



CITY COUNCIL ACTION FORM

Department Finance	Presented by Aimee Tihonovich - Finance Director	Date May 4, 2021
Public Works	David Lady – Public Works Director	

ITEM

Second reading of Ordinance 2021-07 and public hearing: An ordinance approving loans from the Colorado Water Resources and Power Development Authority (“CWRPA”).

BACKGROUND

The City of Salida has planned and budgeted for improvements at the Pasqualle Water Treatment Plant Site as well as the Gallery Water Treatment Plant transmission main piping titled the Low Zone Water Line Replacement Project. Design, environmental, regulatory clearances, and other due diligence has been underway for these projects. These improvements are proposed to be funded through a low interest Direct Loan (1.5%) in the amount of \$4,184,000 provided through the Colorado Water Resources and Power Development Authority (CWPRDA). This funding mechanism has been utilized for other large water projects within the City. The City was also in recipient of receiving a principal forgiveness loan for the Design and Engineering (D&E) component of the project in the amount of \$241,450.00.

The approval of the Direct Loan and D&E Principal Forgiveness Loan through Ordinance 2021-07 will allow for the execution of the construction contracts and completion of the work activities. The first reading of Ordinance 2021-07 was approved on April 20, 2021.

FISCAL NOTE

A budget allocation is included in the 2021 budget under the Water/Wastewater Enterprise Fund and listed as:

- \$1,900,000 - New Water Lines and other Infrastructure (20-30-6018-3)
- \$2,000,000 – Infrastructure Improvements (20-34-6024-3)
- \$45,000 – General Engineering (20-30-5233-0)
- \$175,000 – General Engineering (20-34-5233-0)

STAFF RECOMMENDATION

Staff is recommending approval of the second reading of Ordinance 2021-07.

SUGGESTED MOTION

A Council member should make the motion to “Approve second reading of Ordinance 2021-07.”

CITY OF SALIDA, COLORADO

ORDINANCE NO. 2021-07

AN ORDINANCE APPROVING LOANS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY (“CWRPDA”) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,184,000 AND \$241,450; AUTHORIZING THE FORMS AND EXECUTION OF THE LOAN AGREEMENTS AND GOVERNMENTAL AGENCY BONDS TO EVIDENCE SUCH LOANS; 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 replace water transmission mains and improvements at the treatment plant, including replacement of pump station and disinfection facilities and other water and/or wastewater

improvements (as further described and defined in the Direct 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 or loans 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 “Direct Loan Agreement”), pursuant to which CWRPDA shall loan the City an amount of not to exceed \$4,184,000 at 1.50% interest (the “Direct Loan”) for such purposes, and (ii) to issue a governmental agency bond (the “Direct Loan Bond”) to CWRPDA to evidence the City’s repayment obligations under the Direct Loan Agreement; and

WHEREAS, the Council has further 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 “Design & Engineering Loan Agreement” and together with the Direct Loan Agreement, the “Loan Agreements”), pursuant to which CWRPDA shall loan the City an amount of not to exceed \$241,450 without any interest and with the principal to be forgiven by the CWRPDA (the “Design & Engineering Loan” and together with the Direct Loan, the “Loans”) for such purposes, and (ii) to issue a governmental agency bond (the “Design & Engineering Bond” and together with the Direct Loan Bond, the “Bonds”) to CWRPDA evidencing the City’s obligations under the Design & Engineering 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 2020, 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 Direct Loan Agreement, the Direct Loan Bond, the Design & Engineering Loan Agreement and the Design & Engineering Bond (collectively, the “Financing Documents”); and

WHEREAS, the Direct Loan Bond and the Direct Loan Agreement shall constitute revenue obligations of the City, payable from the Net Revenues of the System (as defined in the Loan Agreements); and

WHEREAS, the City has heretofore issued a governmental agency bond to the Colorado Water Resources and Power Development Authority to evidence a loan (the “2011 Loan”) made pursuant to a Loan Agreement dated as of December 21, 2011 (the “2011 Loan Agreement”), and has issued two series of bonds, its City of Salida, Colorado, Water and Wastewater Activity Enterprise Water and Sewer Revenue Bond, Series 2013 (the “2013 Bonds”), its City of Salida, Colorado Water and Wastewater Enterprise Revenue Refunding Bond, Series 2016 (the “2016 Bonds”), and a governmental agency bond to the Colorado Water Resources and Power Development Authority to evidence a loan (the “2017 Loan”) made pursuant to a Loan Agreement dated as of February 28, 2017 (the “2017 Loan Agreement”) (collectively, the “Prior Bonds”), all secured by a pledge of the Net Revenues of the System; and

WHEREAS, except for the Prior Bonds, the City 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 Direct Loan Bond; and

WHEREAS, the City is not delinquent in the payment of any principal or interest requirements under the Prior Bonds; 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, THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, ORDAINS:

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 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 Manager, 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 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 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 4. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the City hereby delegates to the Mayor or the City Administrator the independent authority to make the following

determinations relating to and contained in the Direct Loan Agreement and the Direct Loan Bond, subject to the restrictions contained in paragraph (b) of this Section 4:

- i. The interest rate on the Direct Loan;
- ii. The principal amount of the Direct Loan;
- iii. The amount of principal of the Direct Loan maturing in any given year and the final maturity of the Direct Loan;
- iv. The dates on which the principal of and interest on the Direct Loan are paid; and
- v. The existence and amount of reserve funds for the Direct 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 Direct Loan shall not exceed 1.50%;
 - ii. The principal amount of the Direct Loan shall not exceed \$4,184,000;
- and
- iii. The final maturity of the Direct Loan shall not be later than December 31, 2055.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Direct Loan Bond and the Direct Loan Agreement shall contain recitals that the Direct Loan 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 Direct Loan Bond after its delivery for value.

Section 6. 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 7. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Direct Loan Bond and the Direct 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 Direct Loan Bond and the Direct 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 Direct 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 City 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 Bonds.

Section 9. Limited Obligation; Special Obligation. The Direct Loan Agreement and Direct Loan Bond are payable solely from the Pledged Revenues (as defined in the Direct Loan Agreement), and the Direct Loan Agreement and Direct Loan 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 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 10. Disposition and Investment of Loan Proceeds. The proceeds of the Loans 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 Loans. Neither CWRPDA nor any subsequent owner(s) of the Loan Agreements shall be responsible for the application or disposal by the City or any of its officers of the funds derived from the Loans. In the event that all of the proceeds of the Loans 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 Loans and the interest thereon, as applicable.

Section 11. City Representative. Pursuant to Exhibits B of the Loan Agreements, the Mayor, the City Administrator and the City Clerk are hereby designated as the Authorized

Officers (as defined in the Loan Agreements) for the purpose of performing any act or executing any document relating to the Loans, the City, or the Financing Documents. 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 Direct Loan is not less than the final maturity of the Direct Loan.

Section 13. 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 14. 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 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 City, 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 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 18. Recordation. A true copy of this Ordinance, as adopted by the City Council, shall be numbered and recorded on the official records of the City and its adoption and

publication shall be authenticated by the signatures of the Mayor and the City Clerk, and by a certification of publication.

Section 19. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after publication following final adoption.

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INTRODUCED, READ BY TITLE, PASSED ON FIRST READING, AND APPROVED
THIS 20TH DAY OF APRIL, 2021.

CITY OF SALIDA, COLORADO

Mayor

ATTEST:

City Clerk

FINALLY ADOPTED AND APPROVED AND ORDERED PUBLISHED ONCE
AFTER SECOND AND FINAL READING THIS 4TH DAY OF MAY, 2021.

CITY OF SALIDA, COLORADO

Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
)
COUNTY OF CHAFFEE) SS.
)
CITY OF SALIDA)

I, Erin Kelley, the duly appointed, qualified and acting City Clerk of the City of Salida, Colorado (the “City”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City constituting the governing body of the City (the “City Council”), by vote had and taken at open, regular meetings of the City Council held at the Council Chambers, in Salida, Colorado, on April 20, 2021 and May 4, 2021, each convening at the hour of 6:00 p.m., as recorded in the regular book of official records of the proceedings of said City kept in my office.

2. The adoption of the Ordinance on first reading was duly moved and seconded and the Ordinance was adopted by an affirmative vote of a majority of the members of the City Council at the regular meeting of the City Council on April 20, 2021, as follows:

Name	“Yes”	“No”	Absent	Abstain
P.T. Wood, Mayor				
Dan Shore, Mayor Pro-Tem				
Justin Critelli				
Harald Kasper				
Alisa Pappenfort				
Mike Pollock				
Jane Templeton				

3. The adoption of the Ordinance on second and final reading was duly moved and seconded and the Ordinance was adopted by an affirmative vote of a majority of the members of the City Council at the regular meeting of the City Council on May 4, 2021, as follows:

Name	“Yes”	“No”	Absent	Abstain
P.T. Wood, Mayor				
Dan Shore, Mare Pro-Tem				
Justin Critelli				

Harald Kasper				
Alisa Pappenfort				
Mike Pollock				
Jane Templeton				

4. The members of the City Council were present at the meeting and voted on the passage of such Ordinance as set forth above.

5. There are no bylaws, rules, or regulations of the City Council which might prohibit the adoption of said Ordinance

6. That notices of the regular meetings on April 20, 2021 and May 4, 2021, in the forms attached hereto as **Exhibit A**, were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

7. The Ordinance was published in the _____, a newspaper of general circulation in the City, after its first and second readings, in accordance with the laws of the State. The affidavits of publication are attached hereto as **Exhibit B**.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
City this _____ day of May, 2021.

(SEAL)

City Clerk

EXHIBIT A

(Attach Meeting Notices)

EXHIBIT B

(Attach Affidavits of Publication)