

ORDINANCE NO. 708

AN ORDINANCE REAFFIRMING THE EXISTENCE OF THE WATER AND WASTEWATER ACTIVITY ENTERPRISE AND, IN CONNECTION THEREWITH, AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT, BETWEEN THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN OF HAYDEN, ACTING BY AND THROUGH ITS WATER AND WASTEWATER ACTIVITY ENTERPRISE, AND THE ISSUANCE OF A GOVERNMENTAL AGENCY BOND IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$872,400 EVIDENCING THE OBLIGATION OF THE TOWN, ACTING BY AND THROUGH SUCH ENTERPRISE, UNDER THE LOAN AGREEMENT.

RECITALS

WHEREAS, the Town of Hayden, Colorado (the "Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town of Hayden Home Rule Charter (the "Charter"); and

WHEREAS, the Town is the owner of a municipal water and wastewater system (the "System"), which System historically has been operated on a self-supporting basis with its financial operations accounted for in a water and sewer enterprise fund of the Town; and,

WHEREAS, pursuant to Section 37-45.1-103, Colorado Revised Statutes, and the Charter, the Town has designated the System as a water activity enterprise (the "Water and Wastewater Activity Enterprise" or the "Enterprise") of the Town, constituting a government-owned business and "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution; and,

WHEREAS, such designation was made by the Town in Ordinance No. 511, (the "Enterprise Ordinance"), adopted by the Board of Trustees of the Town (prior to approval of the Town Charter) on December 6, 2001, designating the System as the "Water and Wastewater Activity Enterprise," and the Enterprise Ordinance authorizes the Hayden Town Council to act as the governing body of the Enterprise, and further provides the powers of the Enterprise to include the issuance of revenue bonds; and,

WHEREAS, the Town, acting through its Town Council, hereby reaffirms the status of the Water and Wastewater Activity Enterprise as an enterprise consistent with the requirements of Section 37-45.1-103, Colorado Revised Statutes and Article X, Section 20 of the Colorado Constitution; and,

WHEREAS, the Town has made an application to the Colorado Water Resources and Power Development Authority (the "Authority") for a loan to finance system improvements including, but not limited to, improvements to the existing Hospital Hill water storage tank including tank relining and repairs (the "Project"); and

WHEREAS, the Authority has accepted such application and expressed its interest in making such loan, subject to certain conditions (the "Loan Agreement"); and

WHEREAS, the Loan Agreement will provide for the issuance by the Town, acting by and through the Enterprise, of a governmental Agency Bond in the principal amount not exceeding \$872,400 (the "Bond") evidencing the obligations of the Town; acting by and through the Enterprise, under the Loan Agreement; and

WHEREAS, the repayment obligations of the Bond shall constitute a special revenue obligation of the Town which is generally payable from the income for the services furnished by or the use of the System less reasonable and necessary current expenses of the Town of operating, maintaining and repairing the System and, after consideration, the Town Council has determined that the execution of the Loan Agreement and the issuance of the Bond to the Authority is to the best advantage of the Town; and

WHEREAS, except as specifically described in the Loan Agreement, the Town has no indebtedness outstanding secured by the Pledged Property (as defined in the Loan Agreement); and

WHEREAS, voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution for the execution of the Loan Agreement or the issuance of the Bond; and

WHEREAS, the form of the Loan Agreement and the Bond, have been presented to the Town and made available to the Town Council; and

WHEREAS, pursuant to Sections 37-45.1-103(4) and 37-45.1-104, Colorado Revised Statutes, the Enterprise Ordinance and the Charter, the Hayden Town Council, acting as the governing body of the Enterprise, is authorized to issue revenue bonds in the name of the Enterprise.

THEREFORE, BE IT ORDAINED BY THE HAYDEN TOWN COUNCIL OF THE TOWN OF HAYDEN, ROUTT COUNTY, COLORADO:

Section 1. Pursuant to and in accordance with the State Constitution, Sections 37-45.1-103(4), 37-45.1-104, and Title 11, Article 57, Part 2, Colorado Revised Statutes, and the Town Charter, the Bond shall be issued by the Town acting by and through the Enterprise. The form of the Loan Agreement setting forth the terms, conditions and details of the Bond and the procedures relating thereto, is incorporated herein by reference and is hereby approved; all Town officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Town under the Loan Agreement and the Bond. The Town shall enter into the Loan Agreement and deliver the Bond in substantially the form presented to the Town at or prior to this meeting of the Town Council with such changes as the Town attorney and bond counsel may determine to be necessary to carry out the purposes hereof and are not inconsistent herewith; provided that, in accordance with Title 11, Article 57, Part, Colorado revised Statutes, the Town Council hereby delegates to the Mayor the authority to approve the final terms of the Loan

Agreement and the Bond, subject to the limitations herein, which approval shall be evidenced by the Mayor's execution thereof. The Town attorney and bond counsel are hereby authorized to negotiate the forms of the Loan Agreement and the Bond and any changes thereto as may be necessary in the opinion of the Town Attorney and bond counsel to effectuate the intentions of the parties or to comply with the provisions of applicable law are hereby approved. The accomplishment of the Project, as defined in the Loan Agreement, is hereby authorized, approved, and ordered.

Section 2. The Mayor and the Town Clerk are hereby authorized and directed to execute and deliver to the Authority the Loan Agreement and any other documents which are required to complete and close this transaction, provided the same have been reviewed and approved by the Town Attorney.

Section 3. The Town shall issue the Bond to evidence the obligations of the Town, acting by and through the Enterprise, under the Loan Agreement. The Bond shall be in the principal amount, mature on the date, bear interest payable at the rate and on the dates, be pre-payable at the option of the Town, acting by and through the Enterprise, on the dates and at the prices, be in the form and be secured in the manner provided in the Loan Agreement; provided however, that the term of the Loan shall not exceed twenty (20) years, the maximum net effective interest rate of the Bonds shall not exceed 2.0% and the principal amount thereof shall not exceed \$872,400.

Section 4. The Mayor, Town Clerk and the Town Manager of the Town are hereby authorized and directed to execute and deliver the Bond to the Authority.

Section 5. The principal of and interest on the Bond shall be payable solely from the Pledged Property (which term is defined in the Loan Agreement). The Town irrevocably pledges the Pledged Property for the payment of the Bond and the amounts due under the Loan Agreement, on a parity with the parity lien obligations secured thereby, as described in the Loan Agreement. The Authority may not look to any general or other fund of the Town for the payment of the principal of or interest on the Bond, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Bond shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the Town; provided, however, that the Town may, but is not required to, apply any otherwise legally available moneys to the repayment of the Loan at its sole discretion.

Section 6. The Town Council hereby determines that the Enterprise is currently an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and hereby reaffirms the establishment of the System as a "water activity enterprise" within the meaning of Title 37, Article 45.1, C.R.S. The Town has and will continue to maintain the System as an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution; provided, however, after the current calendar year the Town may disqualify the System as an "enterprise" in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Loan Agreement and the Bond. In the event that the System is disqualified as an

enterprise and the enforceability of the covenants made by the Town in the Loan Agreement or the Bond are materially, adversely affected, the Town covenants to (i) immediately take all actions necessary to qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Loan Agreement and the Bond.

Section 7. This Ordinance is, and shall constitute, a legislative measure of the Town, acting by and through the Enterprise, and after the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Town, acting by and through the Enterprise, and the Authority, and this Ordinance shall be and shall remain irrevocable until the Bond shall be fully paid, satisfied or discharged.

Section 8. This Enterprise Ordinance, immediately on final passing and adoption, shall be published in accordance with Section 3-3h of the Home Rule Charter and recorded in the Town Book of Ordinances kept for that purpose, authenticated by the signatures of the Mayor and attested by the Town Clerk. This Enterprise Ordinance shall be in full force and effective immediately, June 3, 2021, in accordance with Section 3-3h of the Hayden Home Rule Charter.

Section 9. All action not inconsistent with the provisions of this Ordinance heretofore taken by the Town or its officers and otherwise directed toward the authorization of the Loan Agreement and the Bonds and the undertaking and completion of the Project and the authorization of the Enterprise to have and in connection therewith to exercise the necessary powers is hereby ratified, approved and confirmed.

Section 10. All ordinances, bylaws, orders and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, bylaw, order or other instrument, or part thereof, heretofore repealed.

Section 11. If any section, subsection, paragraph, clause or other provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity to unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

Section 12. A public hearing on this Ordinance will be held on the 3rd day of June, 2021, at or about 7:30 p.m. at the Hayden Town Hall, 178 West Jefferson Avenue, Hayden, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (d) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 20th DAY OF MAY, 2021, AND A PUBLIC HEARING SET FOR JUNE 3, 2021.



Zachary Wuestewald, Mayor

ATTEST



Sharon Johnson, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (h) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 3rd DAY OF JUNE, 2021.



Zachary Wuestewald, Mayor

ATTEST



Sharon Johnson, Town Clerk

