



CITY OF WRAY, COLORADO

ORDINANCE NO. 598

AN ORDINANCE APPROVING LOANS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY (“CWRPDA”) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,750,000; 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 City of Wray (the “City”), in the County of Yuma and State of Colorado, is duly organized and existing under the Constitution and the laws of the State of Colorado and the home rule charter of the City (the “Charter”); and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected, chosen and qualified; and

WHEREAS, the City has heretofore determined and undertaken to operate, and maintain its wastewater treatment facility as a public utility and income-producing project (the “System”); and

WHEREAS, the Council has determine and does hereby determine that the System is an “enterprise” of the City within the meaning of Article X, Section 20 of the Colorado Constitution (the “Enterprise”); and

WHEREAS, the Council, acting by and through the Enterprise, has heretofore determined the need to construct certain wastewater improvements to the System (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 \$2,500,000 at 1% 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 \$250,000 without any interest (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, Article X, Section 20 of the Colorado Constitution (“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 2015, 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, under Article V, Section 5-8(c) of the Charter, the City is authorized to issue revenue bonds payable from the revenues 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, pursuant to TABOR and the Charter, the Financing Documents may be approved by the Council without an election; and



WHEREAS, the Direct Loan Bond and the Direct Loan Agreement shall be revenue obligations of the City, payable from the net revenues of the System; and

WHEREAS, except to secure the Direct Loan and the Direct Loan Bond, 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 Council desires to approve the forms of the Financing Documents and authorize the execution thereof; 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 is necessary for the immediate preservation of the public peace, health, safety and welfare.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WRAY, 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 1.0%;
 - ii. The principal amount of the Direct Loan shall not exceed \$2,500,000;
- and
- iii. The final maturity of the Direct Loan shall not be later than 20 years from the date of the Direct Loan.

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 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 Bonds are issued, this Ordinance shall constitute an irrevocable contract between the City and CWRPDA, and shall be and remain irrepealable until the Bonds 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 Bonds 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. Declaration of Emergency. By reason of the City's need to improve its wastewater treatment facility to provide for the health and welfare of its citizens and the further need to acquire additional financing to improve such wastewater treatment facility and the limited availability of such zero and low interest financing through the CWRPDA, the Council declares that this Ordinance is 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 upon Council approval.

Section 20. Publication and Effective Date. This Ordinance after its passage on first reading shall be numbered, recorded, published and posted as required by the City Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and the City Clerk. This Ordinance shall become effective immediately.

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**PASSED, ADOPTED AS AN EMERGENCY ORDINANCE AND ORDERED
PUBLISHED IN FULL** this 30th day of August, 2016.

CITY OF WRAY, COLORADO

By: 
Mayor: Ronald R Akey

ATTEST:



City Clerk: Ida L Peery, CMC



STATE OF COLORADO)
)
 COUNTY OF YUMA) SS.
)
 CITY OF WRAY)

I, Ida Peery, the duly appointed, qualified and acting City Clerk of the City of Wray, 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 (the “Council”) of the City on first reading at a special meeting of the Council held at the Council Chambers on August 30, 2016.

2. That the ordinance has been signed by the Mayor, sealed with the corporate seal of the City, attested by me as City Clerk, and duly recorded in the books of the City; and that the same remains of record in the book of records of the City.

3. The Ordinance was adopted as an emergency ordinance at special meeting by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Ronn Akey, Mayor	X			
John Willard, Mayor Pro-Tem	X			
Jodi Brady, Member			X	
Deidra Fix, Member	X			
Joe Foltmer, Member	X			
Bernard Hassman, Member	X			
Chad Deyle, Member	X			

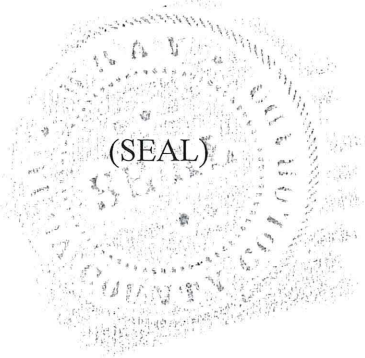
4. That notice of the special meeting on August 26, 2016, in the form attached hereto as **Exhibit A**, was posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.


5. That the ordinance was published in Wray Gazette after its adoption on September 7, 2016, in accordance with Article III, Section 3-16 of the Wray City Charter. The affidavit of publication is 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 30th day of August, 2016.




City Clerk: Ida L Peery, CMC



245 W. Fourth, PO Box 35, Wray, Colorado 80758
970.332.4431 • www.cityofwray.org

James DePue, *City Manager*
Ida Peery, *City Clerk/Treasurer*
Al Wall, *City Attorney*



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Yuma County Recorder, BEVERLY WENGER Page 11 of 12
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Notice of Special Meeting

City of Wray

Notice is hereby given that the City of Wray City Council will be conducting a special meeting held at the Wray Ambulance Barn, 304 West 3rd Street, in Wray Colorado, on Tuesday 30th day of August 2016 at the hour of 12:30 p.m.

For the purpose of:
Tier I and Tier II Energy Impact Grant Applications
Ordinance 598-Appoving Loan from CWRPDA
Intergoverment Contract- CDPHE-Ambulance Grant

The City reserves the right to make any additions and or deletions to this notice.
Given under our hand and the seal of the City of Wray this 26th day of August 2016.

City Clerk
Ida Peery, CMC

Postings:

City Hall
First Pioneer National Bank
U S Post Office
Wray State Bank
Yuma County Federal Credit Union

