

ORDINANCE NO. 2018-2

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY (“CWRPDA”) IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,600,000; AUTHORIZING THE FORMS AND EXECUTION OF THE LOAN AGREEMENT AND GOVERNMENTAL AGENCY BOND TO EVIDENCE SUCH LOAN; AUTHORIZING IMPROVEMENTS TO THE TOWN’S WATER SYSTEM; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Town of Grand Lake (the “Town”), in the County of Grand and State of Colorado, is a political subdivision of the State of Colorado (the “State”), duly organized and existing as a statutory town under the laws of the State; and

WHEREAS, the members of the Board of Trustees of the Town (the “Board”) have been duly elected and qualified; and

WHEREAS, the Town owns and operates a municipal water system serving the inhabitants of the Town (the “System”); and

WHEREAS, the System presently qualifies as an “enterprise” for purposes of TABOR (the “Enterprise”); and

WHEREAS, the Board, acting by and through the Enterprise, has heretofore determined the need to demolish the current water storage tank and replace it with a new underground storage tank and associated yard piping and appurtenances (the “Project”), as further described and defined in the Loan Agreement (defined herein); and

WHEREAS, the Town has made application to the Colorado Water Resources and Power Development Authority (the “CWRPDA”), a body corporate and political subdivision of the State of Colorado, for a loan to finance all or a portion of the cost of the Project; and

WHEREAS, the Board has determined that in order to finance all or a portion of the cost of the Project, it is necessary and advisable and in the best interests of the Town (i) to enter into a loan agreement with CWRPDA (the “Loan Agreement”), pursuant to which CWRPDA shall loan the Town an amount of not to exceed \$1,600,000 at an interest rate not to exceed 2.00% (the “Loan”)

for such purposes, and (ii) to issue a governmental agency bond (the "Bond") to CWRPDA to evidence the Town's repayment obligations under the Loan Agreement; 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, the 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 2017, the System, as operated by the Enterprise, received grants from all Colorado state and local governments combined which were less than 10% of the annual revenue of the System; and

WHEREAS, the Board serves as the governing body of the Enterprise; and

WHEREAS, there have been presented to the Board the forms of the Loan Agreement and the Bond (collectively, the "Financing Documents"); and

WHEREAS, the Bond shall constitute a revenue obligation of the Town, payable from the Net Revenue of the System (as defined in the Loan Agreement); and

WHEREAS, the Town 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 Bond; and

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

WHEREAS, the forms of the Financing Documents are on file with the Town Clerk; and

WHEREAS, the Board desires to approve the form of the Financing Documents and other documents referenced therein, authorize the execution of the Loan Agreement, and authorize the execution and delivery of the Bond.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO:

Section 1. Determinations. The Board hereby finds and determines that the Enterprise constitutes an enterprise under TABOR.

Section 2. Approvals, Authorizations, and Amendments. The forms of the Financing Documents presented at this meeting are incorporated herein by reference and are hereby approved. The Town 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 Town (the "Mayor"). The Mayor and Town Clerk are hereby authorized and directed to execute the Financing Documents and to affix the seal of the Town 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, the Town Manager and the Town Clerk, or by other appropriate officers of the Town, shall be conclusive evidence of the approval by the Town of such instrument.

Section 3. 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 Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Town hereby elects to apply all of the provisions of the Supplemental Act to the Financing Documents.

Section 4. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Town hereby delegates to the Mayor, the Town Manager or the Town Clerk the independent authority to make the following determinations relating to and contained in the Loan Agreement and the Bond, subject to the restrictions contained in paragraph (b) of this Section 4:

- 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 are paid;
- and
- v. The existence and amount of reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 4 shall be subject to the following parameters and restrictions:

- i. The interest rate on the Loan shall be 2%;
- ii. The principal amount of the Loan shall not exceed \$1,600,000; and
- iii. The final maturity of the Loan shall not be later than December 31, 2048.

Section 5. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond, and the Loan Agreement shall contain recitals that the Bond 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 the Bond after its delivery for value.

Section 6. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Board, not inconsistent with the provisions of this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 7. Pledge of Net Revenue. The creation, perfection, enforcement, and priority of the pledge of Net Revenue to secure or pay the Bond and the Loan Agreement 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 Bond and the Loan Agreement 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 Agreement. 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 Town irrespective of whether such persons have notice of such liens.

Section 8. 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 issuance of the Bond.

Section 9. Limited Obligation; Special Obligation. The Loan Agreement and Bond are payable solely from the Net Revenue (as defined in the Loan Agreement), and the Loan Agreement and Bond do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

No elected or appointed officers or agents of the Town shall be subject to any pecuniary liability in connection with any agreement, covenant, or undertaking by the Town, or by them, contained in any document executed in connection with the authorization, execution, and delivery of the Financing Documents or this Ordinance or with respect to any action taken or omitted to be taken in good faith with reference thereto.

Section 10. Disposition and Investment of Loan Proceeds. The proceeds of the Loan shall be applied to pay the costs and expenses of acquiring, constructing, and equipping the Project, including costs related thereto and, to the extent permitted under federal tax laws, reimbursement to the Town for capital expenditures heretofore incurred and paid from Town 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 Loans. Neither CWRPDA nor any subsequent owner(s) of the Loan Agreement shall be responsible for the application or disposal by the Town or any of its officers of the funds derived from the Loan. In the event that all of the proceeds of the Loan 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 Loan and the interest thereon, as applicable.

Section 11. Town Representative. Pursuant to Exhibit B of the Loan Agreement, the Mayor and the Town Manager are hereby designated as the Authorized Officers (as defined in the Loan Agreement) for the purpose of performing any act or executing any document relating to the Loan, the Town, or the Financing Documents. A copy of this Ordinance shall be furnished to CWRPDA as evidence of such designation.

Section 12. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan is not less than the final maturity of the Loan.

Section 13. Direction to Take Authorizing Action. The appropriate officers of the Town and members of the Board 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 CWRPDA.

Section 14. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and members of the Board, not inconsistent with the provisions of

this Ordinance, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 15. Severability. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 16. Repealer. All orders, resolutions, bylaws, ordinances, or regulations of the Town, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency.

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

Section 18. Recordation. A true copy of this Ordinance, as adopted by the Board, shall be numbered and recorded on the official records of the Town and its adoption and publication shall be authenticated by the signatures of the Mayor and the Town Clerk, and by a certification of publication.

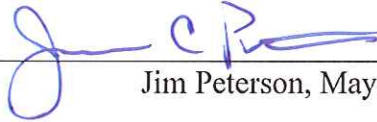
Section 19. Publication and Effective Date. This Ordinance shall be in full force and effect thirty (30) days after publication following final adoption.

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PASSED, APPROVED, ADOPTED AND ORDERED PUBLISHED IN FULL THIS 26th DAY OF FEBRUARY, 2018, BY A MAJORITY VOTE OF THE MEMBERS OF THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO.




TOWN OF GRAND LAKE, COLORADO



Jim Peterson, Mayor

ATTEST:



Alayna Carrell, Town Clerk