

**TOWN OF PAONIA  
COUNTY OF DELTA  
STATE OF COLORADO**

**ORDINANCE NO. 25-03**

**AN ORDINANCE APPROVING LOANS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY ("CWRPDA") IN THE AGGREGATE PRINCIPAL AMOUNTS NOT TO EXCEED \$4,500,000 (THE "LEVERAGED LOAN"), \$3,000,000 (THE "DIRECT LOAN") AND \$3,000,000 (THE "BIL PRINCIPAL FORGIVENESS (PF) LOAN"); 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.**

**WHEREAS**, the Town of Paonia, Colorado (the "Town"), in Delta County, Colorado, is a municipal corporation duly organized and operating under the Constitution and the laws of the State of Colorado (the "State"), acting through its elected Board of Trustees (the "Board"); and

**WHEREAS**, the members of the Board have been duly elected and qualified; and

**WHEREAS**, the Town owns and operates a system to supply water and sewer service for domestic and other public and private purposes (the "System"); and

**WHEREAS**, the Board has heretofore by Ordinance No. 1998-02 (the "Enterprise Ordinance") recognized and confirmed the operations of the System as the "Town of Paonia Water and Sewer Enterprise" within the meaning of Title 37, Article 45.1, Colorado Revised Statutes (the "Enterprise Act") and as an "enterprise" of the Town within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR) (the "Enterprise"); and

**WHEREAS**, the Board serves as the Board of Directors and governing body of the Enterprise; and

**WHEREAS**, the Enterprise presently qualifies as an "enterprise" for purposes of TABOR; and

**WHEREAS**, the Board, acting by and through the Enterprise, has heretofore determined the need to improve the drinking water system of the Town by installing a temporary tank and repairing and relining the finished water storage tank, as well as the replacement of

distribution piping and enhancements to raw water monitoring in the spring structures (as further described and defined in the Loan Agreements (defined herein), the "Project"); and

**WHEREAS**, the Town 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 Board has determined that in order to finance all or a portion of the costs of the Project, it is necessary and advisable and in the best interests of the Town to enter into a loan agreement (the "Leveraged Loan Agreement") with the CWRPDA, pursuant to which the CWRPDA shall loan the Town an amount of not to exceed \$4,500,000 (the "Leveraged Loan") for such purposes; and

**WHEREAS**, the CWRPDA will obtain money to fund the Leveraged Loan to the Town through the issuance of its bonds (the "CWRPDA Bonds"); and

**WHEREAS**, the repayment obligations under the Leveraged Loan Agreement shall be evidenced by a governmental agency bond (the "Leveraged Bond") to be issued by the Town to the CWRPDA, and which Leveraged Bond shall be payable only from revenue of the Enterprise; and

**WHEREAS**, additionally, the Town 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 Town for the Town to enter into a separate loan agreement with CWRPDA for a Direct Loan (the "Direct Loan Agreement" and, with the Leveraged Loan Agreement, the "Loan Agreements") pursuant to which CWRPDA shall loan the Town an amount not to exceed \$3,000,000 (the "Direct Loan") for such purposes; and

**WHEREAS**, the repayment obligations under the Direct Loan Agreement shall be evidenced by a governmental agency bond (the "Direct Bond" and, with the Leveraged Bond, the "Bonds") to be issued by the Town to the CWRPDA; and

**WHEREAS**, additionally, the Town 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 Town for the Town to enter into a loan agreement with CWRPDA for a BIL PF Loan pursuant to which CWRPDA shall loan the Town an amount not to exceed \$3,000,000, approximately \$3,000,000 of which is expected to be forgiven at the closing of the loan (the "BIL PF Loan" and, with the Leveraged Loan and the Direct Loan, the "Loans") for such purposes; and

**WHEREAS**, assuming \$3,000,000 of principal forgiveness on the BIL PF Loan, there shall be no repayment obligations under the BIL PF Loan by the Town to the CWRPDA; and

**WHEREAS**, the repayment obligations under the Loan Agreements shall be evidenced by the Bonds to be issued by the Town to CWRPDA, and which Bonds shall be payable only from revenue of the Enterprise; 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 Bond and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined; and

**WHEREAS**, in 2024, 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**, there have been presented to the Board the forms of the Loan Agreements and Bonds (collectively, the "Financing Documents"); and

**WHEREAS**, the Financing Documents shall constitute revenue obligations of the Town, payable from the Net Revenues of the System (as defined in the Loan Agreements); and

**WHEREAS**, the Town has pledged the Net Revenues derived or to be derived from the operations of the System to payment of the bond issued under a Loan Agreement dated November 5, 2008, between the Town and the CWRPDA (the "2008 Loan Agreement") in the amount of \$448,200 (the "2008 Loan"), to the payment of the bond issued under a Loan Agreement dated May 29, 2014, between the Town and the CWRPDA (the "2014 Loan Agreement") in the amount of \$2,996,494 (the "2014 Loan"), and to the payment of the Town's Water and Sewer Revenue Refunding Bonds, Series 2020A, originally issued in the aggregate principal amount of \$1,650,000 (the "2020A Bonds" and, with the 2008 Loan and the 2014 Loan, the "Prior Parity Obligations"); and

**WHEREAS**, the Town is not in default in making payments on the Prior Parity Obligations; and

**WHEREAS**, the Town is in compliance with all of the covenants of the Prior Parity Obligations; and

**WHEREAS**, except for the Prior Parity Obligations, the Town has not pledged the Net Revenues derived or to be derived from the operations of the System, or any part thereof, to the payment of any bonds or any other purpose, with the result that the Net Revenues may now be pledged lawfully and irrevocably to the payment of the 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 Board without an election; and

**WHEREAS**, the forms of the Financing Documents are on file with the Town Clerk; and

**WHEREAS**, the Board desires to approve the form of the Financing Documents and other documents referenced therein, authorize the execution of the Loan Agreements, and authorize the execution and delivery of the Bonds.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, ACTING BY AND THROUGH THE TOWN OF PAONIA WATER AND SEWER ENTERPRISE:**

Section 1.     Recitals Incorporated.

The foregoing recitals are made a part of this Ordinance.

Section 2.     Determinations.

The Board hereby finds and determines that the Enterprise constitutes an enterprise under TABOR.

Section 3.     Approvals, Authorizations, and Amendments.

(a)     The forms of the Financing Documents as are on file with the Town Clerk are hereby approved, and the Mayor and Town Clerk are hereby authorized and directed to execute the Financing Documents in substantially the forms as are on file with the Town Clerk, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor, the Town Manager or the Town Administrator/Treasurer, and the Town Clerk is hereby authorized to authenticate and affix the seal of the Town thereto. The Town shall enter into and perform its obligations under the Financing Documents, in the forms of such Financing Documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Town Administrator/Treasurer.

(b)     The Mayor, the Town Administrator/Treasurer and the Town Clerk are further hereby authorized and directed to execute and authenticate such other documents, instruments, or certificates as are deemed necessary or desirable in connection with the Town's performance of its obligations under the Financing Documents.

Section 4.     Election to Apply Supplemental Act.

Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (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 Town hereby elects to apply all sections of the Supplemental Act to the Financing Documents.

Section 5.     Delegation.

(a)     Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to the Mayor and the Town Administrator/Treasurer the independent 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 5:

- (i) The interest rate on the Loans;
- (ii) The principal amount of the Loans;
- (iii) The amount of principal of the Loans maturing in any given year and the final maturity of the Loans;
- (iv) The dates on which the principal of and interest on the Loans are paid; and
- (v) The existence and amount of capitalized interest or reserve funds for the Loans, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions:

- (i) the net effective interest rate on the Leveraged Loan shall not exceed 6.50%;
- (ii) the aggregate principal amount of the Leveraged Loan shall not exceed \$4,500,000;
- (iii) the maximum annual repayment cost of the Leveraged Loan shall not exceed \$450,000;
- (iv) the total repayment cost of the Leveraged Loan shall not exceed \$8,500,000;
- (v) the final maturity of the Leveraged Loan shall not extend beyond December 31, 2048;
- (vi) the net effective interest rate on the Direct Loan shall not exceed 1.50%;
- (vii) the aggregate principal amount of the Direct Loan shall not exceed \$3,000,000;
- (viii) the maximum annual repayment cost of the Direct Loan shall not exceed \$200,000;
- (ix) the total repayment cost of the Direct Loan shall not exceed \$4,000,000;

- (x) the final maturity of the Direct Loan shall not extend beyond December 31, 2048; and
- (xi) assuming 100% principal forgiveness for the BIL PF Loan, there will be no repayment obligations upon the issuance of the BIL PF Loan.

(c) Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby further delegates to the Mayor, the Town Administrator/Treasurer the independent authority to sign the Bond Purchase Agreement and to execute any agreement or agreements in connection therewith. The Bond Purchase Agreement may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of the Bond Purchase Agreement by the Mayor, Town Administrator/Treasurer shall be conclusive evidence of the approval by the Town of the Bond Purchase Agreement in accordance with the terms hereof.

The delegation set forth in this Section shall be effective for one year after adoption of this Ordinance.

Section 6. CWRPDA's Official Statement.

The appropriate officers and employees of the Town are hereby authorized and directed to furnish and supply information concerning the Town to CWRPDA for use in the preparation of a Preliminary Official Statement related to the CWRPDA Bonds (the "Preliminary Official Statement") and an Official Statement related to the CWRPDA Bonds ("the Official Statement") to be used to market the CWRPDA Bonds if required. The Town consents to the use and distribution of the Preliminary Official Statement and the Official Statement in connection with the public offering and sale of the CWRPDA Bonds.

Section 7. Continuing Disclosure Undertaking.

The Mayor or the Town Administrator/Treasurer are hereby authorized and directed to execute a Continuing Disclosure Undertaking (the "Continuing Disclosure Undertaking") related to the CWRPDA Bonds to assist the Underwriter in complying with paragraph (b)(5) of Rule 15c2-12 under the Securities and Exchange Act of 1934 if required. The Town agrees that it will comply with the provisions of the Continuing Disclosure Undertaking, including providing notice of certain enumerated events. The execution of the Continuing Disclosure Undertaking by the Mayor or the Town Administrator/Treasurer shall be conclusive evidence of the approval by the Town of the Continuing Disclosure Undertaking in accordance with the terms hereof.

Section 8. Conclusive Recital.

Pursuant to Section 11-57-210 of the Supplemental Act, the Bonds and the Loan Agreements shall contain a recital that the Bonds are issued pursuant to the Supplemental Act.

Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after its delivery for value.

Section 9. Pledge of Revenues.

The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds and the Loan Agreements as 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 Bonds and the Loan Agreements 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 Agreements. 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.

Section 10. 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 adoption of this Ordinance.

Section 11. Limited Obligation.

The Financing Documents are payable solely from the revenues set forth in the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 12. 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 Bonds. Such recourse shall not be available either directly or indirectly through the Board of Trustees 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 Bonds and as a part of the consideration of its sale or purchase, CWRPDA specifically waives any such recourse.

Section 13. Disposition of Loan Proceeds.

The proceeds of the Loans shall be applied only to pay the costs and expenses of acquiring, constructing, reconstructing, improving, bettering, extending or equipping the Project, including costs related thereto 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 Town 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 pursuant to the terms of the Loan Agreements.

Section 14. Town Representatives.

Pursuant to the Loan Agreements, Paige Smith as Mayor and Stefen Wynn as Town Administrator/Treasurer are each designated as an Authorized Officer (as defined in the Loan Agreements) for the purpose of performing any act or executing any document relating to the Loans, the Town, the Bond or the Loan Agreements. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 15. Estimated Life of Improvements.

It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loans is not less than the maximum maturity of the Loans authorized hereby.

Section 6 Direction to Take Authorizing Action.

The Mayor, the Town Clerk, and the Town Administrator/Treasurer are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Town thereto, in substantially the forms presented to the Board, with such changes as are not inconsistent with the provisions of this Ordinance. The Mayor, the Town Clerk, the Town Administrator/Treasurer and other appropriate officials or employees of the Town are further authorized and directed to execute and authenticate such other instruments, documents or certificates as are deemed necessary or desirable to effectuate the provisions of this Ordinance, including but not limited to such certificates and affidavits as may be required by CWRPDA or its bond counsel. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the Town of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 17. Ratification and Approval of Prior Actions.

All actions heretofore taken by the Mayor, any member of the Board, the Town Clerk, the Town Administrator/Treasurer, and the other officers and employees of the Town, 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 18. Severability.

If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 19. Ordinance Irrepealable.



After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the Town and CWRPDA, and shall be and remain irrevocable until the Bond 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 Town to keep and perform the covenants contained in this Ordinance.

Section 20. Electronic Signatures; Electronic Transactions.

The Mayor, the Town Clerk, the Town Administrator/Treasurer or other employee or official of the Town that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the "Authorized Documents") are hereby authorized to execute 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 reproductions 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 21. Recording, Authentication and Publication.

This Ordinance immediately upon its final passage and adoption, shall be numbered and recorded in the Ordinance Book of the Town kept for that purpose, authenticated by the signatures of the Mayor (or Mayor Pro Tem) and the Town Clerk (or her deputy), and the full text hereof shall be published in a newspaper of general circulation in the Town.

Section 22. Emergency Declaration.

Because it is necessary to the successful completion of the Project that the Town be prepared to proceed as soon as the CWRPDA is ready to issue its CWRPDA Bonds, the Board hereby finds and declares that an emergency exists and that passage of this Ordinance at this time is necessary to the immediate preservation of the public health and safety and shall become effective immediately upon passage by a  $\frac{3}{4}$  majority of the Board.

*[Remainder of page left blank intentionally]*

INTRODUCED, READ, ADOPTED BY A ¾ MAJORITY OF THE BOARD OF TRUSTEES AS AN EMERGENCY ORDINANCE AND ORDERED POSTED IN FULL AND PUBLISHED THIS 24TH DAY OF APRIL, 2025.

TOWN OF PAONIA, COLORADO

*Paige Smith*

Paige Smith, Mayor

(SEAL)

Attest:

*Samira M. Vetter*

Samira M Vetter, Town Clerk

