

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE TOWN OF SOUTH FORK, COLORADO, ACTING BY AND THROUGH ITS ENTERPRISE KNOWN AS THE TOWN OF SOUTH FORK WATER AUTHORITY, AUTHORIZING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD AND THE EXECUTION OF A PROMISSORY NOTE TO EVIDENCE THE LOAN; PROVIDING FOR THE PAYMENT OF THE NOTE FROM THE OPERATION OF THE ENTERPRISE; AND DECLARING AN EMERGENCY IN CONNECTION THEREWITH.

WHEREAS, the Town of South Fork, Colorado, is a municipal corporation duly organized and operating as a statutory town under the Constitution and laws of the State of Colorado (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

WHEREAS, on September 13, 2007 the Board of Trustees of the Town adopted Ordinance 07-04 (Creating a Municipal Water Authority as an Enterprise) within the meaning of Article X, Section 20 of the Colorado Constitution, which Ordinance was codified as Article 1 under Chapter 13 of the South Fork Municipal Code; and

WHEREAS, on August 27, 2019 the Board of Trustees adopted Ordinance No. 2019-03 creating a municipal water system which is operated on a self-supporting basis by the Town with all revenues of the System accounted for in separate proprietary fund and the System is considered to be a government-owned business and an “enterprise” of the Town; and

WHEREAS, pursuant to Ordinance No. 2019-03, the Water Activity Enterprise is authorized to issue bonds, notes, or other obligations payable from the revenues derived or to be derived from the System, in accordance with the Water Activity Law; and

WHEREAS, the Board of Trustees has determined, for the benefit of the Town and its inhabitants, that it is necessary to provide for the purchase of a certificate representing 22 acre-feet of augmentation water from the San Luis Valley Water Conservancy District, the funding of which is to be paid from an approved loan from the Colorado Water Conservation Board; and

WHEREAS, the Board of Trustees of the Town has received the Loan Contract (identified as Contract No. CT2020-3398) from the Colorado Water Conservation Board, an agency of the State, for a loan in an amount up to \$444,400, at an interest rate of 1.95% per annum, for a repayment term of thirty (30) years; and

WHEREAS, the Town’s repayment obligations under the Loan Contract will be evidenced by promissory note to be issued by the Town to the CWCB, which Promissory Note shall constitute a special revenue obligation of the Town which is to be paid from System Net Revenues and, after consideration, the Board of Trustees has determined that the execution of the Loan Contract and the issuance of the Promissory Note to the CWCB is to the best advantage of the Town; and

WHEREAS, voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution for the execution of the Loan Contract or the issuance of the Promissory Note; and

WHEREAS, the Town has no outstanding multi-year obligations which are secured by the Net Revenue of the System pledged to repayment of the Promissory Note; and

WHEREAS, the form of the Loan Contract and related appendices have been reviewed by the Town staff and made available to the Board of Trustees; and

WHEREAS, the Board of Trustees desires to authorize the execution of the Loan Contract, the issuance and delivery of the Promissory Note, and the execution of any additional documentation which may be related to the financing; therefore,

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SOUTH FORK, COLORADO:

Section 1. Definitions. The following terms shall have the following meanings as used in this Ordinance:

“Board of Trustees” means the Board of Trustees of the Town acting as the governing body of the Water Activity Enterprise.

“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.

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

“CWCB” means the Department of Natural Resources, Colorado Water Conservation Board, an executive branch agency of the State.

“Enabling Law” means the Water Activity Law, the Supplemental Public Securities Act, the and all other laws of the State establishing the power of the Town to complete the financing contemplated by this Ordinance.

“Event of Default” means any one or more of the events set forth in the Section hereof entitled “Events of Default and Remedies.”

“Future Parity Obligations” means one or more series of additional bonds, notes, interim securities or other obligations issued by the Town having a lien on the Net Revenue which is on a parity with the lien of the Promissory Note.

“Gross Revenue” means all fees (including but not limited to user fees and plant investment fees), charges and revenues directly or indirectly derived by the Town for the services furnished by, or use of, the System, or any part thereof, including all income attributable to any future dispositions of property or rights or related contracts, settlements, or judgments held or obtained

in connection with the System or its operations; provided however, that there shall be excluded from Gross Revenue (a) moneys borrowed and used for providing Capital Improvements; (b) 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 for the purpose of defeasing the same; and (c) 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.

“Loan Contract” means the contract, designated Contract No. CT2020-3398, as may be amended from time to time, by and between the State for the use and benefit of the CWCB and the Town.

“Net Revenue” means Gross Revenue after deducting Operation and Maintenance Expenses.

“Note Account” means the “2020 CWCB Note Account,” established by the provisions hereof for the purpose of paying the principal of and interest on the Promissory Note, including the interest accruing under the Loan Contract prior to the accrual of interest under the Promissory Note.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining, and repairing the System, including without limitation legal and overhead expenses of the Town directly related to the administration of the System; provided however, that there shall be excluded from Operation and Maintenance Expenses any allowance or transfers for depreciation, payments in lieu of taxes or franchise fees, legal liabilities not based on contract, expenses incurred in connection with Capital Improvements, payments due in connection with any bonds or other obligations issued to provide Capital Improvements, and charges for the accumulation of reserves.

“Ordinance” means this Ordinance which authorizes the execution of the Loan Contract and the issuance of the Promissory Note, including any amendments properly made hereto.

“Payment Date” means the date established pursuant to the Loan Contract for the annual payment of the principal of and interest on the Promissory Note, as set forth therein.

“Project” means the System improvements identified in the Loan Contract, which generally consist of the purchase of a certificate representing 22 acre-feet of augmentation water from the San Luis Valley Water Conservancy District, and such other improvements as may be later approved by the Board of Trustees.

“Project Account” means the “2020 CWCB Note Project Account,” established by the provisions hereof for the purpose of paying the Project Costs.

“Project Costs” means the Town’s costs properly attributable to the Project and permissible as “Eligible Expenses” as set forth in Section 9 of Appendix 1 of the Loan Contract.

“Promissory Note” means the Promissory Note evidencing the Town’s repayment obligation from the date of substantial completion of the Project, as set forth in Appendix 3 to the Loan Contract.

“Pro Rata Portion” means the dollar amount derived by dividing the amount of principal and interest to come due on the next Payment Date by the number of monthly credits required to be made prior to such Payment Date.

“Required Reserve Amount” means the amount equal to an annual loan payment as specified for the Required Reserve Amount under Section 11(D) of the Loan Contract.

“Reserve Account” means a special account of the Town designated as the “2020 CWCB Note Reserve Account,” created by this Ordinance for the purpose of paying, if necessary, the principal of and interest on the Promissory Note.

“State” means the State of Colorado.

“Subordinate Lien Obligations” means one or more series of additional bonds, notes, interim securities or other obligations issued by the Town having a lien on the Net Revenue which is subordinate or junior to the lien of the Promissory Note.

“Supplemental Public Securities Act” means Part 2 of Article 57 of Title 11, C.R.S.

“System” means all of the Town’s water facilities and properties, now owned or hereafter acquired, as defined in Ordinance No. 2019-03 of the Town, as the same may be later amended or supplemented by resolution of the Board as provided therein.

“Town” means the Town of South Fork, Colorado.

“Water Activity Enterprise” means the Town of South Fork Water Enterprise, Town of South Fork Water Authority, which has been established pursuant to Ordinance 07-04 and the provisions of the Water Activity Law, and the operation of which is accounted for in the Water Enterprise Fund.

“Water Enterprise Fund” means the Town’s Water Enterprise Fund, a propriety fund of the Town which is used to account for the revenues and expenditures of the Water Activity Enterprise, and any additional funds established hereafter for such purpose.

“Water Activity Law” means Title 37, Article 45.1, C.R.S.

Section 2. Approval of Loan Agreement and Authorization of Promissory Note. Pursuant to and in accordance with the State Constitution and the Enabling Law, there is hereby authorized and approved the execution of the Loan Contract. There shall be issued by the Town, acting and through its Water Activity Enterprise, the Promissory Note in the aggregate principal amount not to exceed \$444,400, for the purpose of paying the Project Costs and other costs in connection with the Promissory Note. All covenants, statements, representations and agreements contained in the Loan Contract and the Promissory Note are hereby approved and adopted as the covenants, statements, representations and agreements of the Town. The accomplishment of the

Project is hereby authorized, approved and ordered and it is hereby determined that the Promissory Note matures at such time not exceeding the estimated life of the Project.

Section 3. Form of Promissory Note. The Promissory Note shall be in substantially the form set forth in Appendix 3 to the Loan Contract with such changes thereto, not inconsistent herewith, as may be necessary or desirable and approved by the officials of the Town executing the same (whose manual or facsimile signatures thereon shall constitute conclusive evidence of such approval). The term of repayment of the Promissory Note shall not exceed thirty (30) years and the interest rate authorized for the Promissory Note shall be 1.95% per annum (with a maximum net effective interest rate that shall not exceed 2.95% per annum), exclusive of any late charges of 5.0% of the annual payment due which may be imposed pursuant to the terms of the Loan Contract for any late payments and a default rate of 7.0%.

Section 4. Fund and Accounts.

(a) ***Water Enterprise Fund.*** There is hereby reaffirmed the Water Enterprise Fund and there is hereby established the following accounts of the Water Enterprise Fund, which shall be maintained by the Town in accordance with the provisions of this Ordinance: the Project Account; the Note Account; and the Reserve Account. The Town shall keep proper books of record and accounts showing complete and correct entries of all transactions relating to the funds and accounts referred to herein and in such manner that the Gross Revenue and the Net Revenue may at all times be readily and accurately determined.

(b) ***Project Account.*** All moneys received from CWCB under the Loan Contract shall be credited to the Project Account shall be applied solely to the payment of the Project Costs. Upon the determination of the Board that all Project Costs have been paid or are determinable, any balance remaining in the Project Account (less any amounts necessary to pay Project Costs not then due and owing) shall be applied solely in accordance with the terms of the Loan Contract, including without limitation Section 8 thereof.

(c) ***Note Account.*** Moneys in the Note Account shall be used solely for the purpose of paying the interest on and principal of the Promissory Note. Upon the determination by CWCB that the Project is substantially complete the Town shall, or before the last day of each month, credit to the Note Account from the Net Revenue an amount equal to the Pro Rata Portion of the interest and principal to come due on the Promissory Note on the next succeeding Payment Date. In the event of insufficient Net Revenue, moneys shall be first applied to the payment of interest. Moneys in the Project Account also may be used to pay the interest accruing under Section 7 of the Loan Contract prior to the completion of the Project or, at the discretion of CWCB, such interest may be rolled into the total loan amount due as provided in Section 7.

(d) ***Reserve Account.***

(i) ***Use of Moneys in the Reserve Account.*** Moneys in the Reserve Account shall be used, if necessary, only to prevent a default in the payment of the

principal of or interest on the Promissory Note on any Payment Date and the Reserve Account is hereby pledged to the payment of the Promissory Note. In the event the amounts credited to the Note Account are insufficient to pay the principal of or interest on Promissory Note when due, the Town shall transfer from the Reserve Account to the Note Account an amount which, when combined with moneys in the Note Account will be sufficient to make such payments when due.

(ii) *Funding and Maintenance of Required Reserve Amount.* Commencing with the first Payment Date, the Town shall annually credit an amount equal to one-tenth of the Required Reserve Amount on or before each Payment Date until such time as the amount credited thereto is equal to the Required Reserve Amount (i.e., the Reserve Account is to be fully funded within ten years from substantial completion of the Project). In the event that moneys from the Reserve Account are transferred to the Note Account as provided in paragraph (i) of this Subsection, such amount shall be replenished within 90 days from the date of such transfer. Moneys credited to the Reserve Account may be invested or deposited in lawful securities or obligations and all interest income from the investment or reinvestment of moneys credited to the Reserve Account shall be credited to the Reserve Account until the amount therein is equal to the Required Reserve Amount, at which time as the balance of the Reserve Account shall be maintained in the Required Reserve Amount and such interest income shall be credited to the Note Account.

(e) *Audits.* At least once a year in the time and manner provided by law, the Town will cause an audit to be performed of the records relating to the revenues and expenditures of the System. Such audit may be made part of and included within the general audit of the Town and made at the same time as the general audit. In addition, at least once a year in the time and manner provided by law, the Town will cause a budget to be prepared and adopted. Copies of the budget and the audit will be filed and recorded in the places, time and manner provided by law. The Town covenants to submit a copy of the annual audit to the CWCBC as provided in provision 8(F) of the Loan Contract.

Section 5. Security for Payment of the Promissory Note; Flow of Funds.

(a) *Pledge of Net Revenues.* The Promissory Note shall constitute an irrevocable and first lien upon the Net Revenue, but not necessarily an exclusive first lien. The Net Revenue is hereby pledged to the payment of the Promissory Note. The creation, perfection, enforcement and priority of the pledge of revenues to secure or pay the Promissory Note shall be governed by Section 11-57-208, C.R.S. and this Ordinance. The Net Revenue shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act.

(b) *Flow of Funds.* The Town shall credit to the Water Enterprise Fund all Gross Revenue immediately upon receipt. The Town shall pay from the Water Enterprise Fund all Operation and Maintenance Expenses as they become due and payable. After such payment or the allocation of Gross Revenue to such payment, the Town shall apply the Net Revenue in the following order of priority:

FIRST, to the credit of the Note Account, the amounts required by the Section hereof entitled "Fund and Accounts - Note Account", and to the credit of any other account or subaccount which has been or will be established for the payment of interest on and principal of any Future Parity Obligations;

SECOND, to the credit of the Reserve Account, the amounts required by the Section hereof entitled "Fund and Accounts - Reserve Account" and to the credit of any other account or subaccount which has been or will be established as a reserve account for the payment the any Future Parity Obligations;

THIRD, to the credit of any other fund or account hereafter established for the payment of Subordinate Lien Obligations, including any sinking fund, reserve fund or similar fund or account established therefor, the amounts required by the resolution or other enactment authorizing issuance of the Subordinate Lien Obligations; and

FOURTH, to the credit of any other fund or account as may be designated by the Town, to be used for any lawful purpose, any moneys remaining in the Water Enterprise Fund after the payments and accumulations set forth in FIRST through THIRD hereof.

(c) ***Promissory Note Does Not Constitute a Debt.*** The Promissory Note, together with the interest thereon, shall be payable only out of: (i) the Note Account; or (ii) if necessary, the Reserve Account. The CWCB may not look to the general fund of the Town for the payment of the principal of and interest on the Promissory Note, and the Loan Contract and the Promissory Note shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be general obligations of the Town.

Section 6. Additional Obligations. No bonds, notes, interim securities or other obligations shall be issued payable from the Net Revenue and having a lien thereon which is superior to the lien of the Promissory Note. The Town may issue Future Parity Obligations only upon compliance with the requirements of provision 11(E) of the Loan Contract. So long as no Event of Default shall have occurred and be continuing, nothing herein shall prevent the Town from issuing Subordinate Lien Obligations.

Section 7. Additional Covenants and Agreements.

(a) ***Maintenance of Rates and Coverage.*** The Town hereby covenants that it will establish, maintain, enforce and collect rates, fees and charges for services furnished by or the use of the System as required in provision 11(C) of the Loan Contract. In the event that the Gross Revenue at any time is not sufficient to make the payments required by said provision, the Town covenants to promptly increase such rates, fees and charges to an extent which will ensure compliance with said covenant.

(b) ***Alienation of Property.*** The Town will not sell or alienate any of the property constituting any part or all of the System in any manner or to any extent as might reduce the security provided for the payment of the Promissory Note, but the Town may

sell any portion of such property which shall have been replaced by other similar property of at least equal value, or which shall cease to be necessary for the efficient operation of the System; provided however, that the proceeds of any such sale of property shall be included as part of the Gross Revenue.

(c) ***Enterprise Status.*** The Town has established, and covenants to continue to maintain, the System as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution and Ordinance 07-04 of the Town; provided, however, after calendar year 2020 the Town may disqualify either the System as an “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made pursuant to this Ordinance. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made pursuant to this Ordinance are materially, adversely affected, the Town covenants to immediately take all actions necessary to (i) qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made herein.

(d) ***Findings of the Board of Trustees.*** The Board of Trustees, having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants with the CWCB that:

(i) The Water Activity Enterprise has been duly established and is operating during the current calendar year as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution;

(ii) the Board of Trustees elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Loan Contract and to the issuance of the Promissory Note; and

(iii) the execution of the Loan Contract and the issuance and delivery of the Promissory Note, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Constitution and the Enabling Law, and all conditions and limitations of the Enabling Law and other applicable law relating to the execution of the Loan Contract and the issuance and delivery of the Promissory Note have been satisfied.

Section 8. Events of Default and Remedies.

(a) ***Events of Default.*** The occurrence or existence of any one or more of the following events shall be an Event of Default hereunder:

(i) payment of the principal of or interest on the Promissory Note is not made by the Town when due; or

(ii) the Town defaults in the performance of any other of its covenants in this Ordinance, and such default continues for thirty days after written notice from CWCB specifying such default.

(b) ***Remedies for Events of Default.*** Upon the occurrence and continuance of an Event of Default, the CWCB may protect and enforce its rights by proper legal or equitable remedy deemed most effectual including mandamus, specific performance of any covenants, injunctive relief or requiring the Board of Trustees to act as if it were the trustee of an express trust, or any combination of such remedies.

Section 9. Approval of Documents. The Mayor (or in the Mayor's absence the Mayor Pro Tem) and Town Clerk 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 the Loan Contract, the Promissory Note, the Security Agreement (as set forth in Appendix 5 to the Loan Contract) and such additional agreements, 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 10. Amendment of Ordinance. This Ordinance may be amended only with the prior written consent of CWCB.

Section 11. Limitation of Actions. In accordance with Section 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization and execution of the Loan Contract or issuance and delivery of the Promissory Note more than thirty days after the date of passage of this Ordinance.

Section 12. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board of Trustees or by the officers and employees of the Town directed toward the issuance of the Promissory Note for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 13. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 14. Ordinance Irrepealable. After the Promissory Note has been issued, this Ordinance shall constitute a contract between CWCB and the Town, and shall be and remain irrepealable until the Promissory Note and the interest accruing thereon shall have been fully paid, satisfied and discharged, as herein provided.

Section 15. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 16. Repealer. All orders, bylaws, resolutions and 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. Emergency Declaration; Effective Date. THE TOWN BOARD OF TRUSTEES FINDS THAT THIS ORDINANCE IS NECESSARY TO THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY DUE TO THE NEED TO COMPLETE THE ACQUISITION OF THE PROJECT AND SHALL TAKE EFFECT AND BE ENFORCED IMMEDIATELY UPON THE FINAL PASSAGE OF THIS ORDINANCE.

INTRODUCED AS AN EMERGENCY ORDINANCE AT A SPECIAL MEETING OF THE BOARD OF TRUSTEES OF THE TOWN OF SOUTH FORK, COLORADO, ON THE ___ DAY OF APRIL 2020, AND PASSED BY A VOTE OF

<u>4</u> FOR,	<u>0</u> AGAINST,	<u>0</u> ABSTENTION(S),	<u>3</u> EXCUSED
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DONE AND SIGNED this 3rd day of April, 2020.

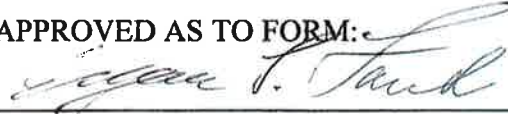
[SEAL]


Rodney Reed, Mayor


Dan Hicks, Town Administrator



APPROVED AS TO FORM:


Eugene L. Farish, Town Attorney

CERTIFICATION

I HEREBY CERTIFY that this Ordinance was approved and adopted at the regular board of the Board of Trustees of the Town of South Fork, Colorado on the 3 day of April, 2020, and published in full in *The South Fork Times*, a legal newspaper for the Town of South Fork on, APRIL 9, 2020.


Dan Hicks, Town Administrator

REINTRODUCED AT A SPECIAL MEETING OF THE BOARD OF TRUSTEES OF THE
TOWN OF SOUTH FORK, COLORADO, ON THE 12TH DAY OF MAY 2020,
REAFFIRMED AS AN EMERGENCY ORDINANCE AND PASSED BY A VOTE OF

7 FOR, 0 AGAINST, 0 ABSTENTION(S), 0 EXCUSED

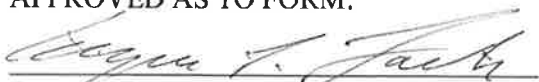
DONE AND SIGNED this 12th day of May, 2020.

[SEAL]


Rodney Reed, Mayor



Dan Hicks, Town Administrator

APPROVED AS TO FORM:


Eugene L. Farish, Town Attorney

CERTIFICATION

I HEREBY CERTIFY that this Ordinance was approved and adopted at the special board of the
Board of Trustees of the Town of South Fork, Colorado on the 12th day of May, 2020.


Dan Hicks, Town Administrator

