



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Public Works	David Lady - Public Works Director	December 17, 2024

AGENDA ITEM

First reading of Ordinance 2024-20: An ordinance approving loan from the Colorado Water Resources and Power Development Authority ("CWRPA").

BACKGROUND

The City of Salida has planned and budgeted for piping improvements to the Harrington Ditch which supplies water to the Water Treatment Plant. The primary goals of this project are to improve the source water protection area, maintain water quality, and to provide efficiency and resiliency with the City's source water. This project requires multiple years of planning and collaboration with other stakeholders. The intent of the project is to have a shovel ready plan set containing the necessary engineering and design items. Design, environmental, regulatory clearances, and other due diligence has been underway for this project.

The City was the recipient of receiving a principal forgiveness loan for the Design and Engineering (D&E) component of the project in the amount of \$200,000. Funding for the construction of the improvements will be evaluated during the Utility Rate Study which is currently underway.

The approval of the D&E Principal Forgiveness Loan through Ordinance 2024-20 will provide funding for a large portion of the design and engineering related to the project.

RECOMMENDATION

Staff is recommending approval of the first reading of Ordinance 2024-20 with a second and final reading scheduled for January 21, 2025.

FISCAL IMPACT

A budget allocation is included in the 2025 budget under the Water/Wastewater Enterprise Fund and listed as:

- \$100,000 – General Engineering (20-34-5233-0)
- Note: Less than \$100,000 in engineering work remains as work was completed in 2024

MOTION

A Council member should make the motion to "Approve first reading of Ordinance 2024-20 with a second and final reading scheduled for January 21, 2025."

CITY OF SALIDA, COLORADO
ORDINANCE NO. 20
(Series of 2024)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY (“CWRPDA”) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$163,403.76; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AUTHORIZING THE CONSTRUCTION OF A PROJECT; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY ON SECOND AND FINAL READING.

WHEREAS, the City of Salida (the “City”), in the County of Chaffee and State of Colorado, is a political subdivision of the State of Colorado (the “State”), duly organized and existing as a statutory city under the laws of the State; and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected and qualified; and

WHEREAS, the City has acted pursuant to Article X, Section 20 of the Colorado Constitution (TABOR) and Ordinance No. 20 (Series of 1996) (the “Enterprise Ordinance”) duly enacted by the City Council and codified as Article D of Chapter 5, Title 7, of the Salida City Code (the “Code”), to create a water activity enterprise (the “Enterprise”) to operate the municipal water and sewer systems serving the inhabitants of the City (the “System”); and

WHEREAS, under the Enterprise Ordinance, the Council acts as the governing body of the Enterprise; and

WHEREAS, the Enterprise presently qualifies as an “enterprise” for purposes of TABOR; and

WHEREAS, the Council, acting by and through the Enterprise, has heretofore determined the need to construct a new raw water supply line (as further described and defined in the Loan Agreement (defined herein), the “Project”); and

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

WHEREAS, the Council 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 City (i) to enter into a loan agreement with CWRPDA (the “Loan Agreement”), pursuant to

which CWRPDA shall loan the City an amount of not to exceed \$163,403.76 without any interest and with the principal to be forgiven by the CWRPDA (the “Loan”) for such purposes, and (ii) to issue a governmental agency bond (the “Bond”) to CWRPDA evidencing the City’s obligations under the Loan Agreement; and

WHEREAS, TABOR requires an election to incur any multiple fiscal year obligation unless such obligation is incurred for an 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, in 2023, the System, as operated by the Enterprise, received grants from all Colorado state and local governments combined which were less than 10% of the annual revenue of the System; and

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

WHEREAS, there have been presented to the Council the forms of the Loan Agreement and the Bond (collectively, the “Financing Documents”); and

WHEREAS, pursuant to 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 City 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, pursuant to Section 31-16-105, C.R.S., because of the urgent need for the financing of the Project and the limited availability of low or no interest loans, the Council has determined that an emergency exists and that adoption of this Ordinance as an emergency measure on second and final reading is necessary for the immediate preservation of the public peace, health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations, and findings by Council.

Section 2. Determinations. The Council hereby finds and determines that the Enterprise constitutes an enterprise under TABOR.

Section 3. Approvals, Authorizations, and Amendments. The forms of the

Financing Documents presented at this meeting are incorporated herein by reference and are hereby approved. The City 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 City (the "Mayor"). The Mayor and City Clerk are hereby authorized and directed to execute the Financing Documents and to affix the seal of the City 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 at this meeting.

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

Section 4. 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 City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The City hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 5. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City 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 6. 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 Bonds.

Section 7. Limited Obligation; Special Obligation. No elected or appointed officers or agents of the City shall be subject to any pecuniary liability in connection with any agreement, covenant, or undertaking by the City, 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 8. 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 City for capital expenditures heretofore incurred and paid from City 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 CWRPDA nor any subsequent owner(s) of the Loan Agreement shall be responsible for the application or disposal by the City 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, as applicable.

Section 9. City Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor, the City Administrator and the City Clerk 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 City, or the Financing Documents. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 10. Direction to Take Authorizing Action. The appropriate officers of the City 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 CWRPDA.

Section 11. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 12. Repealer. All orders, resolutions, bylaws, ordinances or regulations of the City, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

Section 13. Ordinance Irrepealable. After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the City and CWRPDA, and shall be and remain irrepealable until the Bond and the interest thereon, as applicable, 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 City to keep and perform the covenants contained in this Ordinance.

Section 14. Electronic Signatures; Electronic Transactions. In the event the Mayor, City Clerk, City Administrator, Finance Director or other employee or official of the City that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the "Authorized Documents") is not able to be physically present to manually sign any such Authorized Document, such individual or individuals are hereby authorized to execute the Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any

original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. It is hereby determined that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other productions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after publication following final adoption.

INTRODUCED ON FIRST READING, on the ____ day of _____, 20__, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the ____ day of _____, 20__, and set for second reading and public hearing on the ____ day of _____, 20__.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the ____ day of _____, 20__.

CITY OF SALIDA, COLORADO

Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk