

ORDINANCE NO. #545-Series 2020

AN ORDINANCE OF THE TOWN OF DOLORES, COLORADO AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE DOLORES STATE BANK AND THE TOWN OF DOLORES, COLORADO, ACTING BY AND THROUGH ITS WATER ENTERPRISE, THE ISSUANCE OF A LOAN IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$275,000 EVIDENCING THE SPECIAL AND LIMITED OBLIGATION OF THE TOWN, ACTING BY AND THROUGH SUCH ENTERPRISE, UNDER THE LOAN AGREEMENT

WHEREAS, The Town of Dolores, Colorado (the "Town") has previously acquired and since 2010 has operated and maintained its Town of Dolores Water/Sewer Enterprise (the "Water Enterprise"), consisting of a municipal water system for the collection, treatment and disbursement of water and wastewater, for the purpose of serving areas within and outside the limits of the Town (the "Water System") as authorized by law; and

WHEREAS, the Town is authorized pursuant to part 4 of article 35 of title 31 Colorado Revised Statutes ("C.R.S.") referred to herein as the "Act," to operate and maintain water facilities for the use of the Town and public and private consumers and users; and pursuant to part 1 of article 45.1 of title 37, C.R.S., to establish or maintain water activity enterprises for the purpose of conducting water activities, which term includes, without limitation, the diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange or discharge of water and includes the provision of wholesale or retail water services and the acquisition of water or water rights as well as the discharge and treatment of sewerage and wastewater; and

WHEREAS, the Board of Trustees (the "Board") of the Town is authorized, pursuant to Section 37-45.1-103, C.R.S., to operate the Water System as an enterprise of the Town within the meaning of Article X, Section 20 of the Colorado Constitution ("TABOR"), and the Board is authorized under such statute to act as the governing body of the Water Enterprise; and

WHEREAS, pursuant to Ordinance No. 499 Series 2010 (the "Water Enterprise Ordinance") adopted by the Board on April 26, 2010, the Town confirmed and designated (i) the Water Enterprise as an "enterprise" for the purposes of TABOR and (ii) the Board as the governing body of the Water Enterprise; and

WHEREAS, the Town has made an application to the Dolores State Bank (the "Bank") for a loan to finance the construction, replacement and improvement of water line crossings under state Highway 145 a/k/a Railroad Ave. (the "Project"); and

WHEREAS, the Bank has accepted such application and expressed its interest in making such loan, subject to certain conditions; and

WHEREAS, the Bank has offered the terms of a Loan Agreement or promissory note (the "Loan Agreement"), between the Authority and the Town, acting by and through the Water Enterprise; and

WHEREAS, the Loan Agreement provides for the issuance by the Town, acting by and through the Water Enterprise, of a loan not exceeding \$275,000 (the "Bond") evidencing the special and limited obligation of the Town, acting by and through the Water Enterprise, under the Loan Agreement; and

WHEREAS, The terms of the promissory note offered are a 15 year amortization at the rate of 4% for the first 10 years followed by an interest of 1% over New York Prime with no pre-payment penalty; and

WHEREAS, pursuant to Sections 37-45.1-103(4) and 37-45.1-104, C.R.S., the Board, as the governing body of the Water Enterprise is authorized to issue "bonds, notes or other obligations" in the name of the Water Enterprise and such obligations are permitted, under the Act and TABOR, to be issued without an election; and

WHEREAS, pursuant to Section 11-57-205, C.R.S., the Board has determined to delegate to the Mayor of the Town (the "Mayor") or the Town Manager the power to determine the final terms of the Loan Agreement and the Bond within the loan parameters set forth in Section 2 of this Ordinance; and

WHEREAS, the Board has determined and does hereby declare:

(a) In order to meet the present and future needs of the Town, it is necessary to maintain, replace and improve portions of the Water System by constructing the Project; and

(b) Financing the Project by entering into the Loan Agreement with the Bank and delivering the note to the Bank is to the best advantage of the Town and the Water Enterprise.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF DOLORES, COLORADO, AS THE GOVERNING BODY OF THE WATER ENTERPRISE:

Section 1. Approval of Forms of Loan Agreement and Note. The forms of the Loan Agreement and the Note and any changes thereto as may be necessary in the opinion of the Town Attorney and counsel for the Water Enterprise to effectuate the intentions of the parties or to comply with the provisions of applicable law are hereby approved.

Section 2. Delegation: Loan Parameters. The Board hereby delegates to the Mayor or the Town Manager the authority to determine the final terms of the Loan Agreement and the Bond within the loan parameters set forth in Section 2 of this Ordinance.

The Mayor, the Mayor Pro-Tern, or Town Manager are hereby authorized and directed to execute and deliver the Loan Agreement to the Bank in substantially the form filed with the Town Clerk prior to this meeting; provided that the Loan under the Loan Agreement and note reflect the following (the "Loan Parameters"):

- (a) the maximum principal amount of the Loan and the Bond shall not exceed **\$275,000;**
- (b) the maximum net effective interest on the Bond shall not exceed 4% per annum in the first ten years and New York Prime plus 1% in the next 5 years; and
- (c) the maximum term of the Loan shall not exceed 15 years.

Section 3. Payment of Bond from Revenues of Water System. The Town shall issue the Bond to evidence the obligations of the Town, acting by and through the Water Enterprise, under the Loan Agreement. The Bond shall be in the principal amount, mature on the date, bear interest payable at the rate and on the dates, and be prepayable at the option of the Town, acting by and through the Water Enterprise, on the dates and at the prices, in the form and secured in the manner provided in the Loan Agreement. The Bond shall be payable solely from the revenues of the Water Enterprise pledged therefor, which shall be derived from the operation of the Water System, and the Bond shall never constitute the debt, indebtedness or multiple fiscal year obligation of the Town or a charge against its general credit or taxing power.

The Bond shall constitute an irrevocable and first lien upon the Net Revenue, but not necessarily an exclusive first lien..

Section 4. Execution and Delivery of Bond. The Mayor and the Town Clerk are hereby authorized and directed to execute and deliver the Bond, in substantially the form filed with the Town Clerk prior to this meeting, to the Authority; provided that the Bond shall reflect the Loan Parameters.

Section 5. Ordinance Irrepealable. This Ordinance is, and shall constitute, a legislative measure of the Town, acting by and through the Water Enterprise, and after the Bond is issued,

this Ordinance shall constitute an irrevocable contract between the Town, acting by and through the Water Enterprise, and the Authority, and this Ordinance shall be and shall remain irrevocable until the Bond shall be fully paid, satisfied or discharged.

Section 6. Ratification and Approval. All action not inconsistent with the provisions of this Ordinance heretofore taken by the Town or its officers and otherwise directed toward the authorization of the undertaking and completion of the Project and the authorization of the Water Enterprise to have and in connection therewith to exercise the necessary powers is hereby ratified, approved and confirmed.

Section 7. Repealer. All ordinances, resolutions, bylaws, orders and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order or other instrument, or part thereof, heretofore repealed.

Section 8. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Ordinance.

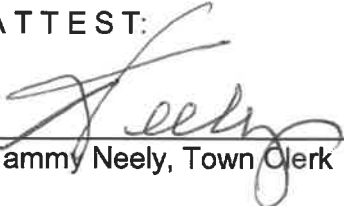
Section 9. Effective Date and Disposition. This Ordinance shall be in full force and effect from and after its enactment, and publication of the Ordinance, as provided by law.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED at a regular meeting of the Board of Trustees of the Town of Dolores, Colorado, held on August 10, 2020.

PASSED, APPROVED, AND ADOPTED ON THIS 10th DAY OF AUGUST, 2020.



Chad Wheelus, Mayor

ATTEST:


Tammy Neely, Town Clerk

