

ORDINANCE NO. 2421
INTRODUCED BY: Padilla

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AUTHORIZING, APPROVING, AND DIRECTING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND A PROMISSORY NOTE PAYABLE FROM NET REVENUES DERIVED FROM THE OPERATION OF THE CITY OF BRIGHTON WATER ACTIVITY ENTERPRISE, AND CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH, FOR THE PURPOSE OF FINANCING THE PAYMENT IN FULL OF THE CITY'S SEWAGE TREATMENT AND DISPOSAL AGREEMENT (SERVICE CONTRACT) WITH METRO WATER RECOVERY

WHEREAS, the City of Brighton, Colorado (the "City") is a home rule municipal corporation duly organized and existing under the City's Home Rule Charter (the "Charter") adopted pursuant to Article XX of the Constitution of the State of Colorado (the "State"); and

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

WHEREAS, the City has heretofore determined and undertaken to combine, operate and maintain its water facilities and sewer facilities as a single government owned business and accounts for the financial operations of the System (as hereinafter defined) in the City's Water Activity Enterprise Fund; and

WHEREAS, the City Council has heretofore established, pursuant to the Charter, the provisions of Title 37, Article 45.1, C.R.S. (the "Water Activity Act") and Ordinance No. 1470 of the City adopted on May 16, 1995 (the "Enterprise Ordinance") the "City of Brighton Water Activity Enterprise" (the "Enterprise"); and

WHEREAS, the Enterprise consists 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"); and

WHEREAS, the City Council has determined and hereby determines that the Enterprise constitutes an "enterprise" under Article X, Section 20 of the Colorado Constitution ("TABOR") and the Water Activity Act; and

WHEREAS, pursuant to the Enterprise Ordinance, the governing body of the Enterprise is the City Council and is subject to all of the applicable laws, rules and regulations pertaining to the City Council; and

WHEREAS, pursuant to the Enterprise Ordinance, whenever the City Council is in session, the governing body of the Enterprise shall also be deemed to be in session, and it shall not be necessary for the governing body of the Enterprise to meet separately from the regular and special meetings of the City Council, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the Enterprise; and

WHEREAS, pursuant to the Enterprise Ordinance, 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 Act, and the City Council may also authorize the issuance of such bonds, notes, or other obligations in accordance with applicable State laws, and in so doing shall be deemed to be acting as both the governing body of the Enterprise and the City Council; and

WHEREAS, the City Council proposes to finance the payment in full of its obligations under the Sewage Treatment and Disposal Agreement (Service Contract), dated April 2, 2009, as amended, between the City and Metro Water Recovery, formerly known as Metro Wastewater Reclamation District and Metropolitan Denver Sewage Disposal District No. 1 (“Metro”) so that the City can transfer wastewater flows to Metro to be treated by Metro’s wastewater facilities (the “Project”); and

WHEREAS, the City has determined and hereby determines to enter into a Loan Agreement (the “Loan Agreement”) with a bank to be identified in the Sale Certificate authorized herein (the “Lender”) to obtain a loan (the “Loan”) in order to finance the costs of the Project; and

WHEREAS, the Loan will be evidenced by a promissory note from the City, as maker, to Lender, as payee, in the form attached to the Loan Agreement (the “Note”); and

WHEREAS, the proceeds derived from the Loan, after payment of the costs of issuance properly allocable thereto, along with such other legally available moneys of the City as may be necessary, shall be used to finance the Project and to pay other costs related to the Project, as more particularly hereinafter set forth; and

WHEREAS, the City, acting by and through the Enterprise, is authorized pursuant to TABOR, the Charter, Title 31, Article 35, Part 4, C.R.S. (the “Act”), and the Water Activity Act, to enter into the Loan Agreement and to execute and deliver the Note without an election to defray the cost of the Project; and

WHEREAS, the City previously issued its “City of Brighton, Colorado, Water Activity Enterprise Revenue Refunding Bonds (Water System Project), Series 2016A” in the original principal amount of \$20,945,000 (the “Series 2016A Bonds”), its “City of Brighton, Colorado, Water Activity Enterprise Revenue Refunding Bonds (Sewer System Project), Series 2016B” in the original principal amount of \$6,325,000 (the “Series 2016B Bonds”), and its “City of Brighton, Colorado, Water Activity Enterprise Revenue Bonds (Water System Project), Series 2022” in the original principal amount of \$77,685,000 (the “Series 2022 Bonds” and together with the Series 2016A Bonds and the Series 2016B Bonds, the “Prior Parity Obligations”) that are secured by a pledge of the Net Revenues (as defined in the Loan Agreement) of the System; and

WHEREAS, except for the Prior Parity Obligations, the City has not pledged nor in any way hypothecated revenues derived and to be derived directly or indirectly from the operation of the System to the payment of any outstanding securities or for any other purpose (excluding securities which have heretofore been redeemed in full, as to all principal, premium, if any, and interest, or are otherwise not outstanding), with the result that the Net Revenues may now be pledged lawfully and irrevocably for the payment of the Note on a parity with the outstanding Prior Parity Obligations, and the Note may be made payable from the Net Revenues; and

WHEREAS, the Note will be payable solely from the Net Revenues of the System and certain special funds pledged to the payment of the Note, and the Note shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, Charter or statutory provision or limitation, and the Note shall not be considered or held to be a general obligation of the City but shall constitute a special and limited obligation; and

WHEREAS, the City specifically elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S., as amended, (the "Supplemental Act") to the Loan Agreement and the Note; and

WHEREAS, the City Council desires to delegate to the Mayor, the City Manager and the Finance Director of the City the independent power to determine the final terms of the Loan consistent with the provisions of this ordinance; and

WHEREAS, there are on file with the City Clerk: (a) the proposed form of the Loan Agreement; and (b) the proposed form of the Note, in the form attached to the Loan Agreement.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the City Council or the officers, agents or employees of the City Council or the City relating to the implementation of the Project and the entering into of the Loan Agreement and the execution and delivery the Note is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution and the laws of the State and the Charter, that undertaking the Project and financing the costs thereof pursuant to the terms set forth in the Loan Agreement are necessary, convenient, and in furtherance of the City's purposes and are in the best interests of the inhabitants of the City and the City Council hereby authorizes and approves the same.

Section 3. Supplemental Act Election; Parameters. The City Council hereby elects to apply all of the provisions of the Supplemental Act to the Loan, the Loan Agreement and the Note (collectively, the "Loan Documents") and in connection therewith delegates to each of the Mayor, the City Manager and the Finance Director the independent authority to make any determination delegable pursuant to Section 11-57-205 of the Supplemental Act in relation to the Loan Documents and to execute a Sale Certificate setting forth such determinations, subject to the following parameters and restrictions:

- (1) the Loan shall mature not later than June 1, 2043;
- (2) the principal amount of the Loan shall not exceed \$32,500,000; and
- (3) the Loan shall bear interest at a rate not to exceed 6.50%; provided that this limitation does not apply to any interest rate reset that may occur after December 1, 2033, or any rate imposed as a result of an event of default under the Loan Documents.

Pursuant to Section 11-57-205 of the Supplemental Act and the Charter, the City Council hereby delegates to each of the Mayor, the City Manager and the Finance Director the independent authority to receive proposals from potential lenders and to determine and accept the best proposal for the Loan in accordance with the provisions of this ordinance, and subject to the parameters set forth herein and the other terms and provisions set forth in this ordinance. The Lender selected pursuant to this Section 3 shall be set forth in the Sale Certificate.

Section 4. Authorization of Further Actions. The officers of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this ordinance, including but not limited to the execution of such certificates and affidavits as may be reasonably required by the Lender or bond counsel.

Section 5. Approval of Documents. The forms, terms and provisions of the Loan Documents are hereby authorized and approved, and the City shall enter into the Loan Documents in the respective forms as are on file with the City Clerk, but with such changes therein as shall be consistent with this ordinance and as the City Attorney shall approve, the execution thereof being deemed conclusive approval of any such changes. The Mayor, and in the Mayor's absence the Mayor Pro-Tem, and the City Clerk are hereby authorized and directed to execute and deliver the Loan Documents, for and on behalf of the City. The City Clerk is hereby authorized and directed to affix the seal of the City to, and to attest those Loan Documents and other documents and certificates delivered in connection with the Loan that require the attestation of the City Clerk.

Section 6. Special and Limited Obligations. The Loan Documents are special, limited obligations of the City payable solely from the Net Revenues and from the funds and accounts provided in the Loan Agreement. The principal of, premium, if any, and interest on the Loan and the Note shall not constitute an indebtedness of the City or the State or any political subdivision thereof, and none of the City, the State or any political subdivision thereof shall be liable thereon, nor in any event shall the principal of, premium, if any, and interest on the Loan and the Note be payable out of funds or properties other than the Net Revenues. Neither the City Council nor any persons executing the Loan Agreement or the Note shall be liable personally on the Loan Agreement or the Note.

Section 7. Ordinance Irrepealable. After the Loan Documents are entered into, this ordinance shall be and remain irrepealable, and may not be amended except in accordance with the Loan Agreement, until the Loan and the Note shall have been fully paid, canceled and discharged in accordance therewith.

Section 8. Authorized Person. The Council hereby authorizes each of the Mayor, the City Manager and the Finance Director to act as an Authorized Person under the Loan Agreement, or such other person or persons who may be so designated in writing from time to time by the Mayor, as further provided in the Loan Agreement.

Section 9. Payment of Costs. All costs and expenses incurred in connection with the Loan Documents and the transactions contemplated by this ordinance shall be paid either from the proceeds of the Loan or from legally available moneys of the City, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 10. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City 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, interest or prior redemption premiums on the Loan Documents. Such recourse shall not be available either directly or indirectly through the City 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 Loan Documents and as a part of the consideration for their sale or purchase, any person purchasing or selling the Loan Documents specifically waives any such recourse.

Section 11. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed.

Section 12. Severability. If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, the intent being that the same are severable.

Section 13. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this ordinance and such statutes. Any such inconsistency or conflict is intended by the City Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 14. Electronic Signatures; Electronic Transactions. The Mayor, the City Clerk, the City Manager, the Finance Director and all other employees and officials of the City that are authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this ordinance (collectively, the "Authorized Documents") are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act. It is hereby determined that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15. 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 of the City in connection with the authorization or issuance of the Loan Documents, including but not limited to the adoption of this Ordinance, shall be commenced more than thirty days after the authorization of the Loan Documents.


Section 16. Recording and Authentication; Publication. Immediately after its passage this Ordinance shall be recorded in the ordinance book of the City kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and affidavits of publication shall be retained with this Ordinance in the City records. Upon final passage, this Ordinance shall be published by title only, with notice that copies of this Ordinance are available at the office of the City Clerk.

Section 17. Effective Date. This Ordinance shall be in full force and effect five days after publication following final passage.

INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED, THIS 2ND DAY OF MAY, 2023.

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 16TH DAY OF MAY, 2023.

CITY OF BRIGHTON, COLORADO



GREGORY MILLS, Mayor

ATTEST:



NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:



ALICIA CALDERÓN, City Attorney