

ORDINANCE NO. 425

AN ORDINANCE OF THE CITY OF CREEDE, A COLORADO TOWN, APPROVING A LOAN BETWEEN THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$220,772.00 FOR THE PURPOSE OF FINANCING THE DESIGN AND ENGINEERING COSTS RELATING TO REHABILITATION TO CREEDE COLLECTION SYSTEM; AUTHORIZING THE FORM AND EXECUTION OF A LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND EVIDENCING THE LOAN; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the City of Creede, Colorado, a Colorado Town (the "Town"), is a statutory municipality organized and operating under the laws of the State of Colorado;

WHEREAS, the Town is the owner and operator of a public water and sewer system, which system has historically been operated by the Town with all revenues of the system accounted for in a separate fund known as the "Water and Sewer Fund" and such system is considered to be a government-owned business generally known as the "Water and Sewer Activity Enterprise" of the Town (the "Enterprise"); and

WHEREAS, the Enterprise has no authority to levy or collect or use in its operations taxes, whether sales taxes, use taxes or ad valorem taxes; and

WHEREAS, pursuant to Section 4-3-30 of the Municipal Code of the City of Creede (the "Code") and prior voter approval, the Town imposes a perpetual sales tax at the rate of 4.0% (the "Sales Tax"); and

WHEREAS, the Town is authorized by Title 29, Article 2, Part 1, Colorado Revised Statutes to issue revenue bonds payable from all or any portion of the Sales Tax, subject to obtaining voter approval of a ballot proposal authorizing such bonds; and

WHEREAS, Article X, Section 20 of the Colorado Constitution provides that voter approval in advance is required for any new tax or the creation of any direct or indirect debt or other multiple-fiscal year financial obligation whatsoever; and

WHEREAS, pursuant to an election held on November 3, 2020, the electors of the Town voted in favor of the following ballot issue (the "Ballot Issue"):

SHALL CITY OF CREEDE DEBT BE INCREASED BY UP TO \$1,000,000, WITH A MAXIMUM REPAYMENT COST OF \$1,525,000 (MAXIMUM PRINCIPAL AND INTEREST), REPAYABLE FROM REVENUE DERIVED FROM A PROPOSED SALES TAX INCREASE, FOR THE PURPOSE OF FINANCING:

- IMPROVEMENTS TO THE TOWN'S SEWER SYSTEM, INCLUDING SEWER LINES, MANHOLES AND THE TOWN'S WASTEWATER TREATMENT FACILITY

BY THE ISSUANCE AND PAYMENT OF A GOVERNMENTAL AGENCY BOND (REPRESENTING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY), WHICH BOND SHALL BEAR INTEREST AT A MAXIMUM NET EFFECTIVE INTEREST RATE NOT TO EXCEED 3.0% AND MATURE, BE SUBJECT TO REDEMPTION, WITH OR WITHOUT PREMIUM, AND BE ISSUED, DATED AND SOLD AT SUCH TIME OR TIMES, AT SUCH PRICES (AT, ABOVE OR BELOW PAR) AND IN SUCH MANNER AND CONTAINING SUCH TERMS, NOT INCONSISTENT HEREWITH, AS THE BOARD OF TRUSTEES OF THE TOWN MAY DETERMINE; AND SHALL THE PROCEEDS OF SUCH BONDS, INCLUDING INVESTMENT EARNINGS, BE COLLECTED AND SPENT AS A VOTER APPROVED REVENUE CHANGE WITHIN THE MEANING OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

WHEREAS, the returns of the above referenced election were duly canvassed and the results thereof duly declared; and

WHEREAS, the Town has heretofore determined to perform improvements to the Creede water and wastewater system, including but not limited to replacement of deteriorating collection piping, manholes and associated appurtenances (the "Project"). Said Project is to be operated and maintained as part of the wastewater system (the "System"); and

WHEREAS, the Board, has determined and hereby determines that it is in the best interests of the Town, and the residents thereof, to enter into a loan agreement (the "Loan Agreement") with the Colorado Water Resource and Power Development Authority (the "CWRPDA") pursuant to which the CWRPDA will loan to the Town, an amount not to exceed \$220,772.00, to finance, design and engineering expenses related to the Project which will be forgiven in accordance with the terms of the Loan Agreement; and

WHEREAS, none of the members of the Board have any potential conflicting interest in connection with the authorization, issuance, or sale of the bond, or the use of the proceeds thereof; and

WHEREAS, the Board desires to authorize the issuance and sale of the bond and the execution of the foregoing documents.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO THAT:

Section 1. Definitions. As used herein, the capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise, all other capitalized terms shall have the respective meanings set forth in the Loan Agreement.

Bond: the Governmental Agency Bond, dated as of the date of issuance, issued in the aggregate principal amount of not to exceed \$220,772.00, as authorized by this Ordinance.

C.R.S.: the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

Ordinance or Bond Ordinance: this Ordinance of the Board of Trustees of the City of

Creede, Colorado.

Owner: the owner of the Bond.

System: the water and sewer system of the Town, as more particularly described in the Loan Agreement.

Section 2. Approval of Loan Agreement. That Loan Agreement in substantially the form presented herewith between the Colorado Water Resources and Power Development Authority and the Town and evidencing a loan from the Colorado Water Resources and Power Development Authority to the Town to finance, design and engineering expenses related to the Project is hereby approved and the Town is authorized to undertake and complete the Project.

Section 3. Authorization of Bond. In accordance with the Constitution, Title 29, Article 2, Part 1, C.R.S.; Title 11, Article 57, Part 2, C.R.S.; Title 37, Article 45.1, C.R.S.; and all other laws of the State of Colorado and pursuant to the Loan Agreement, there shall be issued the "Governmental Agency Bond" of the Town, in the aggregate principal amount of not to exceed \$220,772.00, for the purpose of paying the costs of the Project (the "Project Costs"). The accomplishment of the project is hereby authorized, approved, and ordered.

Section 4. Election to Apply 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 may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply all of the provisions of the Supplemental Act to the Loan Agreement and the Bond.

Section 5. Special Obligations. The Town hereby pledges for the payment of the principal of, premium, if any, and interest on the Bond in accordance with the provisions of the Loan Agreement, and grants a first lien (but not necessarily an exclusive first lien) for such purpose on the Pledged Property described in the Loan Agreement, which Pledged Property shall include the Net Revenues (as defined in the Loan Agreement) of the System and other legally available moneys of the Town including that portion of the Sales Tax equal to a 2% sales tax. The Bond is a special, limited obligation of the Town payable solely from the Pledged Property and secured solely by the sources provided in this Ordinance. The Bond shall not constitute a debt of the Town within the meaning of any constitutional or statutory limitation.

Section 6. Bond Details. The Bond shall be in the principal amount of not to exceed \$220,772.00, which amount shall be forgiven in accordance with the Loan Agreement. The Town shall execute and deliver to the Authority the Bond pursuant to the Loan Agreement. The Bond shall be substantially in the form set forth in the Loan Agreement.

Section 7. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Bond shall contain a recital that it is issued pursuant to 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 8. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a Board member, or any officer or agent of the Town or Enterprise

acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Bond. Such recourse shall not be available either directly or indirectly through the Board, the Town or the Enterprise, or otherwise whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bond and as part of the consideration of its sale or purchase, any person purchasing or selling such Bond specifically waives any such recourse.

Section 9. Form and Execution of the Bond. The Bond shall be executed with a facsimile or manual signature of the Mayor of the Town, sealed with a facsimile or manual impression of the seal of the Town, and attested by the facsimile or manual signature of the City Clerk of the Town. Should any officer whose facsimile or manual signature appear on the Bond cease to be such officer before delivery of the Bond to a purchase, such facsimile or manual signature shall nevertheless be valid and sufficient for all purposes.

Section 10. Disposition and Investment of Proceeds. The Bond shall be issued and sold for the purpose of paying the Project Costs. The Owner shall not be responsible for the application or disposal by the Town or any of its officers of the funds derived from the sale thereof.

All or any portion of the Bond Proceeds may be temporarily invested or reinvested, pending such use, in securities or obligations which are lawful investments.

Section 11. Authorization to Execute Documents. The Mayor and City Manager shall and they are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance, including, but not limited to, the execution of such certificates and affidavits as may be reasonably required. The execution by the Mayor of the Town of any document authorized herein shall be conclusive proof of the approval by the Town of the terms thereof.

Section 12. Authorized Officer. Jeffrey Larson, Mayor of the City of Creede, and Louis Fineberg, City Manager, are hereby authorized to act as the "Authorized Officer" under the Loan Agreement (as such term is therein defined), and to furnish their names to the Authority in accordance with the Loan Agreement.

Section 13. Costs and Expenses. All costs and expenses incurred in connection with the issuance and payment of the Bond shall be paid either from the proceeds of the Bond or from legally available moneys of the Town, or from a combination thereof.

Section 14. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the Town and the members of the Board, not inconsistent with the provisions of this Ordinance, relating to the authorization, sale, issuance, and delivery of the Bond are hereby ratified, approved, and confirmed.

Section 15. Ordinance Irrepealable. After the Bond has been issued, this Ordinance shall constitute a contract between the Owner and the Town, and shall be and remain irrepealable until the Bond has been fully satisfied, and discharged, as herein provided.

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

such inconsistency or conflict.

Section 17. 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 18. Emergency Declaration; Effective Date. The timing for the commencement of the Project and having funds available necessitate that this Ordinance be effective immediately. Therefore, the Board hereby finds and determines that this Ordinance is necessary to the immediate preservation of public health and safety and shall be in full force and effect immediately upon passage by the Board.

PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE and ordered published on March 16th, 2021.

(SEAL)



Mayor



City Clerk