



Ordinance No. 348

AN ORDINANCE OF THE CITY OF CREEDE, COLORADO REAFFIRMING THE CITY OF CREEDE WATER AND SEWER ACTIVITY ENTERPRISE, AND DECLARING AN EMERGENCY IN CONNECTION THEREWITH

WHEREAS, the City of Creede (the "City"), Colorado (the "State") is a municipal corporation and political subdivision of the State duly organized and operating as a statutory town; and

WHEREAS, the City has the power to issue revenue bonds in the manner provided in Part 4 of Article 35 of Title 31, Colorado Revised Statutes; and

WHEREAS, pursuant to the provisions of Title 37, Article 45.1, Colorado Revised Statutes (the "Water Activity Law"), State and local governmental entities which have their own bonding capacity under applicable law are authorized: (i) to establish or continue to maintain water activity enterprises for the purpose of pursuing or continuing water activities, including the construction, operation, repair, and replacement of water or wastewater facilities; and (ii) to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or from any other available funds of the enterprise, the terms and conditions of such bonds or other obligations to be as set forth in the Resolution authorizing the same and, as nearly as practicable, as provided in Part 4 of Article 35 of Title 31, C.R.S., relating to the issuance of water and sewer bonds; and

WHEREAS, in order to qualify as a water activity enterprise under the Water Activity Law, the enterprise must consist of a government water activity business owned by a governmental entity such as the City, which enterprise receives under 10% of its annual revenues in grants from all Colorado state and local governments combined, and which is authorized to issue its own revenue bonds; and

WHEREAS, the City has heretofore operated the City's water and sewer activities as an enterprise within the meaning of Section 20(2)(d) of Article X of the Colorado Constitution, and it is the intent of the City to continue the operation of the System (as defined in Section 1 of this Resolution) as a water activity enterprise and to formally reaffirm the "City of Creede Water and Sewer Activity Enterprise" under the Water Activity Law.

THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO:

Section 1. *Establishment of Enterprise.* There is hereby reaffirmed, pursuant to the terms and provisions of the Water Activity Law (Title 37, Article 45.1, Colorado Revised Statutes), the "City of Creede Water and Sewer Activity Enterprise" (the "Enterprise"). The



Enterprise shall be wholly owned by the City and shall consist of the business represented by all of the City's water and sewer facilities and properties now owned or hereafter acquired, whether situated within or without the City boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto (the "System"). The Enterprise shall have all of the authority, powers, rights, obligations, and duties as may be provided or permitted by the Water Activity Law and the Colorado Constitution, and as may be further prescribed by resolution of the City.

Section 2. *Governing Body.* The governing body of the Enterprise shall be the Board of Trustees of the City, and shall be subject to all of the applicable laws, rules, and regulations pertaining to the Board of Trustees.

Section 3. *Maintenance of Enterprise Status.* The Enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of § 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution. Specifically, but not by way of limitation, for calendar year 2009 and for such calendar years thereafter as shall be determined in the discretion of the Board of Trustees, the Enterprise is not authorized, and shall not, receive 10% or more of its annual revenue in grants from all Colorado state and local governments combined.

Section 4. *Issuance of Bonds.* The Enterprise is authorized to issue bonds, notes, or other obligations payable from the revenues derived or to be derived from the System, in accordance with the Water Activity Law.

Section 5. *Ratification and Approval of Prior Actions.* All actions heretofore taken by the officers of the City and the members of the Board of Trustees, not inconsistent with the provisions of this Resolution, relating to the operation or creation of the Enterprise, are hereby ratified, approved, and confirmed.

Section 6. *Repealer.* All orders, bylaws and resolutions of the City, or parts thereof, inconsistent or in conflict with this Resolution, are hereby repealed to the extent only of such inconsistency or conflict.

Section 7. *Headings.* The headings to the various sections and paragraphs to this Resolution have been inserted solely for the convenience of the reader, are not a part of this Resolution, and shall not be used in any manner to interpret this Resolution.

Section 8. *Severability.* It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.



Section 9. Emergency Declaration; Effective Date. The Board desires to commence the construction of necessary improvements to supplement the existing System as soon as possible, which activities cannot occur without passage of this Ordinance. The use of an emergency provision in this Ordinance will enable the City to complete the financings which must occur prior to such construction activities; therefore, it is hereby declared that an emergency exists, that this Ordinance is necessary for the immediate preservation of the public peace, and that this Ordinance shall be in full force and effect immediately after passage, as provided by law.

PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE and ordered published this 13 day of January, 2009.



City of Creede, Colorado

By *Rex M Shepperd* *Jan 10, 09*
Mayor: Rex M Shepperd Date

By *Pamela J. Wilson* *1/20/09*
Clerk: Pamela J. Wilson Date