

ORDINANCE NO. 1592

AN ORDINANCE AUTHORIZING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO THE CITY OF LA JUNTA ACTING BY AND THROUGH ITS WASTEWATER ENTERPRISE IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,000,000.00 FOR THE PURPOSE OF PAYING THE COSTS OF CERTAIN WASTEWATER FACILITIES; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; DELEGATING TO CERTAIN AUTHORIZED OFFICERS THE AUTHORITY TO DETERMINE, WITHIN CERTAIN PARAMETERS, CERTAIN FINANCIAL MATTERS PERTAINING TO THE LOAN; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

**WHEREAS**, the City of La Junta, Colorado (the "City") is a legally and regularly created, established, organized and existing home rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City; and

**WHEREAS**, the members of the City Council of the City (the "Council") have been duly elected and qualified; and

**WHEREAS**, the Council has heretofore determined that the City's wastewater system (the "System") is and shall be an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

**WHEREAS**, the Council finds and determines that it is in the best interest of the City, to make certain improvements to the System (the "Project"); and

**WHEREAS**, the City has made application to the Colorado Water Resources and Power Development Authority (the "CWRPDA") for a loan to finance all or a portion of the cost of the Project; and

**WHEREAS**, the City 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 for the City to enter into a loan agreement (the "Loan Agreement") with the CWRPDA, a body corporate and political subdivision of the State, pursuant to which CWRPDA shall loan the City acting by and through its wastewater enterprise a maximum amount of not to exceed \$3,000,000.00, including issuance costs, (the "Loan") for such purposes; and

**WHEREAS**, the repayment obligations under the Loan Agreement shall be evidenced by a governmental agency bond (the "Bond") to be issued by the City acting by and through its wastewater enterprise to CWRPDA; and

**WHEREAS**, the City's obligations under the Loan Agreement and the Bond (collectively referred to herein as the "Financing Documents") shall constitute a revenue obligation of the City payable solely from the Pledged Property (as defined in the Loan Agreement), and shall not constitute a debt or indebtedness of the City; and

**WHEREAS**, pursuant to Title 31, Article 35, Part 4, C.R.S. and Title 37, Article 45.1, and Section I 1.5 of the City's home rule charter (the "Charter"), the Financing Documents may be approved by the Council without an election; and

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

**WHEREAS**, the Council desires to approve the form of the Financing Documents and other documents referenced there in, authorize the execution of the Loan Agreement, and authorize the execution and delivery of the Bond; and

**WHEREAS**, none of the members of the Council have any financial interest or other potential conflicting interests in connection with the authorization or execution of the Financing Documents, or the use of the proceeds thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA JUNTA, COLORADO, ACTING BY AND THROUGH ITS WASTEWATER ENTERPRISE:

**Section 1. Approvals, Authorizations, and Amendments.**

(a)The forms of the Financing Documents as are on file with the City Clerk are hereby approved in substantially the form as on file, and the Mayor and City Clerk are hereby authorized and directed to execute the Financing Documents insubstantially the forms as are on file with the City Clerk, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor or the Mayor Pro Tem, and to authenticate and affix the seal of the City thereto. The City acting by and through its wastewater enterprise 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 Mayor Pro Tem.

(b)The Mayor and the City 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 City's performance of its obligations under the Financing Documents.

**Section 2. Election to Apply Supplemental Act.**

Section11-57-204 of the Supplemental Public Securities Act, constituting Title II, Article 57, Part 2, Colorado Revised Statutes (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 sections of the Supplemental Act to the Financing Documents.

**Section 3. Delegation.**

(a) Pursuant to §11-57-205 of the Supplemental Act, the Council hereby delegates to the authorized officers hereafter designated the authority to make the following determinations relating to and contained in the Financing Documents and to execute and deliver 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 dates on which the principal of and interest on the Loan are paid; and
- (iv)The existence and amount of capitalized interest or reserve funds 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 principal amount of the Loan shall not exceed \$3,000,000.00 including issuance costs.

**Section 4. Conclusive Recital.** Pursuant to Section 11-57-210 of the Supplemental Act and Section 31-35-413, C.R.S., the Bond and the Loan Agreement shall contain a recital that the Bond is issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bond after its delivery for value.

**Section 5. Pledge of Revenues; Lien.** The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bond and the Loan Agreement 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 Bond and the 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 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 6. 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 7. Limited Obligation.** The Financing Documents are payable solely from the Pledged Property (as defined in the Loan Agreement) and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

**Section 8. No Recourse against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the City 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 Bond. Such recourse shall not be available either directly or indirectly through the Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of its sale or purchase, CWRPDA specifically waives any such recourse.

**Section 9. Enterprise Status.** The City has and, to the extent necessary to maintain the validity of the Financing Documents under applicable law, will continue to maintain the System (as defined in the Loan Agreement) as an "enterprise" within the meaning Article X, Section 20 of the Colorado Constitution. Specifically, but not by way of limitation, it is hereby covenanted, agreed, and represented that the System has not and shall not receive 10% or more of its annual revenue in grants from all Colorado state and local governments combined in the current calendar year.

**Section 10. Disposition and Investment of Loan Proceeds.** The proceeds of the Loan shall be applied only to pay the costs and expenses of the Project, including costs related thereto. Neither CWRPDA nor any subsequent owner(s) of the Loan Agreement 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 11. City Representative.** Pursuant to Exhibit B of the Loan Agreement, Jeffri Pruyn, Mayor, Richard G. Klein, City Manager, Tom Seaba, Director of Water and Wastewater Services, and Aliza Libby-Tucker, Finance Director, are each hereby designated as an Authorized Officer (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the City, the Bond or the Loan Agreement. Authorized officers may be changed by resolution of the Council.

**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 Loan is not less than the maximum maturity of the Loan authorized hereby.

**Section 13. Direction to Take Authorizing Action.** The Mayor, the City Clerk, and other appropriate officers of the City 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 the execution and delivery of such certificates and affidavits as may reasonably be required by CWRPDA. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the City of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

**Section 14. Ratification and Approval of Prior Actions.** All actions heretofore taken by the Mayor, any member of the Council, the City Clerk, and the other officers and employees of the City, 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. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order or other instrument, or part thereof, heretofore repealed. Neither this repealer nor any other provision of this Ordinance shall be construed to adversely affect or impair any contract entered into by the City or any enterprise thereof prior to the effective date of this Ordinance.

**Section 17. Ordinance Irrepealable.** After the Bond is issued, this Ordinance shall constitute an irrevocable contract between the City, acting by and through its Wastewater Enterprise, and CWRPDA, and shall be and remain irrepealable 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 City, acting by and through its Wastewater Enterprise to keep and perform the covenants contained in this Ordinance.

**Section 18. Disposition.** This Ordinance, as soon as possible after adoption, shall be numbered and recorded by the City Clerk on the official records of the City, and shall be authenticated by the signatures of the Mayor and the City Clerk.

**Section 19. Publication and Effective Date.** This ordinance shall be in full force and effect five days after publication following final passage.

INTRODUCED, PASSED ON FIRST READING AS AMENDED, APPROVED AND  
ORDERED PUBLISHED IN FULL this 18<sup>th</sup> day of June, 2018.

CITY OF LA JUNTA, COLORADO,  
ACTING BY AND THROUGH ITS  
WASTEWATER ENTERPRISE

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Jeffri Pruyn, Mayor

ATTEST:

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Melanie R. Scofield, City Clerk



INTRODUCED, PASSED ON SECOND READING AS AMENDED, APPROVED  
AND ORDERED PUBLISHED BY TITLE ONLY this 16<sup>th</sup> day of July, 2018.

CITY OF LA JUNTA, COLORADO  
ACTING BY AND THROUGH ITS  
WASTEWATER ENTERPRISE

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Jeffri Pruyn, Mayor

ATTEST:

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Melanie R. Scofield, City Clerk

AS TO FORM:

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Phillip F. Malouff, Jr., City Attorney

**INTRODUCED, READ BY TITLE ONLY AND PASSED ON FIRST READING**  
at a regular meeting of the City Council on the 18<sup>th</sup> day of June,  
2018 and ordered published in full in the La Junta Tribune  
Democrat.

After having been published in full in the La Junta Tribune  
Democrat at least ten (10) days prior to second reading **ADOPTED**  
**AND PASSED AS AN ORDINANCE ON SECOND READING** at a regular  
meeting of the City Council on the 16<sup>th</sup> day of July, 2018 by a  
vote of SEVEN (7) FOR and ZERO (0) AGAINST, and ordered  
published by title only in the La Junta Tribune Democrat.

**CITY OF LA JUNTA, COLORADO**  
**ACTING BY AND THROUGH ITS**  
**WASTEWATER ENTERPRISE**

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Jeffri Pruyn, Mayor

**ATTESTED:**

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Melanie R. Scofield, City Clerk

STATE OF COLORADO

COUNTY OF OTERO

CITY OF LA JUNTA

I, Melanie Scofield, City Clerk of the City of La Junta, Colorado, do hereby certify that the foregoing pages number 2 to 10, inclusive, constitute a full and correct copy of the record of the proceedings of the City Council of the City, taken at a regular meeting thereof, held on Monday, the 18<sup>th</sup> day of June, 2018, and a regular meeting held on Monday, the 16<sup>th</sup> day of July, 2018 at the Municipal Building, 601 Colorado Avenue, La Junta, Colorado, so far as said minutes relate to an Ordinance of the City of La Junta, Colorado, authorizing and approving a loan from the Colorado Water Resources and Sewer Development Authority, that said Ordinance has been duly authenticated by the signatures of the presiding officer of the City Council and myself, as City Clerk of the City, sealed with the corporate seal of the City and the Ordinance recorded in the Book kept for that purpose in my office.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed the seal of the City, this 16<sup>th</sup> day of July, 2018.

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Melanie R. Scofield, City Clerk