TOWN OF CRESTED BUTTE, COLORADO
ORDINANCE NO. 42
(SERIES 2019)

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY; AND AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN.

WHEREAS, the Town of Crested Butte (the "Town"), in the County of Gunnison and State of Colorado (the "State"), is duly organized and existing under the Constitution and the laws of the State 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 and qualified; and

WHEREAS, the Town has acted pursuant to Article X, Section 20 of the Colorado Constitution ("TABOR") and Title 37, Article 45.1, C.R.S. (the "Enterprise Act") to create a water activity enterprise (the "Enterprise") to operate the municipal water and sewer systems serving the inhabitants of the Town (the "System"); and

WHEREAS, the Council serves as the governing body of the Enterprise; and

WHEREAS, under TABOR, 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

WHEREAS, the Council finds and determines that it is in the best interest of the Town to make improvements to its water treatment system (the "Project"); and

WHEREAS, the Town has made an application to the Colorado Water Resources and Power Development Authority (the "CWRPDA"), a body corporate and political subdivision of the State, for a loan to finance all or a portion of that cost of the Project; and

WHEREAS, the Council has determined that in order to finance all or a portion of the costs of the Project, it is necessary and advisable and in the best interests of the Town for the Town to enter into a loan agreement (the "Loan Agreement") with the CWRPDA, pursuant to which the CWRPDA shall loan the Town an amount of not more than $2,025,600 (the "Loan") for such purposes; 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 the CWRPDA; and

WHEREAS, the Town's obligations under the Loan Agreement and the Bond (collectively referred to as the "Financing Documents") shall constitute a revenue obligation of the Town payable from the Pledged Property (as defined in the Loan Agreement); and

WHEREAS, pursuant to TABOR, Section 10.4 of the Charter, Title 31, Article 35, Part 4, C.R.S. (the "Sewer and Water Systems Act") and the Enterprise Act, the Financing Documents may be approved by the Council without an election; and

WHEREAS, the forms of the Financing Documents are on file with the Town Clerk; and

WHEREAS, the Council desires to approve the form of the Financing Documents and other documents referenced therein, authorize the execution of the Loan Agreement, and authorize the execution and delivery of the Bond; and

WHEREAS, none of the members of the Council 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; and

WHEREAS, the Town has previously entered into a loan agreement with the CWRPDA for a loan in the amount of $1,900,000, dated May 25, 2010 (the "2010 Loan"), a separate loan agreement with the CWRPDA for a loan in the amount of $400,000, dated February 29, 2012 (the "2012 Loan"), and a separate loan agreement with the CWRPDA for a loan in the amount of $2,500,000, dated May 1, 2017 (the "2017 Loan" and with the 2010 Loan and the 2012 Loan, the "Prior Loans"); and

WHEREAS, the Prior Loans are secured by a lien on the Pledged Property;

WHEREAS, the lien on the Pledged Property securing the Loan will be subordinate to the lien on the Pledged Property securing the Prior Loans; and

WHEREAS, except to secure the Prior Loans, 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.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO:

Section 1. Determinations. The Council hereby finds and determines that the Enterprise constitutes an enterprise under TABOR.

Section 2. Approvals, Authorizations, and Amendments. The forms of the Financing

Documents 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 Mayor and 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 pursuant to this Ordinance.

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 Town Clerk, the Finance and Human Resources Director and the Public Works Director 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 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;

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 2.50%;

ii. the principal amount of the Loan shall not exceed $2,025,600; and

iii. the final maturity of the Loan shall not be later than December 31, 2055.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond and the Loan Agreement shall contain recitals 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 Resolution, 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 Loan Agreement and the Bond are payable solely from the Pledged Property (as defined in the Loan Agreement), and the Loan Agreement and the Bond 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. 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 the 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 11. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor, the Town Manager, the Finance and Human Resources Director and the Public Works 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 Bonds 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 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 the CWRPDA.

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

Section 19. Publication and Effective Date. This Ordinance shall be in full force and effect five days after public notice (including publication) following final passage.

[Remainder of page intentionally left blank.]

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED POSTED THIS 2nd DAY OF DECEMBER, 2019, AND A PUBLIC HEARING ON THIS ORDINANCE SHALL BE HELD AT THE REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, ON THE 16TH DAY OF DECEMBER, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

(SEAL)

ATTEST:

_____
Lynelle Stanford, Town Clerk

APPROVED AND ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 16TH DAY OF DECEMBER, 2019.

TOWN OF CRESTED BUTTE, COLORADO

By: _____
James A. Schmidt, Mayor

(SEAL)

ATTEST:

_____
Lynelle Stanford, Town Clerk

STATE OF COLORADO)
)
COUNTY OF GUNNISON) SS.
)
TOWN OF CRESTED BUTTE)

I, Lynelle Stanford, the duly appointed, qualified and acting Town Clerk of the Town of Crested Butte, Colorado (the "Town") do hereby certify:

1. That at a regular meeting of the Town Council of the Town (the "Council") held on December 2, 2019, the Ordinance was introduced on first reading in writing by a member of the Council and read in full, or, if copies were made available to the Council and the public, was read by title only.

2. That following the first reading of the Ordinance, at least two members of the Council voted to approve the scheduling and holding of a public hearing on December 16, 2019 (the "Public Hearing"), which is not earlier than seven days after the first reading, as follows:

Name	"Yes"	"No"	Absent	Abstain
James A. Schmidt, Mayor	X			
Will Dujardin, Mayor Pro-Tem	X			
Chris Haver			X	
Mallika Magner	X			
Mona Merrill	X			
Candice Bradley	X			
Laura Mitchell	X			

3. That the Council caused the notice of the Public Hearing, in the form attached hereto as **Exhibit A**, to be published at least two days prior to the Public Hearing.

4. That, at the Public Hearing, the Ordinance was read in full, or, if copies of the Ordinance were made available to the Council and the public, the Ordinance was read by title only.

5. That, following the Public Hearing and second reading of the Ordinance, at least four members of the Council voted to approve and adopt the Ordinance, as follows:

Name	"Yes"	"No"	Absent	Abstain
James A. Schmidt, Mayor	X			
Will Dujardin, Mayor Pro-Tem	X			
Chris Haver	X			
Mallika Magner	X			
Mona Merrill	X			
Candice Bradley	X			
Laura Mitchell	X			

6. That, following the approval and adoption of the Ordinance and in accordance with Section 4.11 of the Town Charter, the Council caused copies of the Ordinance to be posted in three public places within the Town and a public notice containing a brief description of the ordinance, its effective date and a statement that copies are available for inspection at the Town Hall of the Town, to be published. The affidavit of publication is attached hereto as **Exhibit B**.

7. That the foregoing pages are a true, correct, and complete copy of the Ordinance approved and adopted by the Council on second reading at a regular meeting of the Council held at the Town Hall of the Town on December 16, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town this 16th day of December, 2019.

(SEAL)

Town Clerk

EXHIBIT A

Notice of Public Hearing

L E G A L

PLEASE TAKE NOTICE that a public hearing will be on the 16th day of December, 2019 at 7PM in the Town Hall Offices at 507 Maroon Ave, Crested Butte, Colorado on Ordinance No. 42, Series 2019:

Ordinance No. 42, Series 2019 - An Ordinance of the Crested Butte Town Council Approving a Loan from the Colorado Water Resources and Power Development Authority; and Authorizing the Execution of a Loan Agreement and a Governmental Agency Bond to Evidence Such Loan.

TOWN OF CRESTED BUTTE, COLORADO
/s/ Lynelle Stanford, Town Clerk
Published in the Crested Butte News on December 6, 2019

EXHIBIT B

Affidavit of Publication

FOR BILLING DEPARTMENT:

Agency: Town of CB
Department _____
Publication Date: 12.6.19
Ad Description:
Ordinance No. 42
Cost: 11 21

PROOF OF PUBLICATION

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

I, Melissa Fenlon, certify that:

I am the publisher of the Crested Butte Chronicle & Pilot/CB News, a newspaper of general circulation published in Crested Butte (printed in Salida) in said State and County:

The attached advertisement, which is a printed copy taken from said newspaper, was published in said newspaper on the 6 day of December, 2019; and

said advertisement was published in said newspaper proper and not in any supplement thereof:

Signature

Subscribed and sworn before me this 27 day of December, 2019 by Melissa Fenlon.

Notary Public

JILL R CLAIR
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054044040
MY COMMISSION EXPIRES DECEMBER 4, 2021

—LEGAL—

PLEASE TAKE NOTICE that a public hearing will be on the 16th day of December, 2019 at 7PM in the Town Hall Offices at 507 Maroon Ave, Crested Butte, Colorado on Ordinance No. 42, Series 2019:
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TOWN OF CRESTED BUTTE, COLORADO
/s/ Lynelle Stanford, Town Clerk

Published in the *Crested Butte News*. Issue of December 6, 2019. #120615