

ORDINANCE NO. 2019-[]

AN ORDINANCE AUTHORIZING, APPROVING AND DIRECTING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT PAYABLE FROM NET REVENUE TO BE DERIVED FROM THE OPERATION OF THE TOWN OF CASTLE ROCK STORMWATER ENTERPRISE, AND CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH, FOR THE PURPOSE OF FINANCING VARIOUS CAPITAL IMPROVEMENTS TO THE STORMWATER SYSTEM, AND PROVIDING FOR ITS EMERGENCY ADOPTION ON SECOND AND FINAL READING.

WHEREAS, the Town of Castle Rock, Colorado (the “Town”), is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the Town (the “Charter”); and

WHEREAS, the members of the Town Council of the Town (the “Council”) have been duly elected or appointed and qualified, and act as the governing body of its Stormwater Enterprise (the “Enterprise”); and

WHEREAS, the Town now owns and operates a municipal stormwater system (the “System”); and

WHEREAS, the Council has determined that the System constitutes an enterprise pursuant to Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Town has determined that it is in the best interest of the Town to incur stormwater revenue obligations to fund various capital improvements to the System (the “Project”); and

WHEREAS, the Town, acting by and through its Stormwater Enterprise, intends to enter into a Loan Agreement with JPMorgan Chase Bank, N.A. (the “Lender”) to obtain a loan (the “Loan”) in order to finance the costs of the Project; and

WHEREAS, the Loan shall be evidenced by a Stormwater Enterprise Revenue Bond (the “Bond”) to be issued by the Town to the Lender; 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 Town 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 Town 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 securities or for any other purpose with the result that the revenues of the System may now be pledged lawfully and irrevocably for the payment of the Loan and the Bond, and they may be made payable from the revenues of the System; and

WHEREAS, the Council has determined that the Loan and the Bond shall be payable from and constitute an irrevocable lien, but not necessarily an exclusive such lien, on the revenues of the System; and

WHEREAS, the Town is authorized by Article X, Section 20 of the Colorado Constitution; Title 31, Article 35, Part 4, C.R.S.; Title 37, Article 45.1, C.R.S.; and Article X of the Charter to execute and deliver the Loan and the Bond without an election; and

WHEREAS, pursuant to Article X, Section 20 of the Colorado Constitution and Article 45.1 of Title 37, C.R.S., the Loan and the Bond may be executed and delivered without voter approval since the System constitutes an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution; and

WHEREAS, the Council has further determined and hereby further declares that the Borrower is authorized and the Loan and Bond shall be executed and delivered pursuant to the provisions of Title 37, Article 45.1; Title 31, Article 35; Title 11, Article 57, Part 2, C.R.S.; and Article X of the Charter; and

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

WHEREAS, the Loan shall be a special limited obligation of the Town payable solely from the Net Revenue (as defined in the Loan Agreement); and

WHEREAS, the Council desires to delegate to any member of the Council, the Town Manager or the Finance Director the power to determine the terms of the Loan consistent with the provisions of this ordinance; and

WHEREAS, there are on file with the Town Clerk: (a) the proposed form of the Loan Agreement; and (b) the proposed form of the Bond, in the form attached to the Loan Agreement, to be delivered to the Lender evidencing the Town's obligations to pay the Loan.

NOW THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO, ACTING AS SUCH AND AS THE GOVERNING BOARD OF THE TOWN OF CASTLE ROCK STORMWATER ENTERPRISE:

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

Section 2. Finding of Best Interests. The Council hereby finds and determines, pursuant to the Constitution and the laws of the State of Colorado and the Charter, that the acquisition, construction and implementation of 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 Town's purposes and are in the best interests of the inhabitants of the Town and the Council hereby authorizes and approves the same.

Section 3. Supplemental Act Election; Parameters. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Loan, the Loan Agreement and the Bond (collectively, the "Loan Documents") and in connection therewith delegates to each of the Mayor, the Town Manager and the Finance Director of the Town the authority to independently make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, in relation to the Loan Documents, including the execution of any certificates necessary or desirable to evidence such determinations, including without limitation, the rate or rates of interest on the Loan, the conditions on which and the prices at which the Loan may be redeemed before maturity, the existence and amount of any reserve funds, the principal amount of the Loan, the amount of principal maturing in any particular year, and the dates on which principal and interest shall be paid, subject to the following parameters and restrictions:

- (1) the Loan shall mature not later than December 31, 2030;
- (2) the principal amount of the Loan shall not exceed \$9,500,000; and
- (3) the Loan shall bear interest at a rate not to exceed 2.25%.

Provided, however, that with respect to Sections (3) and (4) above, the maximum interest rate and the maximum annual repayment cost imposed as a result of an event of default shall conform to the provisions of the Loan Agreement.

The officers of the Town shall take all action which they deem necessary or reasonably required in conformity with the Supplemental Act to enter into the Loan Documents, including the paying of incidental expenses, which are hereby authorized to be paid, and for carrying out, giving effect to and consummating the transactions contemplated by this ordinance and the Loan Documents, including, without limitation, the execution and delivery of any necessary or appropriate closing documents to be delivered in connection with the execution and delivery of the Loan Documents.

Section 4. Authorization of Further Actions. The officers of the Town 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.

Section 5. Approval of Documents. The forms, terms and provisions of the Loan Documents are hereby authorized and approved, and the Town shall enter into the Loan Documents in the respective forms as are on file with the Town Clerk, but with such changes therein as shall be consistent with this ordinance and as the Town Manager shall approve, the execution thereof being deemed conclusive approval of any such changes. The Mayor, Mayor Pro-Tem and the Town Clerk are hereby authorized and directed to execute and deliver the Loan

Documents, for and on behalf of the Town. The Town Clerk is hereby authorized and directed to affix the seal of the Town to, and to attest those Loan Documents requiring the attestation of the Town Clerk.

Section 6. Limited Obligation Debt. The Loan and the Bond are special, limited obligations of the Town payable solely as provided in the Loan Agreement. The principal of, premium, if any, and interest on the Loan and the Bond shall not constitute an indebtedness of the Town or the State of Colorado or any political subdivision thereof, and neither the Town, the State of Colorado nor 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 Bond be payable out of funds or properties other than the Net Revenue, as such term is defined in the Loan Agreement. Neither the Council nor any persons executing the Loan Agreement or the Bond shall be liable personally on the Loan Agreement or the Bond.

Section 7. Ordinance Irrepealable. After the Loan Agreement and the Bond 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 Bond shall have been fully paid, canceled and discharged in accordance therewith.

Section 9. Authorized Person. The Council hereby authorizes each of the Mayor, the Town 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 10. Payment of Costs. All costs and expenses incurred in connection with the Loan and the transactions contemplated by this ordinance shall be paid either from the proceeds of the Loan or from legally available moneys of the Town, or from a combination thereof, and such moneys are hereby appropriated for that purpose.

Section 11. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Town Council, or any officer or agent of the Town 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. Such recourse shall not be available either directly or indirectly through the Town Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as a part of the consideration of its sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 12. Repealer. All bylaws, orders, resolutions and ordinances of the Town, 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 Town, or part thereof, heretofore repealed.

Section 13. 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 14. Charter Controls. Pursuant to Article XX of the Colorado 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 Council and shall be deemed made pursuant to the authority of Article XX of the Colorado Constitution and the Charter.

Section 15. Emergency Declaration. In order to take advantage of the currently favorable conditions in the municipal bond market, the continuation of which cannot be predicted, the Council hereby determines that this ordinance is necessary for the immediate preservation of the public peace, health or safety.

Section 16. Effective Date and Disposition. As an emergency ordinance, this ordinance shall take effect upon adoption, shall be authenticated and shall be numbered and recorded in the official records of the Town as required by the Charter. This ordinance shall be published by title and summary (with notice that the entire text of the proposed ordinance is available for public inspection at the office of the Town Clerk) prior to first reading thereon and subsequent to adoption.

Section 17. Safety Clause. The Town Council finds and declares that this ordinance is promulgated and adopted for the public peace, health or safety and this ordinance bears a rational relation to the legislative object sought to be obtained.

Section 18. Disposition of Ordinance. This ordinance, as adopted by the Council, shall be numbered and recorded by the Town Clerk in the official records of the Town. The adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem, and Town Clerk, and by the certificate of publication.

ATTACHMENT A

APPROVED ON FIRST READING this 3rd day of December, 2019, by a vote of ____ for and ____ against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, FINALLY APPROVED AND ADOPTED AS AN EMERGENCY ORDINANCE, to become effective upon adoption, and ordered published by title and summary (with notice that the entire text of the proposed ordinance is available for public inspection at the office of the Town Clerk) this 17th day of December, 2019, by a vote of $\frac{3}{4}$ of the Town Council of the Town of Castle Rock, Colorado of ____ for and ____ against as required by Section 2.02.100.E. of the Castle Rock Municipal Code.

TOWN OF CASTLE ROCK

Jason Gray, Mayor

ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Robert J. Slentz, Town Attorney

STATE OF COLORADO)
)
COUNTY OF DOUGLAS) SS.
)
TOWN OF CASTLE ROCK)

I, Lisa Anderson, the duly appointed, qualified and acting Town Clerk of the Town of Castle Rock, Colorado (the “Town”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an emergency ordinance adopted by the Town Council (the “Council”) of the Town (i) on first reading at a regular meeting of the Council held at the Town Hall on December 3, 2019, and (ii) on second reading, at a regular meeting of the Council held at the Town Hall on December 17, 2019.

2. The ordinance has been signed by the Mayor, sealed with the corporate seal of the Town, attested by me as Town Clerk, and duly recorded in the books of the Town; and that the same remains of record in the book of records of the Town.

3. The passage of the ordinance on first reading was duly moved and seconded and the ordinance was passed on first reading by an affirmative vote of a majority of the members of the Council as follows:

| Name | “Yes” | “No” | Absent | Abstain |
|----------------------------|-------|------|--------|---------|
| Jason Gray, Mayor | | | | |
| Jason Bower, Mayor Pro Tem | | | | |
| Kevin Bracken | | | | |
| Caryn Johnson | | | | |
| Jess Loban | | | | |
| George Teal | | | | |
| James Townsend | | | | |

4. The passage of the ordinance on second and final reading was duly moved and seconded and the ordinance was passed on second and final reading on December 17, 2019, by an affirmative vote of three-fourths (3/4) of the members of the Council as follows:

| Name | “Yes” | “No” | Absent | Abstain |
|----------------------------|-------|------|--------|---------|
| Jason Gray, Mayor | | | | |
| Jason Bower, Mayor Pro Tem | | | | |
| Kevin Bracken | | | | |
| Caryn Johnson | | | | |
| Jess Loban | | | | |
| George Teal | | | | |
| James Townsend | | | | |

5. That notice of the regular meetings of December 3, 2019, and December 17, 2019, in the forms attached hereto as **Exhibit A**, was posted and published prior to first reading pursuant to Section 2.02.100.C of the Municipal Code.

6. That prior to adoption on first reading, the ordinance was posted on the Town’s website (www.CRgov.com) on _____, 2019, at [TIME], which is not later than 12:00 p.m., five (5) calendar days prior to the meeting of _____, 2019, along with a notice containing the title of the ordinance; a brief summary of the subject matter of the ordinance; where the ordinance can be inspected; the full text of the proposed ordinance; and the date, time and place of the meeting at which the ordinance will be considered and public comment taken.

7. Following adoption after first reading and second reading and final adoption, the ordinance was posted on the Town’s website on _____ 2019, along with a notice containing a summary of the subject matter of the ordinance and identifying the location where the ordinance is available for public inspection. Such date is not later than five (5) business days after adoption, and such ordinance shall remain posted for thirty (30) days post adoption.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Town this _____ day of December, 2019.

Town Clerk

(SEAL)

EXHIBIT A

(Attach Notice of Meetings – December 3, 2019 and December 17, 2019)