



**AGENDA
CITY OF VICTOR
SPECIAL COUNCIL MEETING
MARCH 24, 2021 – 11:00 A.M.
REMOTE AND IN-PERSON**

The Victor City Council encourages and appreciates the community's interest in attending City Council meetings. Members of the public who are called to speak on an agenda item will be limited to a three-minute presentation.

- I. **CONVENE SPECIAL MEETING
PLEDGE OF ALLEGIANCE**

- II. **ROLL CALL**

- III. **ORDINANCES AND RESOLUTIONS**
 - A. **ORDINANCE NO. 514 – FIRST READING - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTOR, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, APPROVING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN CONTRACT, THE PROMISSORY NOTE TO EVIDENCE SUCH LOAN, AND THE SECURITY AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY ON SECOND AND FINAL READING. ☒**

- IV. **ADJOURN**

***To access this special meeting remotely, go to www.cityofvictor.com home page, click on "Departments" tab located at the top of the home page, scroll down and click on "Mayor and City Council", and follow pop-up window instructions. Please contact City Hall for assistance at 719-689-2284.**

*Note: Any item on this agenda may be subject to a vote by City Council. Assistance for the hearing, visually, or physically impaired may be provided upon request. Please inquire at the office of the City Clerk, 1-719-689-2284, or to P. O. Box 86, Victor, CO 80860.
For persons with hearing impairments, please call RELAY COLORADO at 711 or 1-800-659-2656 and request "City of Victor at 719-689-2284."
The City of Victor supports efforts to affirmatively further fair housing.
THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER.*

CITY COUNCIL
OF THE CITY OF VICTOR, COLORADO

ORDINANCE NO. 514

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VICTOR, COLORADO, ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE, APPROVING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN CONTRACT, THE PROMISSORY NOTE TO EVIDENCE SUCH LOAN, AND THE SECURITY AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY ON SECOND AND FINAL READING.

WHEREAS, the City of Victor, Colorado (the “City”), is a statutory city and political subdivision of the State of Colorado, duly organized and operating under the Constitution and laws of the State of Colorado; and

WHEREAS, the members of the City Council of the City (the “Council”) have been duly elected and qualified; and

WHEREAS, the City has heretofore determined and undertaken to operate, and maintain its water facilities as a government-owned business (the “System”) and accounts for the financial operations of the System in the City’s Utility Enterprise Fund; and

WHEREAS, the City has determined that the System is an enterprise within the meaning of Title 37, Article 45.1, C.R.S. (the “Enterprise Act”) and Article X, Section 20 of the Colorado Constitution (“TABOR”) and has heretofore established the System as a water activity enterprise pursuant to the Enterprise Act (the “Enterprise”); and

WHEREAS, the Council is acting hereunder as the governing body of the Enterprise; and

WHEREAS, TABOR requires an election to incur any multiple fiscal year obligation unless such obligation is incurred for an enterprise; and

WHEREAS, under TABOR, an enterprise is a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined; and

WHEREAS, in 2020, the Enterprise received less than 10% of its revenue from grants from all Colorado state and local governments combined; and

WHEREAS, the Council, acting by and through the Enterprise, has the authority to issue notes or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility or the combined functions, services, benefits, or facilities of the Enterprise or from any other available funds of the Enterprise pursuant to Section 37-45.1-104(2) of the Enterprise Act; and

WHEREAS, the Council, acting by and through the Enterprise, has heretofore determined that the interest of the City and the public interest and necessity demand and require that the Victor Reservoir No. 2 Dam be rehabilitated (the “Project”); and

WHEREAS, the cost of the Project is estimated to be \$512,000 including design, engineering, legal, financing and administrative costs relating thereto, and any other costs incidental thereto; and

WHEREAS, the Council has determined that in order to finance the Project, it is necessary and advisable and in the best interests of the City to enter into a loan contract (the “Loan Contract”) and a security agreement (the “Security Agreement”) with the Colorado Water Conservation Board (“CWCB”), a body corporate and political subdivision of the State of Colorado, pursuant to which the CWCB will loan the City approximately \$378,750, which includes a one percent loan origination fee, pursuant to the Loan Contract to finance the Project; and

WHEREAS, the City’s repayment obligations under the Loan Contract shall be evidenced by a promissory note (the “Promissory Note”) to be executed and delivered by the City to the CWCB; and

WHEREAS, the Promissory Note, the Loan Contract and the Security Agreement (collectively, the “Financing Documents”) may be approved by the Council acting in its enterprise capacity without an election pursuant to Sections 37-45.1-104 to 106 of the Enterprise Act; and

WHEREAS, the City’s repayment obligations under the Financing Documents shall be special, limited obligations payable solely from and secured by an irrevocable lien (but not an exclusive lien) on the Net Revenue of the System, as hereinafter defined, shall not constitute a debt, an indebtedness or a multiple fiscal year debt or other financial obligation of the City within

the meaning of any constitutional or statutory provision or limitation and shall not be considered or held to be general obligations of the City; and

WHEREAS, the City has not pledged nor hypothecated the Net Revenue derived or to be derived from the operation of the System, or any part thereof, to the payment of any bonds or for any other purpose, with the result that the Net Revenue may now be pledged lawfully and irrevocably to the payment of the Financing Documents; and

WHEREAS, pursuant to TABOR, Title 31, Article 35, Part 4, C.R.S. and the Enterprise Act, the Financing Documents may be approved by the Council without an election; and

WHEREAS, there have been presented to the Council the forms of the Financing Documents; and

WHEREAS, the Council desires to approve the forms of the Financing Documents and authorize the execution thereof; and

WHEREAS, pursuant to Section 31-16-105, C.R.S., because of the urgent need for the financing of the Project and the limited availability of low interest loans, the Council has determined that an emergency exists and that adoption of this Ordinance as an emergency measure on second and final reading is necessary for the immediate preservation of the public peace, health, safety and welfare.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VICTOR, COLORADO:

Section 1. Approvals, Authorizations, and Amendments. The forms of the Financing Documents presented at this meeting are incorporated herein by reference and are hereby approved. The City shall enter into and perform its obligations under the Financing Documents in the forms of such documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Mayor of the City (the “Mayor”). The Mayor and City Clerk of the City (the “Clerk”) are hereby authorized and directed to execute the Financing Documents and to affix the seal of the City thereto, and further to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms approved at this meeting.

The execution of any instrument or certificate or other document in connection with the matters referred to herein by the Mayor and Clerk, the City Administrator of the City (the “City

Administrator”) or by other appropriate officers of the City, shall be conclusive evidence of the approval by the City of such instrument.

Section 2. Election to Apply the Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. (the “Supplemental Act”) provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 3. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to the Mayor, the Mayor Pro Tem or the City Administrator the authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 3:

- (i) The interest rate on the Loan;
 - (ii) The principal amount of the Loan;
 - (iii) The amount of principal of the Loan maturing in any given year and the final maturity of the Loan;
 - (iv) The dates on which the principal of and interest on the Loan is paid;
- and
- (v) The existence and amount of a reserve fund for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions:

- (i) the interest rate on the Loan shall not exceed 1.25%;
- (ii) the aggregate principal amount of the Loan shall not exceed \$380,000; and
- (iii) the final maturity of the Loan shall not be any later than 20 years from the date of substantial completion of the Project.

Section 4. Conclusive Recitals. Pursuant to Section 11-57-210 of the Supplemental Act, the Promissory Note and the Security Agreement shall contain a recital that each is issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of each of the Promissory Note and Security Agreement after its delivery for value. Pursuant to Section 31-35-413, C.R.S.,

and this Ordinance, the Promissory Note and the Security Agreement shall contain a recital that they are issued pursuant to Title 31, Article 35, Part 4, C.R.S. Such recital shall conclusively impart full compliance with all the provisions of such statute and each of the Promissory Note and Security Agreement issued containing such recital shall be incontestable for any cause whatsoever after its delivery for value.

Section 5. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Financing Documents provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The amounts pledged to the payment of the Financing Documents shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Contract. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

For purposes of this Ordinance and the Loan Contract, “Pledged Revenue” shall mean the Net Revenue of the System. “Net Revenue” shall mean the Gross Revenue less the Operation and Maintenance Expenses.

“Gross Revenue” means all income and revenues directly or indirectly derived by the Enterprise from the operation and use of the System, or any part thereof, including without limitation, any rates, fees, plant investment fees, standby charges, availability fees, tolls, and charges for the services furnished by, or the use of, the System, and all income attributable to any past or future dispositions of property or rights or related contracts, settlements, or judgments held or obtained in connection with the System or its operations; provided however, that there shall be excluded from Gross Revenue any moneys borrowed and used for providing Capital Improvements; any money and securities, and investment income therefrom, in any refunding fund, escrow account, or similar account pledged to the payment of any bonds or other obligations; and any moneys received as grants or appropriations from the United States, the State of Colorado, or other sources, the use of which is limited or restricted by the grantor or donor to the provision of Capital Improvements or for other purposes resulting in the general unavailability thereof, except to the extent any such moneys shall be received as payments for the use of the System,

services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the Enterprise, paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses of the Enterprise directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries and administrative expenses, labor, and the cost of materials and supplies for current operation; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance for depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations, and charges for the accumulation of reserves.

“System” means all of the water facilities and properties of the Enterprise, now owned or hereafter acquired, whether situated within or without the boundaries of the City including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, which comprise the physical plant of the Enterprise.

“Capital Improvements” means the acquisition of land, water, water rights, easements, facilities, and equipment (other than ordinary repairs and replacements), and those property improvements or any combination of property improvements which will constitute enlargements, extensions or betterments to the System and will be incorporated into the System.

Section 6. 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 in connection with the Financing Documents shall be commenced more than thirty days after the adoption of this Ordinance.

Section 7. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Revenue and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 8. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the 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 of or interest on the Promissory Note. Such recourse shall not be available

either directly or indirectly through the 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 Promissory Note and as a part of the consideration of its sale or purchase, CWCB specifically waives any such recourse.

Section 9. Disposition and Investment of Proceeds of the Loan Contract. The proceeds of the Loan Contract shall be applied only to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and reimbursement to the City for capital expenditures heretofore incurred and paid from City funds in anticipation of the incurrence of long-term financing therefor, and all other costs and expenses incident thereto, including without limitation the costs of obtaining the Loan Contract. The CWCB shall not be responsible for the application or disposal by the City or any of its officers of the funds derived from the Loan Contract.

Section 10. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan Contract is not less than the final maturity of the Loan.

Section 11. Issuance of Additional Debts or Bonds. The City will not issue any indebtedness payable from the Pledged Revenue and having a lien thereon which is superior to the lien created by the Financing Documents. The City may issue parity debt only with the prior written approval of CWCB, provided that:

(a) the City is at the time approval is requested from CWCB and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of the Loan Contract, including, but not limited to, being current on the annual payments due under the Loan Contract; and

(b) the City provides to the CWCB a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the Enterprise's revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the Enterprise's revenues are sufficient to pay its annual Operation and Maintenance Expenses, annual debt service on all outstanding indebtedness having a lien on the Pledged Revenue, including the Loan Contract, and the annual debt service on the proposed indebtedness to be issued. No more than 10% of total revenues may originate from tap and/or connection fees.

Section 12. Direction to Take Authorizing Action. The appropriate officers of the City and members of the Council are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to such certificates and affidavits as may reasonably be required by CWCB.

Section 13. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the City and members of the Council, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby authorized, ratified, approved, and confirmed.

Section 14. Repealer. All acts, orders, ordinances, or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 15. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 16. Inconsistencies. In the event of any inconsistencies between this Ordinance and the Loan Contract, this Ordinance is controlling.

Section 17. Ordinance Irrepealable. After the Promissory Note is issued, this Ordinance shall constitute an irrevocable contract between the City and the CWCB, and shall be and remain irrepealable until the Promissory Note and the interest thereon have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, ordinance, resolution or other measure enacted after the issuance of the Promissory Note shall in any manner be construed as impairing the obligations of the City to keep and perform the covenants contained in this Ordinance.

Section 18. Electronic Signatures; Electronic Transactions. In the event the Mayor, the Mayor Pro Tem, the City Administrator, the Clerk or other employee or official of the City that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the “Authorized Documents”) is not able to be physically present to manually sign any such Authorized Document, such individual or individuals 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 19. Declaration of Emergency. By reason of the City's need to effect the Project to provide for the health, safety and welfare of its citizens and the further need to acquire financing to effect the Project, and the limited availability of low interest financing through CWCB, the Council declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, and this Ordinance shall be in full force and effect immediately upon final passage on second reading and adoption by the Council in accordance with Section 31-16-105, C.R.S.

Section 19. Recording and Authentication. Immediately on its passage this Ordinance shall be recorded in a book kept for that purpose, authenticated by the signatures of the Mayor and Clerk, and shall be published in accordance with law.

Section 20. Effective Date. This Ordinance shall take effect upon adoption by the affirmative vote of three-fourths (3/4) of the members of the Council pursuant to Section 31-16-105, C.R.S.

INTRODUCED, FIRST READ, PASSED AND ORDERED PUBLISHED IN FULL ON FIRST READING, THIS 24TH DAY OF MARCH, 2021.

CITY OF VICTOR, COLORADO

Mayor

ATTEST:

City Clerk

FINALLY ADOPTED AND APPROVED AS AN EMERGENCY MEASURE, TO BECOME EFFECTIVE UPON ADOPTION, AND ORDERED PUBLISHED ONCE AFTER SECOND AND FINAL READING THIS 15TH DAY OF APRIL, 2021.

CITY OF VICTOR, COLORADO

Mayor

ATTEST:

City Clerk

STATE OF COLORADO)
)
 COUNTY OF TELLER) SS.
)
 CITY OF VICTOR)

I, Glori Thurston, the duly appointed, qualified and acting City Clerk of the City of Victor, Colorado (the “City”) do hereby certify:

i) That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council (the “Council”) of the City on first reading at a special meeting of the Council held on March 24, 2021, by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Bruce Davis, Mayor				
Byron L. Hakes				
Mark Gregory				
Barbara Manning				
Michelle Wirtz				

ii) The Ordinance was adopted as an emergency ordinance on second and final reading at a regular meeting of the Council held on April 15, 2021, by an affirmative vote of 3/4 of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Bruce Davis, Mayor				
Byron L. Hakes				
Mark Gregory				
Barbara Manning				
Michelle Wirtz				

iii) That notices of the special Council meeting on March 24, 2021 and regular Council meeting on April 15, 2021, in the forms attached hereto as **Exhibit A**, were posted no less than twenty-four hours prior to the meetings as required by law.

iv) That the ordinance was published in Pikes Peak Courier after its adoption on first reading, and again after second reading as required by law. The affidavit of publication is attached hereto as **Exhibit B**.

2021. WITNESS my hand and the seal of the City of Victor affixed this _____ ,

City Clerk

(SEAL)

EXHIBIT A

(Attach Meeting Notices)

EXHIBIT B

AFFIDAVIT OF PUBLICATION