



## ORDINANCE NO. 349

**AN ORDINANCE OF THE CITY OF CREEDE, COLORADO, ACTING BY AND THROUGH ITS WATER AND SEWER ACTIVITY ENTERPRISE, APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE CERTAIN WATER IMPROVEMENTS; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND A BOND TO DOCUMENT THE LOAN; PROVIDING FOR PAYMENT OF THE BOND FROM NET REVENUES OF THE CITY'S WATER AND SEWER SYSTEM; AND DECLARING AN EMERGENCY.**

WHEREAS, the City of Creede, Colorado is a duly organized and validly existing statutory town, municipal corporation and political subdivision of the State (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, the City is the owner and operator of a public water and sewer system, which system has historically been operated on a self-supporting basis by the City with all revenues of the system accounted for in a separate fund known as the "Water and Sewer Fund" and, as provided in the ordinance of the City pertaining thereto adopted on the date hereof (the "Enterprise Resolution"), such system is considered to be a government-owned business generally known as the "Water and Sewer Activity Enterprise" of the City; and

WHEREAS, the City is acting hereunder by and through its Water and Sewer Activity Enterprise, which is a water activity enterprise under the provisions of Title 37, Article 45.1, C.R.S.; and

WHEREAS, to finance all or a portion of the estimated costs of the Project, the Board has determined to enter into a Loan Agreement with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which the Authority is to loan the City a principal amount not to exceed \$1,250,000 under its Drinking Water Revolving Fund; and

WHEREAS, the City's repayment obligation under the Loan Agreement will be evidenced by governmental agency bond to be issued by the City to the Authority, which Bond shall constitute a special revenue obligation of the City which is generally payable from the income for the services furnished by or the use of the System less reasonable and necessary current expenses of the City of operating, maintaining and repairing the System and, after consideration, the Board has determined that the execution of the Loan Agreement and the issuance of the Bond to the Authority is to the best advantage of the City; and

WHEREAS, voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution for the execution of the Loan Agreement or the issuance of the Bond; and



WHEREAS, the form of the Loan Agreement and the Bond, have been presented to the City and made available to the Board; and

WHEREAS, as provided in the Acts, which include but are not limited to Title 11, Article 57, Part 2, C.R.S., by this Ordinance the City desires to authorize the execution of the Loan Agreement and the Bond.

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

**Section 1. Definitions.** The following terms shall have the following meanings as used in this Ordinance:

“*Acts*” means Title 37, Article 45.1, Part 1, C.R.S. and Title 11, Article 57, Part 2, C.R.S., the Enterprise Resolution, and all other laws of the State establishing the power of the City to complete the financing contemplated by this Ordinance.

“*Authority*” means the Colorado Water Resources and Power Development Authority.

“*Board*” means the Board of Trustees of the City, acting as the Board of Directors of the Water and Sewer Activity Enterprise in accordance with the Enterprise Resolution.

“*Bond*” means the governmental agency Bond to be issued by the City to the Authority pursuant to the Loan Agreement, the form of which is set forth in Exhibit D to the Loan Agreement.

“*City*” means the City of Creede, Colorado, acting by and through its Water and Sewer Activity Enterprise.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Financing Documents*” means the Loan Agreement and the Bond.

“*Loan Agreement*” means that certain Loan Agreement between the City and the Authority pursuant to which the Authority is to loan revenues from its Drinking Water Revolving Fund to the City.

“*Project*” shall have the meaning assigned it in the Loan Agreement.

“*Project Costs*” means the City’s costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Acts.

“*State*” means the State of Colorado.

“*System*” means the water and sewer system of the City, as more particularly described in the Loan Agreement.



“*Water and Sewer Activity Enterprise*” means the government owned business of the City for water and sewer services which is authorized to issue its own revenue bonds and which receives under 10% of annual revenue in grants from all Colorado state and local governments combined.

**Section 2. Approval of Loan Agreement and Authorization of Bond.** Pursuant to and in accordance with the State Constitution and the Acts, the Bond shall be issued by the City acting by and through its Water and Sewer Activity Enterprise. The form of the Loan Agreement setting forth the terms, conditions and details of the Bond and the procedures relating thereto. is incorporated herein by reference and is hereby approved; all City officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the City under the Financing Documents. The City shall enter into the Loan Agreement and deliver the Bond in substantially the form presented to the City at or prior to this meeting of the Board with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered.

**Section 3. Bond Details.** The Bond shall be in an aggregate principal amount of \$1,250,000, shall bear interest at 1.75% per annum, and shall be payable and mature as more particularly set forth in the loan repayment schedule in Exhibit C to the Loan Agreement.

**Section 4. Pledge for Payment of the Bond.** The principal of and interest on the Bond shall be payable solely from the Pledged Property (which term is defined in the Loan Agreement). The City irrevocably pledges the Pledged Property for the payment of the Bond and the amounts due under the Loan Agreement. The Authority may not look to any general or other fund of the City for the payment of the principal of or interest on the Bond, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Bond shall not constitute a debt or an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the City.

**Section 5. Maintenance of Enterprise Status.** The Board hereby determines that the Water and Sewer Activity Enterprise is currently an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and hereby reaffirms the establishment of the System as a “water activity enterprise” within the meaning of Title 37, Article 45.1, C.R.S. The City has and will continue to maintain the System as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution; provided, however, after the current calendar year the City may disqualify the System as an “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Financing Documents. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made by the City in the Financing Documents are materially, adversely affected, the City covenants to (i) immediately take all actions necessary to qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.



**Section 6. Approval of Miscellaneous Documents.** The Mayor of the City (or in the Mayor's absence the Mayor Pro Tem) is hereby authorized and directed to execute the Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Bond and the financing contemplated by this Ordinance.

**Section 7. Amendment of Ordinance.** This Ordinance may be amended only with the prior written consent of the Authority.

**Section 8. Limitation of Actions.** The Board elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Agreement and to the issuance of the Bond. In accordance with Section 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization of the Bond more than 30 days after the authorization of such security.

**Section 9. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or by the officers and employees of the City directed toward the issuance of the Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 10. Headings.** The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

**Section 11. Ordinance Irrepealable.** After any Bond has been issued, this Ordinance shall constitute a contract between the Authority and the City, and shall be and remain irrepealable until the Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 12. 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 13. Repealer.** All orders, bylaws, resolutions and ordinances of the City, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

**Section 14. Emergency Declaration; Effective Date.** The execution of the Loan Agreement and the issuance of the Bond do not require prior voter approval under Article X, Section 20 of the State Constitution and Board. The timing for the commencement of the Project and having funds available necessitate that this Ordinance be effective immediately; therefore, the Board hereby finds and determines that this Ordinance is necessary to the immediate preservation of public health and safety and shall be in full force and effect immediately upon passage by the Board.



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Eryn K Follman  
Mineral County Clerk

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 18, 09*  
Mayor: Rex M. Shepperd Date



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