

AN ORDINANCE ESTABLISHING A WATER ACTIVITY ENTERPRISE UNDER STATE LAW WITHIN THE TOWN OF LA JARA, COLORADO; ACKNOWLEDGING THAT SUCH WATER ACTIVITY ENTERPRISE HAS THE AUTHORITY TO ISSUE ITS OWN REVENUE BONDS UNDER STATE LAW; MAKING CERTAIN FINDINGS WITH RESPECT TO SUCH ENTERPRISE; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Town of La Jara, Colorado ("Town") desires to establish a water activity enterprise (the "Enterprise") under state law; and

WHEREAS, the members of the governing body of the Town (the "Board of Trustees") are willing and intend to act as the governing body of the Enterprise; and

WHEREAS, pursuant to Title 37, Article 45.1, Part 1, Colorado Revised Statutes, (the "Act"), the establishment of water activity enterprises within or by entities of state and local government is critical to the health and welfare of the people of the State of Colorado; and

WHEREAS, the Act defines a "water activity enterprise" to include any water activity business owned by a district, which enterprise receives under ten percent of its annual revenue in grants from all Colorado state and local governments combined and which is authorized to issue its own revenue bonds pursuant to this article or any other applicable law; and

WHEREAS, "district" is defined in the Act to include municipalities; and

WHEREAS, "water activity" is defined in the Act to include, but not be limited to, the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water as well as the provision of wholesale or retail water or wastewater or stormwater services and the acquisition of water or water rights; and

WHEREAS, "grant" in the context of the Act means a cash payment of public funds made directly to a water activity enterprise by the state or a local governmental entity or a district, which cash payment is not required to be repaid; and

WHEREAS, the Town is a district under the Act which under Title 31, Article 35, Part 4, Colorado Revised Statutes, has its own bonding authority and which will be the sole owner of the Enterprise; and

WHEREAS, the Town's water activity, until now known as the water and sewer fund, at present receives under ten percent of its annual revenues in grants from all Colorado state and local governments combined and the Town intends to insure that the water activity enterprise will receive under ten percent of its revenues from such grants; and

WHEREAS, the Act provides at Section 37-45.1-104, Colorado Revised Statutes, that each water activity enterprise, through its governing body, may issue or reissue revenue bonds in accordance with and through the provisions of Section 37-45.1-104 (2), Colorado Revised Statutes; and

WHEREAS, the Board of Trustees has determined that it is in the best interest of the Town to designate its water enterprise and its water activities as a "water activity enterprise" pursuant to the Act and Article X, Section 20 of the Colorado Constitution (the "Amendment"); and

WHEREAS, all capitalized words and terms used in this enterprise ordinance (the "Enterprise Ordinance") shall have the meaning set forth therefor in these recitals;

NOW, THEREFOR, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LA JARA, COLORADO, AS FOLLOWS:

Section 1. - Establishment of the Enterprise: The Town hereby establishes the Enterprise as an agency of the Town and formally designates it as the "Town of La Jara, Colorado, Water Activity Enterprise". It shall be the purpose of the Enterprise to pursue or continue all the Town's water activities as defined in the Act, including water acquisition or water project or facility activities, including the construction, operation, repair, and replacement of water or wastewater facilities, using revenues and income generated by and earned or acquired in connection with such water activities and held and managed in the Town's water enterprise fund. As between the Town and the Enterprise, all water activities will be deemed done and furnished by the Enterprise.

Section 2. - Enterprise Excluded from the Provisions of the Amendment: Pursuant to and in accordance with the Act, the Enterprise shall be excluded from the provisions of the Amendment and shall be entitled to impose rates, fees, tolls, and charges; collect and spend revenues; issue revenue bonds; and construct, operate, and maintain facilities and provide water services; all without reference or regard to the limitations contained in the Amendment.

Section 3. - Governing Body: The members of the Board of Trustees shall serve as the governing body of the Enterprise and shall be known collectively as the Board of Directors of the Enterprise (the "Board"). Acting as the Board, the Board of Trustees may exercise the Town's legal authority relating to water activities as defined in the Act. The Board hereby is directed to take all actions necessary to cause the Enterprise to comply with all applicable laws.

Section 4. - Powers of the Enterprise: The Enterprise shall have all powers and authority granted to water activity enterprises by the provisions of the Act, including, but not limited to, the power to conduct and continue water activities as defined in the Act; the power to contract with any person or entity, including other districts as defined in the Act and other water activity enterprises as defined in the Act; and the power to issue and reissue revenue bonds through its governing body in accordance with and through the provisions of Section 37-45.1-104(2), Colorado Revised Statutes.

Section 5. - Enterprise Obligations and Town Obligations: In consideration of the Enterprise's commitment to provide water services for which the Town actually is obligated and to pay, from revenues and income in the water enterprise fund, debt service on general obligation bonds and notes of the Town issued in the past to finance the acquisition, construction, and installation of water rights, facilities, and appurtenances, the Town hereby agrees to continue to provide administrative services for the Enterprise and its activities, to continue to hold title to and own all of the assets currently owned by the Town and necessary to the operation of the Enterprise, and to impose and collect all rates, fees, tolls, and charges for water activities pursuant to Title 31, Article 35, Part 4, Colorado Revised Statutes

Section 6. - Transactions in the Name of the Town: Any and all transactions of the Enterprise may be done in the name of the Town or in the name of the Enterprise and neither this Section 6 nor any transaction entered into pursuant to it shall alter or abrogate the relationship of the Town and the Enterprise as

established in Section 5 of this Enterprise Ordinance and further clarified from time to time in joint resolutions that may hereafter be adopted by the Town and the Enterprise.

Section 7. - Findings of the Board of Trustees: The Board of Trustees of the Town of La Jara, Colorado, hereby makes the following findings with respect to the establishment of the Enterprise:

(a) The Town's water enterprise fund, water rights, water facilities, and appurtenances all shall comprise the Enterprise which shall be and is the water activity business owned by the Town.

(b) The Enterprise shall be and is an agency of the Town for the purposes and within the meaning of the following:

- (i) Title 24, Article 10, Part 1, Colorado Revised Statutes, the "Colorado Governmental Immunity Act";
- (ii) Title 29, Article 1, Part 6, Colorado Revised Statutes, the "Colorado Local Government Audit Law";
- (iii) Title 29, Article 1, Part 1, the "Local Government Budget Law of Colorado", and
- (iv) all other local, state, and federal laws, rules, and regulations.

(c) The establishment of the Enterprise is necessary to provide a secure water supply for domestic use by the inhabitants of the Town and other domestic customers of the Enterprise; to continue to provide water for agricultural uses currently being practiced within the incorporated limits of the Town, to supply water for food processing, recreational, and all other beneficial uses, to treat, reclaim, conserve, recharge, augment, exchange, or reuse water supplies; and to provide wholesale and retail water supply and wastewater services.

(d) The Town has the authority to conduct water activities as defined in the Act and is the sole owner of the Enterprise as required by the Act. The Town has bonding authority for water activities pursuant to Title 31, Article 35, Part 4, Colorado Revised Statutes, all as required by the Act.

(e) The Enterprise receives under ten percent of its annual revenues in grants (as defined in the Act) from all Colorado state and local governments combined and the Town has not received nor does it expect to receive for the remainder of fiscal year 1993 any of its revenue from such sources.

(f) Pursuant to the Act, the Enterprise is authorized to issue its own revenue bonds.

(g) The Enterprise does not, and shall not levy any tax whatsoever, nor shall any rates, tolls, fees, or charges imposed or collected by the Enterprise ever be deemed to be taxes for any purpose under any law, rule, or regulation, whether local, state, or federal.

Section 8. - Termination: The Enterprise shall remain in existence at the will of the Board of Trustees and in accordance with law. In the event that the Enterprise is terminated by operation of law or by act of the Board of Trustees, any and all assets of the Enterprise, immediately and without the need for further action, shall be deemed to be and shall be assets of the Town.

Section 9. - Repealer: All orders, by-laws, and ordinances of the Town, or parts thereof, inconsistent or in conflict with this Enterprise Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. - Severability: If any section, paragraph, clause, or provision of the Enterprise 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 Enterprise Ordinance, the intent being that the same are severable.

Section 11. - Publication: The Town Clerk shall certify to the passage of this Ordinance and shall cause notice of its contents and passage to be published as provided by law.

Section 12. - Emergency Clause: The Board of Trustees hereby finds, determines, and declares that this Ordinance is necessary for the immediate preservation of the public peace, health, safety and financial well-being of the Town in that, for the purpose of complying with the terms and provisions of the Act, it is necessary that this Ordinance take effect and be in force upon its adoption and publication as provided by law.

INTRODUCED, PASSED, ADOPTED, AND APPROVED at a regularly scheduled meeting of the Board of Trustees of the Town of La Jara, Colorado, at which a quorum was present the 9th day of December, 1993.

TOWN OF LA JARA

By: *Glenn S. Novak*

(S E A L)

Helen J. Hutchins
Helen J. Hutchins
La Jara Town Clerk

Date of Publication: _____.