

**CITY OF DELTA, COLORADO
ORDINANCE NO. 12, 2023
AMENDED**

AN ORDINANCE OF THE CITY OF DELTA, COLORADO,
ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE,
AUTHORIZING A LOAN AGREEMENT WITH THE
COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY

WHEREAS, the City of Delta (“City”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Delta Home Rule Charter (“Charter”); and

WHEREAS, by Ordinance No. 21, 1995, the City established the City of Delta Water Activity Enterprise (the “Enterprise”) pursuant to the provisions of C.R.S. § 37-45.1-101, *et seq.*, with the power to issue bonds and other obligations to support water activities including but not limited to water delivery and wastewater treatment services; and

WHEREAS, the Enterprise is an “enterprise” as defined in Article X, Section 20(2) of the Colorado Constitution authorized to issue its own revenue bonds; and

WHEREAS, the City, acting by and through the Enterprise, has the power and authority to issue bonds to fund water and sewer improvements pursuant to the Charter and C.R.S. § 31-35-401, *et seq.*; and

WHEREAS, the Enterprise desires to construct improvements to the Delta wastewater treatment plant including improvements to the aerobic digestion process, constructing a new adjacent building, installing new dry pit chopper motive pumps, jet aeration blowers and manifolds, and an HVAC system (the “Project”); and

WHEREAS, the Project is a “water activity” as defined in in C.R.S. § 37-45.1-102; and

WHEREAS, in order to fund the Project, the City, acting by and through the Enterprise, has applied for a loan from the Colorado Water Resources and Power Development Authority (the “Authority”) for a principal amount of up to \$5,439,740.00, of which up to \$1,500,000 of the principal amount will be forgiven by the Authority subject to the terms and conditions of the loan agreement; and

WHEREAS, the City Council desires to approve the loan agreement with the Authority on behalf of the Enterprise.

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

1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the City Council.
2. Approval of Loan Agreement. The City Council, acting by and through the Enterprise, hereby approves the Loan Agreement between the Authority and the Enterprise for up to

\$5,439,740.00 to fund the Project. A copy of the Loan Agreement including exhibits and related documents is available for inspection at the office of the City Clerk.

3. Various Findings, Determinations, Declarations and Covenants. The City Council, having been fully informed of and having considered all the pertinent facts and circumstances, hereby affirms the representations set forth in Sections 2.01 and 2.02 of the Loan Agreement (capitalized terms used in this Section but not otherwise defined in this Ordinance shall have the meanings set forth in the Loan Agreement) and further finds, determines, declares and covenants with the Authority that:

(a) **Loan Terms.** It is in the best interests of the City and its residents that the Governmental Agency Bond in the maximum principal amount to be repaid of \$3,939,740 (after application of up-front principal forgiveness) be authorized to evidence the loan for a term of 20 years at an interest rate of 1.00% (excluding penalty interest as provided for late charges, if any), to be issued and delivered at the time, in the manner and for the purposes provided in this Ordinance and the Loan Agreement.

(b) **Pledge of Net Revenue.** Net Revenue as defined in EXHIBIT A of the Loan Agreement is hereby pledged to the payment of the Governmental Agency Bond and the amounts due under the Loan Agreement. The Governmental Agency Bond shall constitute a first lien upon the Net Revenue, but not necessarily an exclusive first lien. Pursuant to and in accordance with Section 11-57-208, C.R.S., Net Revenue, as received by or otherwise credited to the Town, shall immediately be subject to the lien of the pledge stated above without any physical delivery, filing, or further act.

(c) **Additional Obligations.** No future bonds, notes, interim securities or other obligations payable from Net Revenue shall be issued having a lien thereon which is superior to the lien of the Governmental Agency Bond or, without first meeting the requirements set forth in EXHIBIT F of the Loan Agreement, shall be issued on a parity with or subordinate to the lien of the Governmental Agency Bond.

(d) **Maintenance of Rates and Coverage.** The City will establish, maintain, enforce and collect rates, fees and charges for services furnished by or the use of the System as required in provision set forth in EXHIBIT F of the Loan Agreement under the caption titled "Rate Covenant". In the event that the Gross Revenue at any time is not sufficient to make the payments required by said provision, the City covenants to promptly increase such rates, fees and charges to an extent which will ensure compliance with said covenant.

(e) **Enterprise Status.** The City has established, and covenants to continue to maintain, the System as an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution; provided, however, after the calendar year in which the Governmental Agency Bond is issued the City may disqualify either the System as an "enterprise" in any year in which said disqualification does not materially, adversely affect the enforceability of the

covenants made pursuant to this Ordinance and the Loan Agreement. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made pursuant to this Ordinance and the Loan Agreement are materially, adversely affected, the City covenants to immediately take all actions necessary to (i) qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of such covenants.

(f) Supplemental Public Securities Act. The City Council elects to apply all of the provisions of Part 2 of Article 57 of Title 11, C.R.S. to the execution of the Loan Agreement and to the issuance and delivery of the Governmental Agency Bond the form of which is set forth in EXHIBIT D to the Loan Agreement.

4. Authorization to Execute Documents. The City shall enter into the Loan Agreement and deliver the Governmental Agency Bond in substantially the form available in the office of the City Clerk with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as approved by the City Attorney in order to carry out the purposes of this Ordinance. The Loan Agreement and the Governmental Agency Bond shall be executed by the Mayor, or in the Mayor's absence the Mayor Pro Tem, and attested by the City Clerk. Additionally, Elyse Ackerman Casselberry, City Manager, and Tod Dezeeuw, Finance Department, are authorized to execute related documents, including but not limited to requisitions, and to take such further actions as may be reasonably necessary to close the transaction contemplated by the Loan Agreement. Elyse Ackerman Casselberry, City Manager, and Tod Dezeeuw, Finance Department, shall be authorized officers and representatives as identified in EXHIBIT B to the Loan Agreement.

5. Effective Date. This Ordinance shall become effective thirty (30) days after final passage and publication pursuant to Section 19(c) of the Charter.

INTRODUCED on November 7, 2023, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered published as required by the Charter.

CITY OF DELTA, COLORADO
/s/ Kevin Carlson
Mayor

ATTEST:

/s/ Jolene E. Nelson
City Clerk

INTRODUCED a second time as amended at a meeting of the City Council on November 21, 2023, read by title and number, passed, approved, and ordered published as required by the Charter.

CITY OF DELTA, COLORADO

/s/ Kevin Carlson

Mayor

ATTEST:

/s/ Jolene E. Nelson

City Clerk