursuant to Title 31, Article 35, Part 4, C.R.S. (the "Sewer and Water Systems Act") and Title 37, Article 45.1, C.R.S. (the "Water Activity Enterprise Act"), the Town is authorized to issue revenue bonds payable solely from the revenues of the System; and

WHEREAS, pursuant to TABOR, the Bond and the Loan Agreement may be approved by the Board without an election as the Town is acting by and through its Water and Sewer Enterprise; and

WHEREAS, the Town has not pledged or 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, except pursuant to the Design and Engineering Loan Agreement between the Town and the Authority, executed December 12, 2018; and

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LAKE CITY, COLORADO, AS FOLLOWS:

Section 1. Incorporation of Recitals; Findings. The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Board of Trustees. This Ordinance and the financing of a portion of the Project through the Loan from the CWRPDA and the execution and delivery of the Financing Documents is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the comfort and convenience of the Town and the inhabitants thereof.

Section 2. Approvals, Authorizations, and Amendments. The Loan and the forms of the Financing Documents that were presented to the Board are hereby approved, and the Mayor and Town Clerk are hereby authorized and directed to enter into the Loan and to execute the Financing Documents in substantially the forms as are on file with the Town Clerk, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Manager, and to authenticate and affix the seal of the Town thereto. The Town shall enter into and perform its obligations under the Financing Documents, in the forms of such Financing

Documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Manager.

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

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, 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 Manager 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 interest rate on the Loan shall not exceed one percent (1 %); (ii) the principal amount of the Loan shall not exceed \$900,000.00; and (iii) the final maturity of the Loan shall not be later than thirty (30) years from the date of the Loan.

Section 5. Conclusive Recitals. Pursuant to Section 31-35-413, C.R.S., the Bond and the Loan Agreement shall contain a recital that the Bond is issued under authority of the Sewer and Water Systems Act. Such recital shall conclusively impart full compliance with all of the provisions of the Sewer and Water Systems Act, and the Bond containing such recital shall be incontestable for any cause whatsoever after its delivery for value. 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 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 Financing Documents shall be payable solely from the Pledged Property, which shall consist of the Net Revenue (as defined in the Loan Agreement) and the Financing Documents shall not constitute a debt of the Town within the meaning of any constitutional or statutory limitations or provisions.

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 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 Board 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 10. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied to pay the costs and expenses of the Project, including costs related thereto and the costs of execution and delivery of the Financing Documents. Neither CWRPDA nor any subsequent owner 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 11. Town Representatives. Pursuant to Exhibit B of the Loan Agreement, the Mayor and the Town Administrator 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 12. 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 13. Direction to Take Authorizing Action. The Mayor, the Town Clerk, and other appropriate officers and employees of the Town 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 the execution and delivery of such certificates and affidavits as may reasonably be required by CWRPDA. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the Town of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 14. 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 15. 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 16. 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 17. 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, 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 18. Recordation. A true copy of this Ordinance, as adopted by the Board, shall be numbered and recorded on the official records of the Town and its adoption and publication shall be authenticated by the signatures of the Mayor and the Town Clerk, and by a certification of publication.

Section 18. Effective Date. This ordinance shall become effective on the thirty-first day following publication pursuant to Section 31-16-105, C.R.S.

INTRODUCED AND ADOPTED by the Board of Trustees of the Town of Lake City, Colorado, this 6th day of February, 2019.

TOWN OF LAKE CITY, COLORADO

By: \_\_\_\_\_  
Bruce Vierheller, Mayor

ATTEST:

\_\_\_\_\_  
Jamie L. Turrentine, Town Clerk

STATE OF COLORADO            )  
   )  
 COUNTY OF HINSDALE        ) SS.  
   )  
 TOWN OF LAKE CITY            )

I Jamie L. Turrentine, the duly appointed, qualified and acting Town Clerk of the Town of Lake City, Colorado (the “Town”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the Board of Trustees of the Town (the “Board”) at a regular meeting of the Board held at Town Hall on February 6, 2019.

2. That the ordinance has been signed by the Mayor, sealed with the corporate seal of the Town, attested by me as Town Clerk, and duly recorded in the books of the Town; and that the same remains of record in the book of records of the Town.

3. That the passage of the ordinance was duly moved and seconded and the ordinance was passed by a majority of affirmative votes of the members of the Board who were present at the meeting, as follows:

Name	“Yes”	“No”	Absent	Abstain
Jeff Heaton				
Jud Hollingsworth				
Richard Moore				
Marty Priest				
Alan Rae				
Dave Roberts				
Bruce Vierheller, Mayor				

4. That notice of the regular meeting of February 6, 2019, in the form, attached hereto as **Exhibit A**, was posted in a designated public place within the boundaries of the Town no less than twenty-four hours prior to the meeting as required by law.

5. That the ordinance was published in full after passage in *The Silver World*, a newspaper of general circulation within the Town, on February 8, 2019. The affidavit of publication is attached hereto as **Exhibit B**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this 6<sup>th</sup> day of February, 2019.

(SEAL)

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Jamie L. Turrentine, Town Clerk

EXHIBIT A

(Attach Notice of Meeting)

**EXHIBIT B**

(Attach Affidavit of Publication)