



**DATE:** October 15, 2009

**TO:** Honorable Mayor and Members of City Council

**FROM:** Jerry Forte, P.E., Chief Executive Officer

**RE:** **AN EMERGENCY ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY IN THE MAXIMUM PRINCIPAL AMOUNT OF \$9,000,000 FOR THE IMPROVEMENT OF THE UTILITIES SYSTEM OF THE CITY; APPROVING THE FORM, TERMS AND PROVISIONS OF A LOAN AGREEMENT WITH SUCH AUTHORITY; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH LOAN AGREEMENT AND THE ISSUANCE OF THE CITY OF COLORADO SPRINGS, COLORADO, UTILITIES SYSTEM IMPROVEMENT REVENUE BOND, SERIES 2009E TO EVIDENCE SUCH LOAN PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE UTILITIES SYSTEM; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.**

**CITY STRATEGIC GOAL(S) THIS ITEM SUPPORTS:**



**UTILITIES' STRATEGIC GOAL(S) THIS ITEM SUPPORTS:** S3: Maintain Financial Stability

**SUMMARY:** The attached Emergency Ordinance addresses the approval, execution and delivery of a loan funded through the Colorado Water Resources & Power Development Authority (CWRPDA), and the issuance of the Utilities System Improvement Revenue Bonds, Series 2009E. The 2009E aggregate principal amount not to exceed \$9,000,000 will be used to finance the improvement of the utilities system of the City.

**PREVIOUS COUNCIL ACTION:** On March 24, 1998 City Council approved Ordinance 98-48 accepting a loan from the CWRPDA for the purpose of making improvements to the System, which was amended by Ordinance 00-203 approved by City Council on December 12, 2000.

**BACKGROUND:** The Long Term Financing Plan (Plan) was presented to the Utilities Board on May 21, 2003 and July 16, 2003. The Plan objectives include: minimize debt costs, maintain quality of credit ratings, balance risk/benefits and maintain flexibility. A Financial Risk Management Policy (Policy) was developed in accordance with the Plan and Executive Limitation (EL) 7 was revised on July 16, 2003 to conform to the Plan. The goal of the Policy is to contain the volatility in borrowing rates within predefined limits while achieving the lowest overall cost of capital.

**FINANCIAL IMPLICATIONS:** The 2009E bond issue will increase debt service payments over the next 20 years.

**BOARD/COMMISSION RECOMMENDATION:** N/A

**STAKEHOLDER PROCESS:** N/A

**ALTERNATIVES:** The Utilities could choose not to request the loan. This alternative would require Utilities to fund the improvement through bonds issued at a higher interest rate. This would not be financially advantageous to the Utilities at this time.

**RECOMMENDATION:** Move approval of proposed 2009E Emergency Bond Ordinance.

**PROPOSED MOTION:** Approval of proposed ordinance.

c: Utilities' Officer Team

ORDINANCE NO. 09-\_\_

AN EMERGENCY ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY IN THE MAXIMUM PRINCIPAL AMOUNT OF \$9,000,000 FOR THE IMPROVEMENT OF THE UTILITIES SYSTEM OF THE CITY; APPROVING THE FORM, TERMS AND PROVISIONS OF A LOAN AGREEMENT WITH SUCH AUTHORITY; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH LOAN AGREEMENT AND THE ISSUANCE OF THE CITY OF COLORADO SPRINGS, COLORADO, UTILITIES SYSTEM IMPROVEMENT REVENUE BOND, SERIES 2009E TO EVIDENCE SUCH LOAN PAYABLE SOLELY OUT OF THE NET REVENUES TO BE DERIVED FROM THE OPERATION OF THE UTILITIES SYSTEM; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Colorado Springs, Colorado (the "City") is a municipal corporation and a home rule city duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the Charter of the City (the "Charter"); and

WHEREAS, the City now owns and operates a municipal water system, electric light and power system, gas system, wastewater system and certain other systems heretofore designated by the City Council (the "Council") of the City (the "System"), constituting the Utilities created by the Charter; and

WHEREAS, as of the date hereof, there are outstanding revenue bonds of the City in the aggregate principal amount of \$1,699,390,983 (collectively, the "Outstanding Parity Bonds"), which are special obligations of the City payable from the gross revenues derived from the operation of the System (the "Gross Pledged Revenues"), after provision is made for the payment of the operation and maintenance expenses of the System (such remaining revenues the "Net Pledged Revenues") and the payment of the Outstanding Parity Bonds is secured by a pledge of and by an irrevocable lien on the Net Pledged Revenues; and

WHEREAS, the Outstanding Parity Bonds have been issued pursuant to ordinances previously approved by the Council and a loan agreement (collectively, the "Parity Bond Ordinances") relating to the City's outstanding bond payable to the Colorado Water Resources and Power Development Authority ("CWRPDA"); and

WHEREAS, the City proposes to extend, better, otherwise improve and equip the System and, subsequent to the date of adoption of this ordinance, to issue therefor its "City of Colorado Springs, Colorado, Utilities System Improvement Revenue Bonds, Series 2009D-1 (Tax-Exempt)" and its "City of Colorado Springs, Colorado, Taxable Utilities System Improvement Revenue Bonds, Series 2009D-2 (Direct Pay Build America Bonds)" (collectively, the "2009D Bonds") pursuant to an ordinance adopted by the Council on September 22, 2009, which, upon issuance, will be secured by a pledge of and by an irrevocable lien on the Net Pledged Revenues on a parity with the lien thereon of the other Parity Obligations (as hereafter defined); and

WHEREAS, the City has determined to acquire, construct, equip and improve a new roof for the water treatment plant located at the Highline Reservoir (the "Project"); and

WHEREAS, the Council has determined to enter into a loan agreement (the "Loan Agreement") with CWRPDA, pursuant to which CWRPDA shall loan the City an amount not to exceed \$9,000,000 (the "Loan") to finance the Project; and

WHEREAS, to evidence the City's obligation to repay the Loan, the City shall issue its City of Colorado Springs, Colorado, Utilities System Improvement Revenue Bond, Series 2009E (the "Bond") to CWRPDA, which Bond shall be a special obligation of the City payable from the Net Pledged Revenues; and

WHEREAS, the lien of the Bond on the Net Pledged Revenues shall be on a parity with the lien thereon of the Outstanding Parity Bonds, the 2009D Bonds, any Parity Credit Facility Obligations (as defined in the Parity Bond Ordinances) and Reserve Fund Insurance Policy (as defined in the Parity Bond Ordinances) repayment obligations relating thereto, any Parity Financial Products Agreements (as defined in the Parity Bond Ordinances) heretofore or hereafter entered into, and any securities of the City hereafter issued on a parity with the foregoing (collectively, the "Parity Obligations"); and

WHEREAS, pursuant to Section 11-57-205, Colorado Revised Statutes, as amended, the City desires to delegate to the Mayor or the Vice-Mayor of the City the power to determine the rate of interest on the Bond, the aggregate principal amount of the Bond, and the amount of principal maturing, or subject to mandatory redemption, in any particular year; and

WHEREAS, the Council has determined and does hereby declare:

A. In order to meet the present and future needs of the City, it is necessary to acquire, construct and improve a new roof for the water treatment plant located at the Highline Reservoir, which will be a part of the System;

B. The Loan Agreement shall be executed and the Bond shall be issued for the Project;

C. The City is not in default in making any payments required by any of the Parity Bond Ordinances at the time of the adoption of this ordinance, including any payments to the providers of reserve fund insurance policies required by the Parity Bond Ordinances, and no Liquidity Provider Bonds (as defined in the Parity Bond Ordinances) are held by or on behalf of the Liquidity Provider or the Bank (as defined in the Parity Bond Ordinances);

D. The Net Pledged Revenues derived in the Fiscal Year ending on December 31, 2008 are not less than 130% of the Average Annual Principal and Interest Requirements (as such terms are defined in the Parity Bond Ordinances) of the Outstanding Parity Bonds, the 2009D Bonds and the Bond; and

E. The Chief Executive Officer of the Utilities has estimated that there will be no increase in the annual Operations and Maintenance Expenses of the System as a result of the expenditure of the funds proposed to be derived from the execution and delivery of the Loan Agreement and the issuance of the Bond; and

F. All action preliminary to the authorization of the execution of the Loan Agreement and the issuance of the Bond has been taken.

WHEREAS, the Council has determined that the public interest and necessity require the City to enter into the Loan Agreement and to issue the Bond; and

WHEREAS, there has been presented to the Council the proposed form of the Loan Agreement, which includes as Exhibit D the form of the Bond; and

WHEREAS, the Council desires to approve the forms of the Loan Agreement and the Bond and authorize the execution thereof.

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

Section 1. Approvals and Authorizations. The forms, terms and provisions of the Loan Agreement and the Bond presented to this meeting are hereby approved. The City shall enter into and perform its obligations under the Loan Agreement and the Bond in the forms of such documents presented to this meeting, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Vice-Mayor of the City. The Mayor or the Vice-Mayor of the City and the City Clerk or any Deputy City Clerk of the City are hereby authorized and directed to execute the Loan Agreement and the Bond 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 execution of any instrument or certificate or other document in connection with the matters referred to herein by the Mayor or the Vice-Mayor of the City and the City Clerk or any Deputy City Clerk of the City or by other appropriate officers of the City shall be conclusive evidence of the approval by the City of such instrument.

Section 2. Loan Details. The Loan shall be in a principal amount set forth in the Loan Agreement (but not to exceed \$9,000,000), shall bear interest at the rate per annum, shall be subject to prepayment on the dates and terms, and shall mature on the dates and in the principal amounts set forth in the Loan Agreement and the Bond. The City shall execute and deliver to CWRPDA the Bond pursuant to the Loan Agreement as evidence of the Loan Repayments (as defined in the Loan Agreement).

Section 3. Special Obligation. The Bond and the City's obligations under the Loan Agreement shall be payable and collectible solely out of the Net Pledged Revenues, which revenues are so pledged; CWRPDA may not look to any general or other fund for the payment of the Bond, except the Net Pledged Revenues pledged therefor; the Bond and the City's obligations under the Loan Agreement shall not constitute an indebtedness or a debt within the meaning of any constitutional, Charter or statutory provision or limitation; and the Bond and the City's obligations under the Loan Agreement shall not be considered or held to be general obligations of the City but shall constitute its special obligations. The payment of the Bond and the City's obligations under the Loan Agreement are not secured by an encumbrance, mortgage or other pledge of property of the City, except for the Net Pledged Revenues. No property of the City, subject to such exception, shall be liable to be forfeited or taken in payment of the Bond. The lien of the Bond and the City's obligations under the Loan Agreement on the Net Pledged Revenues shall be on a parity with the lien thereon of the Parity Obligations.

Section 4. No Recourse Against Officers and Agents. No recourse shall be had for the payment of the Loan Repayments or for any claim based thereon or otherwise upon this ordinance or any other ordinance pertaining hereto, against any individual member of the Council or any officer, employee or other agent of the City or the Utilities, past, present or future, either directly or indirectly through the Council, or the City, or otherwise, whether by virtue of any penalty or otherwise, all such liability, if any, being by the acceptance of the Bond by CWRPDA and as part of the consideration of their issuance specially waived and released.

Section 5. Election to Apply Supplemental Public Securities Act to the Loan Agreement and the Bond. The Council hereby elects to apply Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended (the "Supplemental Public Securities Act") to the Loan Agreement and the Bond. Pursuant to such election to apply Section 11-57-205 of the Supplemental Public Securities Act to the Bond, the Council hereby delegates to the Mayor or the Vice-Mayor of the City the power to make the following determinations with respect to the Loan Agreement and the Bond without any requirement that the Council approve such determinations:

A. Interest Rate. The rate of interest to be borne by the Bond; provided that the Bond shall not bear interest at a rate exceeding 3.0% per annum.

B. Principal Amount. The principal amount of the Bond; provided that the such principal amount of the shall not exceed \$9,000,000.

C. Maturity Schedule. The amount of principal of the Bond maturing in any particular year (which may be \$0.00); provided that the principal amount of the Bond maturing in any particular year shall not exceed \$1,000,000 and that the final maturity date of the Bond shall not be later than December 31, 2030.

Such determinations shall be evidenced by the execution and delivery of the Loan Agreement by the Mayor or the Vice-Mayor of the City, which shall not be more than one year from the date of adoption of this ordinance.

Section 6. Incontestable Recital in Loan Agreement and Bond. Pursuant to Article XX of the State Constitution, the Supplemental Public Securities Act and this ordinance, the Bond shall recite that it is issued under the authority of this ordinance and the Supplemental Public Securities Act and that it is the intention of the City that such recital shall conclusively impart full compliance with all the provisions of this ordinance and shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value and that the Bond issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

Section 7. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied only to pay the costs and expenses of acquiring, constructing, equipping and improving the Project, including costs related thereto and to the issuance of the Bond, 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 of the Bond 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.

Section 8. City Representative. Pursuant to Exhibit B of the Loan Agreement, William J. Cherrier, Chief Planning and Finance Officer of the Utilities and Bruce McCormick, Water Services Officer of the Utilities 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 Bond or the Loan Agreement. A copy of this ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 9. Direction to Take Authorizing Action. The appropriate officers of the City and the Utilities and the 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 10. Ratification. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council, the officers of the City and the Utilities and otherwise taken by the City directed toward the Project and the execution and delivery of the Loan Agreement and the Bond for such purpose, be, and the same hereby is, ratified, approved and confirmed.

Section 11. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any other such bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed. All rules of the Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the Council be, and the same hereby are, suspended.

Section 12. Severability. If any section, subsection, paragraph, clause or other provision of this ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this ordinance, the intent being that the same are severable.

Section 13. Ordinance Irrepealable. After the Bond is issued, this ordinance shall constitute an irrevocable contract between the City and the holder or holders of the Bond and this ordinance shall be and shall remain irrepealable until the Bond shall be fully paid, canceled, and discharged, except as otherwise provided in the Loan Agreement.

Section 14. Emergency Statement, Effective Date and Publication. Because, on advice of the personnel of the Utilities, the Council has determined that (1) the Project and its prompt completion are vital to the life, health and property of the City and its inhabitants, and it is important that the City be assured now of the receipt of the proceeds of the Loan to meet costs as they become due for immediately necessary components of the Project and purposes of budgetary planning, and (2) present and future uncertainties exist as to the financial markets and the City's ability to borrow funds on advantageous terms for the Project, the Council has been advised that it should proceed immediately to enter into the Loan Agreement for the needs of the Utilities and therefore a public emergency is declared to exist, this ordinance is declared to be necessary for the immediate preservation of the public peace, health and safety, and this ordinance shall be in full force and effect immediately upon final passage and adoption at a single meeting upon Council approval as required by the Charter. This ordinance upon such final passage shall be entered upon the journal of the Council's proceedings, shall be kept in the book marked "Ordinance Record" and authenticated as required by the Charter, and on the day following its passage shall be published in a daily, legal newspaper of general circulation in the City. The Council hereby determines that it is appropriate that publication of this ordinance by title with a summary written by the Clerk, together

with a statement that this ordinance is available for public inspection and acquisition in the office of the Clerk, shall be sufficient publication pursuant to Section 3-80 of the Charter and this ordinance shall be so published.

INTRODUCED AND FINALLY PASSED, SIGNED AND APPROVED AS AN EMERGENCY ORDINANCE, this October 27, 2009.

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Mayor

(SEAL)

Attest:

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City Clerk