

**ORDINANCE NO. 5106**

**AN ORDINANCE APPROVING LOANS FROM THE  
COLORADO WATER CONSERVATION BOARD TO  
FINANCE IMPROVEMENTS TO THE CITY'S WATER  
SYSTEM; AUTHORIZING THE FORM AND EXECUTION  
OF LOAN CONTRACTS AND PROMISSORY NOTES TO  
EVIDENCE SUCH LOANS AND SECURITY  
AGREEMENTS**

WHEREAS, the City of Grand Junction, Colorado (the "City"), is a home rule city duly existing under the Constitution and laws of the State of Colorado and its City Charter (the "Charter"); and

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

WHEREAS, the Council has determined and does hereby determine that the City's water system (the "System") is an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution ("TABOR") and Section 37-45.1-103 of the Colorado Revised Statutes, as amended; and

WHEREAS, the Council has heretofore determined that the interest of the City and the public interest and necessity require certain improvements to the System, including, without limitation, certain repairs and improvements to the Carson Reservoir Dam, Kannah Creek Flowline, and Purdy Mesa Flowline (collectively, the "Project"); and

WHEREAS, the Council has determined that in order to finance the Project it is necessary, advisable, and in the best interests of the City to enter into loan contracts (the "Loan Contracts") with the State of Colorado for the use and benefit of The Department of Natural Resources, Colorado Water Conservation Board (the "CWCB"), pursuant to which the CWCB will make loans the City (the "Loans") for such purposes; and

WHEREAS, the City's repayment obligations under each Loan Contract shall be evidenced by a Promissory Note (the "Note") to be issued by the City to the

CWCB and further secured by a Security Agreement to be executed by the City, as borrower, to the CWCB, as secured party; and

WHEREAS, the obligation to repay the Loans shall comprise a revenue obligation of the City payable from the Pledged Revenues (as defined herein), and pursuant to TABOR and Article XII, Section 93(f) of the Charter may be approved by the Council without an election; and

WHEREAS, forms of each Note, Loan Contract, and Security Agreement (collectively, the "Financing Documents") have been filed with the City Clerk; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Section 1. Approvals, Authorizations, and Amendments. The forms of the Financing Documents filed with the City Clerk 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 City Manager. The City Manager and City 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 by appropriate officers of the City of any instrument or certificate or other document in connection with the matters referred to herein shall be conclusive evidence of the approval by the City of such instrument or certificate or other document.

Section 2. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, of the Colorado Revised Statutes, as amended (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. Certain Definitions. For all purposes of the Financing Documents and this Ordinance, the following terms shall have the following meanings:

“Capital Improvements” means the acquisition of land, easements, facilities and equipment (other than ordinary repairs and replacements), and the construction or reconstruction of improvements, betterments and extensions, for use by or in connection with the System.

“Gross Revenues” means all income and revenues directly or indirectly derived by the City from the operation and use of the System, or any part thereof, including without limitation, any rates, fees (including without limitation plant investment fees and availability fees) and charges for the services furnished by, or for 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, and including investment income accruing from such moneys; provided however, that there shall be excluded from Gross Revenues: ad valorem property taxes; 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. Notwithstanding anything contained above, amounts deposited in a rate stabilization account shall not be deemed Gross Revenues in the calendar year deposited and amounts withdrawn from the rate stabilization account shall be deemed Gross Revenues in the year withdrawn.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the City (referred to as the Borrower in the Financing Documents), paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses of the City (referred to as the Borrower in the Financing Documents) directly related to the administration of the System, insurance premiums, audits, 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, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations, and expenses that are otherwise paid from ad valorem property taxes.

“Pledged Revenues” for any period means the Gross Revenues during such period less Operation and Maintenance Expenses.

“System” means all of the City’s water facilities and properties, now owned or hereafter acquired, whether situated within or without the City’s boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto, which facilities and properties are used exclusively for the City’s water activity enterprise.

#### Section 4. Delegation and Parameters.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to the President, the City Manager, the Finance Director, or any member of the Council 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 each Loan;
- (ii) The principal amount of each Loan;
- (iii) The amount of principal of each Loan maturing in any given year and the final maturity of the Loan;

(iv) The conditions on which and the prices at which each Loan may be paid prior to maturity;

(v) The dates on which the principal of and interest on each Loan are paid; and

(vi) The existence and amount of capitalized interest or reserve funds for each Loan, if any.

(b) The delegation in paragraph (a) of this Section shall be subject to the following parameters and restrictions: (i) the interest rate on any Loan shall not exceed 2.00%; (ii) the aggregate principal amount of the Loans shall not exceed \$15,000,000; and (iii) the final maturity of any Loan shall not be later than twenty years from the date CWCB determines the Project to be substantial complete.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Financing Documents shall contain a recital that they are issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Financing Documents after their delivery for value.

Section 6. 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 revenues 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 Financing Documents. 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.

Section 7. 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 date of adoption of this Ordinance.

Section 8. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Revenues and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 9. 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 Loans. 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 Financing Documents and as a part of the consideration of making the Loans, the CWCB specifically waives any such recourse.

Section 10. Disposition and Investment of Loan Proceeds. The proceeds of the Loans shall be applied only to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and all other costs and expenses incident thereto, including without limitation, the costs of obtaining the Loan.

Section 11. Neither the CWCB nor any subsequent owner(s) of the Financing Documents shall be responsible for the application or disposal by the City or any of its officers of the funds derived from the Loans. In the event that all of the proceeds of the Loans are not required to pay such costs and expenses, any remaining amount shall be used for the purpose of paying the principal amount of the Loans and the interest thereon.

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 the execution and delivery of such certificates and affidavits as may reasonably be required by the 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. Ordinance Irrepealable. After the Financing Documents are executed and delivered, this Ordinance shall constitute an irrevocable contract between the City and the CWCB, and shall be and remain irrepealable until the Loans and the interest thereon shall have been fully paid, satisfied, and discharged. No provisions of any constitution, statute, charter, ordinance, resolution, or other measure enacted after the execution and delivery of the Financing Documents shall in any way be construed as impairing the obligations of the City to keep and perform its covenants contained in this Ordinance.

Section 17. Disposition of Ordinance. This Ordinance, as adopted by the City Council shall be numbered and recorded by the City Clerk in the official records of the City. The adoption and publication shall be authenticated by the signatures of the President of the City Council and City Clerk and by the certificate of publication.

Section 18. Effective Date. This Ordinance shall be in full force and effect 30 days after publication following final passage.

INTRODUCED, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM this 5<sup>th</sup> day of October, 2022.

INTRODUCED, PASSED ON SECOND READING, APPROVED AND ORDERED PUBLISHED IN PAMPHLET FORM this 19<sup>th</sup> day of October, 2022.

CITY OF GRAND JUNCTION, COLORADO



A handwritten signature in black ink, appearing to be "C. Starnes", is written over a horizontal line.

President of the City Council

Attest:

A handwritten signature in black ink, "Amy Phillips", is written over a horizontal line.

City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5106 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 5<sup>th</sup> day of October 2022 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 19<sup>th</sup> day of October 2022, at which Ordinance No. 5106 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 21<sup>st</sup> day of October 2022.

  
Deputy City Clerk

Published: October 7, 2022  
Published: October 21, 2022  
Effective: November 20, 2022

