

SPONSORED BY TRUSTEE

TRUSTEE'S BILL

ORDINANCE NO.

NO. 09-08  
Series of 2009

09-08  
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**A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 09-05, WHICH PREVIOUSLY AUTHORIZED THE TOWN OF HUDSON, COLORADO, SALES TAX REVENUE BONDS, SERIES 2009; AND DECLARING AN EMERGENCY.**

**WHEREAS**, at a regular meeting of the Board of Trustees (the "Board of Trustees") of the Town of Hudson, Colorado (the "Town") held on March 18, 2009, the Board of Trustees adopted Ordinance No. 09-05 (the "Original Ordinance") as an emergency ordinance; and

**WHEREAS**, the Original Ordinance set forth the terms and conditions upon which the Town's Sales Tax Revenue Bonds, Series 2009 (the "Bonds") may be issued; and

**WHEREAS**, the Board of Trustees wishes to amend certain provisions of the Original Ordinance relating to the Bonds; and

**WHEREAS**, there has been filed with the Town Clerk an amended form of the Registrar and Paying Agent Agreement between the Town and the Registrar for the Bonds.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO: ;**

**Section 1. Definitions.** Terms used but not defined herein shall have the meanings ascribed thereto in the Original Ordinance.

**Section 2. Amendments to the Original Ordinance.** The terms of the Original Ordinance are hereby amended as follows. This Amending Ordinance shall not be construed to amend or repeal any term or provision of the Original Ordinance except as expressly set forth herein. None of the amendments herein shall affect the titles set forth in the Original Ordinance.

(a) The definitions for the following terms set forth in Section 1 of the Original Ordinance shall be amended as follows:

Authorized Denominations: the authorized denominations for the Bonds set forth in the Sale Certificate.

Ordinance: collectively, the Original Ordinance and the Amending Ordinance, which provide for the issuance and delivery of the Bonds.

Reserve Fund: a special fund of the Town designated as the "Sales Tax Revenue Bond Reserve Fund", created by this Ordinance for the purpose of paying, if necessary, the principal of, premium if any, and interest on the Bonds. The Reserve Fund will be held by the Paying Agent pursuant

to the Registrar and Paying Agent Agreement. The Reserve Fund will be funded to the extent so provided in the Sale Certificate.

Supplemental Reserve Fund: a special fund of the Town designated as the "Sales Tax Revenue Supplemental Reserve Fund", created by this Ordinance for the purpose of paying, if necessary, the principal of, premium if any, and interest on the Bonds. The Supplemental Reserve Fund will be held by the Paying Agent pursuant to the Registrar and Paying Agent Agreement. The Supplemental Reserve Fund will be funded to the extent so provided in the Sale Certificate.

(b) The following definitions shall be added to Section 1 of the Original Ordinance:

Amending Ordinance: this Ordinance of the Town, which amends certain provisions of the Original Ordinance as set forth herein.

Original Ordinance: Ordinance No. 09-05, which was adopted by the Town as an emergency ordinance at its regular meeting held on March 18, 2009.

(c) Section 3(a)(v) of the Original Ordinance is hereby amended to read:

the principal amount and Authorized Denominations of the Bonds;

(d) Section 7(a) of the Original Ordinance is hereby amended to read:

The Bonds designated in the Sale Certificate will be subject to redemption at the option of the Town from any legally available funds on the dates set forth in the Sale Certificate in whole, or in part from any maturities, in any order of maturity and by lot within a maturity from Bonds of the same maturity and interest rate, in such manner as the Town may determine (giving proportionate weight to Bonds in denominations larger than the minimum Authorized Denomination), at the price set forth in the Sale Certificate, subject to the parameters and restrictions of this Ordinance.

(e) Section 7(c) of the Original Ordinance is hereby amended to read:

In the case of Bonds of a denomination larger than the minimum Authorized Denomination, a portion of such Bond may be redeemed, in which case the Registrar shall, without charge to the Owner of such Bond, authenticate and issue a replacement Bond or Bonds for the unredeemed portion thereof.

(f) Section 16 of the Original Ordinance is hereby amended to read:

There are hereby created and established the following funds and accounts, which shall be maintained by the Town (and, with respect to the Reserve Fund and the Supplemental Reserve Fund, shall be held by the Paying Agent) in accordance with the provisions of this Ordinance:

- (a) the Project Fund;
- (b) the Street Improvement Sales Tax Capital Improvement Fund;
- (c) the Debt Service Fund;
- (d) the Reserve Fund; and
- (e) the Supplemental Reserve Fund.

(g) The final paragraph of Section 17 of the Original Ordinance is hereby amended to read:

Immediately upon issuance of the Bonds, the Town shall credit to the Supplemental Reserve Fund, from legally available moneys of the Town, the amount set forth in the Sale Certificate, if any.

(h) Section 21 of the Original Ordinance is hereby amended to read:

The Reserve Fund shall be funded to the extent provided in the Sale Certificate, and if so funded, the provisions of this Section shall apply.

Except as provided hereafter with respect to any Reserve Fund Guaranty, moneys in the Reserve Fund shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, or interest on the Bonds, and the Reserve Fund is hereby pledged to the payment of the Bonds. In the event the amounts credited to the Debt Service Fund and the Supplemental Reserve Fund are insufficient to pay the principal of, premium if any, or interest on the Bonds when due, there shall be transferred from the Reserve Fund to the appropriate account or accounts of the Debt Service Fund an amount which, when combined with moneys in the account or accounts, will be sufficient to make such payments when due.

The Reserve Fund shall be maintained in the amount of the Required Reserve until such time as the amount credited thereto, when combined with moneys in the Debt Service Fund and the Supplemental Reserve Fund, will be sufficient to pay the principal of, premium if any, and interest on all of the Bonds, at which time such moneys may be applied for such purpose. If at any time the amount of the Reserve Fund is less than the Required Reserve, then the Town shall deposit to the Reserve Fund from the Pledged Revenue and shall pay to the issuer of any Reserve Fund Guaranty, amounts sufficient to bring the amount credited to the Reserve Fund to the Required Reserve. Such deposits and payments shall be made as soon as possible after such use, but in accordance with and subject to the limitations of the Section hereof entitled "Street Improvement Sales Tax Capital Improvement Fund". For purposes of this Section, investments credited to the Reserve Fund shall be valued on the basis of their current market value, as reasonably determined by the Paying Agent, which value shall be determined at least annually.

In lieu of all or any portion of the moneys required to be credited to the Reserve Fund hereunder, the Town may at any time or from time to time deposit or pledge to the Reserve Fund any Reserve Fund Guaranty or Guaranties in or to the Reserve Fund, in full or partial satisfaction of the Required Reserve. From and after the issuance of any Reserve Fund Guaranty: (i) the amounts available under any Reserve Fund Guaranty shall be used (in addition to the amount of any cash or the original cost of investments credited thereto) in calculating the amount available in the Reserve Fund; (ii) the Town may transfer moneys from the Reserve Fund to any other fund or account of the Town to be used for any lawful purpose of the Town, so long as the Required Reserve is maintained; and (iii) moneys credited to the Reserve Fund pursuant to the Section hereof entitled "Street Improvement Sales Tax Capital Improvement Fund" may be used for the purpose of paying amounts due in connection with such Reserve Fund Guaranty, as determined by the Town.

Moneys credited to the Reserve Fund may be invested or deposited in securities or obligations which are Permitted Investments. The investment of moneys credited to the Reserve Fund shall, however, be subject to the covenants and provisions of the Section hereof entitled "Disposition and Investment of Proceeds; Tax Covenants". Except to the extent otherwise required by such Section, so long as the amount of the Reserve Fund is equal to the Required Reserve, all interest income from the investment or reinvestment of moneys credited to the Reserve Fund shall be used for the payment of the

principal of, premium if any, or interest on the Bonds as set forth in the Registrar and Paying Agent Agreement; provided that if the amount of the Reserve Fund is less than the Required Reserve, then such interest income shall be credited to the Reserve Fund. The amount credited to the Reserve Fund shall never exceed the amount of the Required Reserve.

(i) Section 22 of the Original Ordinance is hereby amended to read:

The Supplemental Reserve Fund shall be funded to the extent provided in the Sale Certificate, and if so funded, the provisions of this Section shall apply.

Moneys in the Supplemental Reserve Fund shall be used, if necessary, only to prevent a default in the payment of the principal of, premium if any, or interest on the Bonds, and the Supplemental Reserve Fund is hereby pledged to the payment of the Bonds. In the event the amounts credited to the Debt Service Fund are insufficient to pay the principal of, premium if any, or interest on the Bonds when due, the Town shall transfer from the Supplemental Reserve Fund to the appropriate account or accounts of the Debt Service Fund an amount which, when combined with moneys in the account or accounts, will be sufficient to make such payments when due.

The Supplemental Reserve Fund shall be maintained in the amount of the Required Supplemental Reserve until such time as the amount credited thereto, when combined with moneys in the Debt Service Fund and the Reserve Fund, will be sufficient to pay the principal of, premium if any, and interest on all of the Bonds, at which time such moneys may be applied for such purpose. If at any time the amount of the Supplemental Reserve Fund is less than the Required Supplemental Reserve, then the Town shall deposit to the Supplemental Reserve Fund from the Pledged Revenue, amounts sufficient to bring the amount credited to the Supplemental Reserve Fund to the Required Supplemental Reserve. Such deposits and payments shall be made as soon as possible after such use, but in accordance with and subject to the limitations of the Section hereof entitled "Street Improvement Sales Tax Capital Improvement Fund". For purposes of this Section, investments credited to the Supplemental Reserve Fund shall be valued on the basis of their current market value, as reasonably determined by the Paying Agent, which value shall be determined at least annually.

Moneys credited to the Supplemental Reserve Fund may be invested or deposited in securities or obligations which are Permitted Investments. The investment of moneys credited to the Supplemental Reserve Fund shall, however, be subject to the covenants and provisions of the Section hereof entitled "Disposition and Investment of Proceeds; Tax Covenants". Except to the extent otherwise required by such Section, so long as the amount of the Supplemental Reserve Fund is equal to the Required Supplemental Reserve, all interest income from the investment or reinvestment of moneys credited to the Supplemental Reserve Fund shall be credited to the Reserve Fund to the extent necessary to fund the Reserve Fund in the amount of the Required Reserve and thereafter shall be used for the payment of the principal of, premium if any, or interest on the Bonds as set forth in the Registrar and Paying Agent Agreement; provided that if the amount of the Supplemental Reserve Fund is less than the Required Supplemental Reserve, then such interest income shall be credited to the Supplemental Reserve Fund. The amount credited to the Supplemental Reserve Fund shall never exceed the amount of the Required Supplemental Reserve.

**Section 3. Authorization to Execute Registrar and Paying Agent Agreement.**

The Mayor and Town Clerk shall, and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of the Ordinance, including, but not limited to, the execution of the Registrar and Paying Agent Agreement in substantially the form presented to this meeting of the Board. In the event of the issuance of a Policy, the Mayor and Town Clerk are authorized to add to the Registrar and Paying Agent Agreement such representations, covenants, warranties, and

operative provisions as may be required in connection with the issuance of such Policy. The execution by the Mayor of the Town of the Registrar and Paying Agent Agreement shall be conclusive proof of the approval by the Town of the terms thereof.

**Section 4. Recording and Authentication.** Upon adoption hereof, this Amending Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

**Section 5. Emergency Declaration and Effective Date.** It is hereby found and determined by the Board of Trustees that: (i) the construction and acquisition of the Project is necessary in the public interest in order to properly and safely serve the Town and its residents; (ii) the long-term financing of the Project by the issuance of the Bonds pursuant to the Ordinance is necessary in order to reduce the costs of the Project. As a result of the foregoing, the Board of Trustees hereby declares that an emergency exists, and that this Ordinance is necessary to the immediate preservation of the public health and safety, all in accordance with §31-16-105, C.R.S.

**Section 6. Effective Date.** This Ordinance shall take effect upon adoption by the affirmative vote of three-fourths (3/4) of the members of the Board of Trustees pursuant to §31-16-105, C.R.S.

**PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE** on this 29<sup>th</sup> day of April, 2009.



**TOWN OF HUDSON, COLORADO**

Neal Pontius, Mayor

ATTESTED:

Linnette Barker, Town Clerk