

**ORDINANCE NO. 1**

**SERIES 2012**

**AN ORDINANCE APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY IN A PRINCIPAL AMOUNT NOT TO EXCEED \$400,000; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; DESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH**

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

**WHEREAS**, the members of the Town Council of the Town (the "Council") have been duly elected and qualified;

**WHEREAS**, the Town owns and operates a water and wastewater system (the "System") which operates as an enterprise pursuant to Article X, Section 20 of the Colorado Constitution ("Tabor") and constitutes a water activity enterprise pursuant to Title 37, Article 45.1, C.R.S. (the "Enterprise Act");

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

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

**WHEREAS**, the Town has determined that in order to finance all or a portion of the cost 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, a body corporate and political subdivision of the State, pursuant to which CWRPDA shall loan the Town an amount of not more than \$400,000 (the "Loan") for such purposes;

**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 CWRPDA;

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

**WHEREAS**, pursuant to Section 10.4 of the Town's 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;

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

**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.

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

Section 1. Approvals, Authorizations, and Amendments.

(a) The forms of the Financing Documents as are on file with the Town Clerk are hereby approved, and the Mayor and Town Clerk are hereby authorized and directed 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.

(b) The Mayor and the Town Clerk are further hereby authorized and directed to execute and authenticate such other documents, instruments, or certificates as are deemed necessary or desirable in connection with the Town's performance of its obligations under the Financing Documents.

Section 2. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (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 sections of the Supplemental Act to the Financing Documents.

Section 3. Delegation.

(a) Pursuant to §11-57-205 of the Supplemental Act, the Council hereby delegates to the Mayor or the Town Manager the 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 3:

- (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 capitalized interest or reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions:

(i) the interest rate on the Loan shall not exceed 2.00%;

(ii) the principal amount of the Loan shall not exceed \$400,000; and

(iii) the final maturity of the Loan shall not be later than December 31, 2032.

Section 4. Incontestable Recital. 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.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, C.R.S., 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 as 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 adoption of this Ordinance.

Section 8. Limited Obligation. The Financing Documents are payable solely from the Pledged Property (as defined in the Loan Agreement) and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 9. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, 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 Council 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. Enterprise Status. The Town has and, to the extent necessary to maintain the validity of the Financing Documents under applicable law, will continue to maintain the System as an "enterprise" within the meaning Article X, Section 20 of the Colorado Constitution. Specifically, but not by way of limitation, it is hereby represented that the Town has not received 10% or more of the System's annual revenue in grants from all Colorado state and local governments combined in 2011.

Section 11. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied only to pay the costs and expenses of the Project, including costs related thereto. Neither 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 12. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Town Manager, the Director of Public Works and the Finance Director are each designated as an Authorized Officer (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 13. 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 maximum maturity of the Loan authorized hereby.

Section 14. Direction to Take Authorizing Action. The Mayor, the Town Clerk, and other appropriate officers 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 15. Ratification and Approval of Prior Actions. All actions heretofore taken by the Mayor, any member of the Council, the Town Clerk, and the other officers and employees of the Town, 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 16. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

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 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.

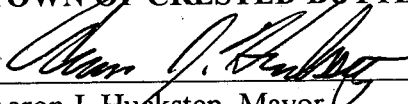
Section 18. Disposition of Ordinance. This Ordinance, as adopted by the Town Council, shall be numbered and recorded by the Town Clerk in the official records of the Town. The adoption and publication shall be authenticated by the signatures of the Mayor and Town Clerk, and by the certificate of publication.

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

**INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 6<sup>th</sup> DAY OF FEBRUARY, 2012.**

**ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 21<sup>st</sup> DAY OF FEBRUARY, 2012.**

**TOWN OF CRESTED BUTTE, COLORADO**

  
\_\_\_\_\_  
Aaron J. Huckstep, Mayor

ATTEST:

  
\_\_\_\_\_  
Eileen Hughes, Town Clerk

(SEAL)

