

ORDINANCE NO. 30

SERIES 2022

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE FUND, APPROVING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN CONTRACT, PROMISSORY NOTE TO EVIDENCE SUCH LOAN, AND SECURITY AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Recitals.

A. The Town of Breckenridge (the "Town"), in the County of Summit and State of Colorado, is a duly organized and existing home rule municipality of the State of Colorado (the "State") created and operating under the State Constitution and the Home Rule Charter of the Town (the "Charter").

B. The members of the Town Council of the Town (the "Council") have been duly elected, chosen, and qualified.

C. Pursuant to C.R.S. §37-45.1-103, the Town owns and operates its municipal water system (the "System").

D. Pursuant to Section 12-1-2 of the Town's Municipal Code, the Town has determined that the System constitutes an enterprise (the "Enterprise") pursuant to Article X, Section 20 of the Colorado Constitution.

E. The Council is the governing body of the Enterprise.

F. The Council has heretofore determined that the interest of the Town and the public interest and necessity demand and require the restoration of the Goose Pasture Tarn Dam's ability to safely store its full design capacity and remove the storage restriction imposed by the Colorado DSB (the "Project").

G. The cost of the Project to the Town is estimated at \$23,000,000 including design, engineering, legal, financing and administrative costs relating thereto, and any other costs incidental thereto.

H. The Council has determined that in order to finance the Project, it is necessary and advisable and in the best interests of the Town to enter into a loan contract (the "Loan Contract") and a security agreement (the "Security Agreement") with the Colorado Water Conservation Board ("CWCB"), a body corporate and political subdivision of the State of Colorado, pursuant to which the CWCB will loan the Town \$13,130,000 pursuant to the Loan Contract to finance the Project.

I. The Town's repayment obligations under the Loan Contract shall be evidenced by a promissory note (the "Promissory Note") to be executed and delivered by the Town to the CWCB, which Promissory Note will be on parity with the Town's Loan Agreement dated November 1, 2017, between the Town and the Colorado Water and Power Development Authority in the amount of \$56,990,796 (the "Parity Obligations").

J. Except for the Parity Obligations, the Town 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 bonds or for any other purposes, with the result that the net revenue may now be pledged lawfully and irrevocably to the payment of the Loan.

K. Under Section 11.6 of the Charter, the Town is authorized to issue revenue bonds payable solely from the net revenue of the System.

L. Article X, Section 20 of the Colorado Constitution ("TABOR"), requires an election to incur any multiple fiscal year obligations unless such obligation is incurred by an enterprise.

M. Under TABOR, an enterprise is a government-owned business authorized to issue its own revenue bonds and receiving under 10% of its annual revenue in grants from all Colorado state and local governments combined.

N. In 2021, the Enterprise did not receive grants from state and local governments in excess of 10% of the annual revenue of the System.

O. The Promissory Note, the Loan Contract and the Security Agreement (collectively, the "Financing Documents") may be approved by the Council acting in its enterprise capacity without an election pursuant to C.R.S. §§ 37-45.1-104 to 106.

P. The Financing Documents shall be revenue obligations of the Town, payable from the Pledged Revenues (as defined in the Financing Documents and herein) and under TABOR may be approved by the Council without an election.

Q. There have been presented to the Council the forms of the Financing Documents.

R. The Council desires to approve the forms of the Financing Documents and authorize the execution thereof.

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 Town 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 Town (the "Mayor"), the Town Manager (the "Town Manager") or the Town Director of Finance (the "Finance Director"). The Mayor and Town Clerk of the Town (the "Town Clerk") are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Town 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 Town Manager, the Finance Director, and Town Clerk or by other appropriate officers of the Town, shall be conclusive evidence of the approval by the Town of such instrument.

Section 3. Election to Apply 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 Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply all of the Supplemental Act to the Financing Documents.

Section 4. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to the Mayor or Mayor Pro Tem 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 is paid;
- and
- (v) The existence and amount of a reserve fund 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 aggregate principal amount of the Loan shall not exceed \$13,130,000; and
 - (iii) the final maturity of the Loan shall not be any later than December 31, 2055.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Promissory Note and Security Agreement shall contain a recital that each 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 Promissory Note and Security Agreement 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 Financing Documents 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 Financing Documents 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 Contract. 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.

For purposes of this Ordinance and the Loan Contract, "Pledged Revenue" shall mean the Net Revenue of the Town. "Net Revenue" shall mean the Gross Revenue less the Operation and Maintenance Expenses plus all proceeds of insurance in excess of or not applied to the repair and replacement of the System, and the proceeds or any sale, conveyance, or exchange of the System in excess of that applied to replace the System sold or exchanged.

"Gross Revenue" means all income and revenues directly or indirectly derived by the Enterprise from the operation and use of the System, or any part thereof, including without limitation, any rates, fees (including without limitation plant investment fees and availability fees) and charges for the services furnished by, or for the use of, the System, and all income attributable to any past or future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the System or its operations, and including investment income accruing from such moneys; provided however, that there shall be excluded from Gross Revenue: ad valorem property taxes; any moneys borrowed and used for providing Capital Improvements; any money and securities and investment income therefrom in any refunding fund, escrow account, or similar account pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for

the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom. Notwithstanding anything contained above, amounts deposited in a rate stabilization account shall not be deemed Gross Revenue in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Gross Revenue in the year withdrawn.

“*Capital Improvements*” means the acquisition of land, easements, facilities and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments and extensions, for use by or in connection with the System.

“*Operation and Maintenance Expenses*” means all reasonable and necessary current expenses of the Enterprise, paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses of the Enterprise directly related to the administration of the System, insurance premiums, audits, professional services, salaries and administrative expenses, labor and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations, and expenses that are otherwise paid from ad valorem property taxes.

“*System*” shall mean the property and facilities comprising the water system of the Town, including real and personal property and any easements, and also any and all additions and betterments thereto and improvements and extensions hereafter constructed or acquired by the Town and used in connection with the water facilities of the Town.

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 issuance of the Promissory Note.

Section 8. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Revenue 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 Board, 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 Promissory Note. Such recourse shall not be available either directly or indirectly through the Board 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 Promissory Note and as a part of the consideration of its sale or purchase, CWCB specifically waives any such recourse.

Section 10. Disposition and Investment of Proceeds of the Loan Contract. The proceeds of the Loan Contract shall be applied only to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and reimbursement to the Town for capital expenditures heretofore incurred and paid from Town 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 Contract. The CWCB shall not be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan Contract.

Section 11. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan Contract is not less than the final maturity of the Loan.

Section 12. Issuance of Additional Debts or Bonds. The Town will not issue any indebtedness payable from the Pledged Revenue and having a lien thereon which is superior to the lien created by the Financing Documents. The Town will issue parity debt only with the prior written approval of CWCB, provided that:

(a) the Town is at the time approval is requested from CWCB and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of the Loan Contract, including, but not limited to, being current on the annual payments due under the Loan Contracts and in the accumulation of all amounts then required to be accumulated in the Town's debt service reserve account or fund; and

(b) the Town provides to the CWCB a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the Town's revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the Town's revenues are sufficient to pay its annual Operation and Maintenance Expenses, annual debt service on all outstanding indebtedness having a lien on the Pledged Revenue, including the Loan Contract, the annual debt service on the proposed indebtedness to be issued, and all required deposits to any reserve funds required by the Loan Contract or by the lender(s) of any indebtedness having a lien on the Pledged Revenue. No more than 10% of total revenues may originate from tap and/or connection fees.

Section 13. Direction to Take Authorizing Action. The appropriate officers of the Town 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 CWCB.

Section 14. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town 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 authorized, ratified, approved, and confirmed.

Section 15. Repealer. All acts, orders, ordinances, or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 16. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 17. Inconsistencies. In the event of any inconsistencies between this Ordinance and the Loan Contract, this Ordinance is controlling.

Section 18. Ordinance Irrepealable. After the Promissory Note issued, this Ordinance shall constitute an irrevocable contract between the Town and the CWCB, and shall be and remain irrepealable until the Promissory Note and the interest thereon shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, ordinance, resolution or other measure enacted after the issuance of the Promissory Note shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 19. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 20. Recording and Authentication. Immediately on its passage this Ordinance shall be recorded in a book kept for that purpose, authenticated by the signatures of the Mayor and clerk, and shall be published in accordance with law.

Section 21. Effective Date, Recording, Authentication, and Publication. A true copy of this ordinance shall be numbered and recorded in the official records of the Town, authenticated by the signatures of the Mayor and the Town Clerk, and published in accordance with the Charter and the Town's municipal code. In accordance with Section 5.9 of the Charter, this ordinance will take effect thirty days after final publication.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 23rd day of August, 2022.


This ordinance was published in full on the Town of Breckenridge website on August 24, August 25, August 26, August 27 and August 28, 2022.

A public hearing on this ordinance was held on September 13, 2022.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 13th day of September, 2022. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM



Town Attorney



Date

This Ordinance was published on the Town of Breckenridge website on September 15, September 16, September 17, September 18 and September 19, 2022. This ordinance shall become effective on October 19, 2022.