

ORDINANCE NO. 315

AN ORDINANCE AUTHORIZING THE ASSUMPTION BY THE TOWN OF THE OBLIGATIONS OF THE IGNACIO SANITATION DISTRICT UNDER SUCH DISTRICT'S SEWER REVENUE BONDS, SERIES 1998, CURRENTLY OUTSTANDING IN THE AGGREGATE PRINCIPAL AMOUNT OF \$319,400; AUTHORIZING THE PAYMENT OF SUCH BONDS SOLELY FROM THE NET REVENUE DERIVED FROM THE OPERATION OF THE TOWN'S SEWER SYSTEM; CONFIRMING THE SEWER SYSTEM AS AN ENTERPRISE UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSUMPTION AGREEMENT BETWEEN THE TOWN AND THE OWNER OF SUCH BONDS; RATIFYING PAST ACTIONS IN CONNECTION WITH THE ACQUISITION OF THE DISTRICT'S SEWER SYSTEM AND THE ASSUMPTION OF SUCH BONDS; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Ignacio, Colorado (the "Town"), is a municipal corporation duly organized and existing as a statutory town pursuant to the constitution and laws of the State of Colorado (the "State"); and

WHEREAS, Ignacio Sanitation District, La Plata County, Colorado (the "District"), is a quasi-municipal corporation duly organized and existing as a sanitation district under the constitution and laws of the State; and

WHEREAS, the District owned and operated a sanitary sewer system (the "System") as an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution ("TABOR"); and

WHEREAS, pursuant to a resolution adopted by the District on November 18, 1998 (the "Bond Resolution"), the District has heretofore issued its Sewer Revenue Bonds, Series 1998 (the "Bonds"), to the USDA Rural Utilities Service (the "RUS"), which Bonds are currently outstanding in the aggregate principal amount of \$319,400; and

WHEREAS, the Bonds are special revenue obligations of the District, payable solely from the "Net Revenue" (as defined in the Bond Resolution) derived from the operation of the System; and

WHEREAS, the District has filed dissolution documents with the La Plata County District Court and proposes to dissolve itself as a governmental entity; and

WHEREAS, pursuant to that certain Plan for Dissolution Agreement between the District and the Town (the "Dissolution Agreement") filed as part of such dissolution proceedings, the District and the Town desire to provide for, *inter alia*: (1) the acquisition by the Town of the System and all other assets and funds of the District; and (2) the assumption by the

Town of the District's obligations under the Bonds and the Bond Resolution; and

WHEREAS, as of the date hereof all of the assets and properties of the System have heretofore been transferred to the Town; and

WHEREAS, the Town and RUS desire to provide for: (1) the assumption by the Town of the District's obligations under the Bonds and the Bond Resolution; and (2) the taking of such other actions as may be necessary or appropriate in connection with the foregoing acquisition and assumption, including without limitation the execution of agreements, certificates, and other documents; and

WHEREAS, the Town is authorized by Title 31, Article 35, Part 4, C.R.S., without an election, to acquire, operate, and maintain sewerage facilities for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the Town; and to prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from such sewerage facilities; and in anticipation of the collection of the revenues of such sewerage facilities, to issue revenue bonds by action of the Board to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of the sewerage facilities; and

WHEREAS, in addition, the Town is authorized by Title 37, Article 45.1, Part 1, C.R.S. (the "Enterprise Act"), without an election, to establish "water activity enterprises" under TABOR, and to issue revenue bonds as provided therein; and

WHEREAS, the Board hereby finds and determines that the assumption of the District's obligations under the Bonds is in the best interests of the Town and its citizens; and

WHEREAS, the Town's obligations under the Bonds shall be a revenue obligation of the Town, payable solely from the Net Revenue derived from the operation of the System, and shall not constitute a debt or indebtedness of the Town; and

WHEREAS, the Board hereby determines that the System is and shall continue to be operated as an "enterprise" within the meaning of TABOR and as a "water activity enterprise" within the meaning of the Enterprise Act; and

WHEREAS, there has been submitted to this meeting of the Board that certain Assumption Agreement (the "Assumption Agreement") between the Town and RUS as the owner of all of the Bonds, and such Assumption Agreement is on file with the Town Clerk; and

WHEREAS, the Board desires to approve the form of the Assumption Agreement and other documents referenced therein, and authorize the execution and delivery of the same; and

WHEREAS, none of the members of the Board have any financial interest or other potential conflicting interests in connection with the authorization or execution of the Assumption

Agreement, the acquisition of the System, the assumption of the District's obligations under the Bonds and the Bond Resolution, or the other matters authorized herein;

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

Section 1. Approvals.

(a) The form of the Assumption Agreement as on file with the Town Clerk is hereby approved, and the officers of the Town are hereby authorized and directed to execute, seal, and deliver the Assumption Agreement in substantially such form; provided that the Assumption Agreement may be completed, amended, revised, or otherwise changed as may be necessary or appropriate to accomplish the purposes thereof, so long as such changes as are not inconsistent with the provisions of this Ordinance.

(b) The Mayor and the Town Clerk are further hereby authorized and directed to execute and authenticate such other documents, instruments, or certificates as are deemed necessary or desirable in connection with the Town's performance of its obligations under the Assumption Agreement and the documents referenced therein.

Section 2. Election to Apply Supplemental Act. Title 11, Article 57, Part 2, Colorado Revised Statutes (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 sections of the Supplemental Act to this Ordinance, the Bonds, and the Assumption Agreement.

Section 3. Confirmation of Enterprise Status. It is hereby determined by the Board that the System is and shall continue to be operated as an "enterprise" within the meaning of TABOR and as a "water activity enterprise" within the meaning of the Enterprise Act. Specifically, but not by way of limitation, it is hereby covenanted and agreed that: (i) to the extent necessary to maintain the validity and enforceability of the Bonds, the System shall not receive 10% or more of its annual revenue in grants from all Colorado state and local governments combined; and (ii) in no event shall the System or the Enterprise have any ability to levy taxes to pay the Bonds or any other expenses of the Enterprise or the System.

Section 4. Pledge of Revenues; Lien. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Bonds as provided herein shall be governed by §11-57-208, C.R.S., and this Ordinance. The amounts pledged to the payment of the Bonds shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge and the obligation to perform the contractual provisions made in this Ordinance or other instrument shall have priority over any or all other obligations and liabilities of the Town, subject to any prior pledges and liens. 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 5. Limitation of Actions. Pursuant to §11-57-212, C.R.S., no legal

or equitable action brought with respect to any legislative acts or proceedings in connection with the Bonds shall be commenced more than thirty days after the adoption of this Ordinance.

Section 6. Limited Obligation. The Bonds are payable solely from the Net Revenue, and do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 7. No Recourse against Officers and Agents. Pursuant to §11-57-209, C.R.S., if a member of the Board, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Bonds. Such recourse shall not be available either directly or indirectly through the Board or the Town, 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 a part of the consideration of the assumption by the Town of the obligations under the Bonds, any person purchasing or selling the Bonds specifically waives any such recourse.

Section 8. Estimated Life of Improvements. It is hereby determined that the estimated life of the System is not less than the final maturity for the Bonds.

Section 9. Direction to Take Authorizing Action. The Mayor, the Town Clerk, and other appropriate officers of the Town 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 the execution and delivery of such certificates and affidavits as may reasonably be required by RUS. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the Town of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 10. Ratification and Approval of Prior Actions. All actions heretofore taken by the Mayor, any member of the Board, the Town Clerk, and the other officers and employees of the Town, not inconsistent with the provisions of this Ordinance, relating to the acquisition of the System and the assumption of the obligations under the Bonds, or actions to be taken in respect thereof, are hereby ratified, approved, and confirmed.

Section 11. 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 12. 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. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order or other instrument, or part thereof, heretofore repealed. Neither this repealer nor any other provision of this Ordinance shall be construed to adversely affect or impair any contract entered into by the Town or any enterprise thereof prior to the effective date of this Ordinance.

Section 13. Ordinance Irrepealable. This Ordinance shall constitute an irrevocable contract between the Town and the registered owners of the Bonds, and shall be and remain irrepealable until the Bonds 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 Bonds by the Town shall in any manner be construed as impairing the obligations of the Town to keep and perform the covenants contained in this Ordinance.

Section 14. Disposition. This Ordinance, as soon as possible after adoption, shall be numbered and recorded by the Town Clerk on the official records of the Town, and shall be authenticated by the signatures of the Mayor and the Town Clerk

Section 15. Emergency Declaration. It is hereby found and determined by the Board that: (i) the Town has been operating the System since 2010 as part of the dissolution plan for the District; (2) adoption of this Ordinance and execution of the Assumption Agreement is necessary in order to finalize the dissolution of the District, which dissolution has been substantially delayed; (3) the Town has negotiated the terms of the Assumption Agreement with RUS over a long period of time, and further delay in the execution thereof could result in further changes in the Assumption Agreement which are not in the best interests of the Town or its residents, and which will result in additional fees and costs; and (4) the assumption of the Bonds by the Town and the finalization of the District's dissolution is necessary in order for the Town to have appropriate title to the System and to properly and safely serve the Town and its residents sewer services through the System. As a result of the foregoing, the Board 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 16. Effective Date. This Ordinance shall take effect upon adoption by the affirmative vote of three-fourths (3/4) of the members of the Board and if required by §31-16-104, C.R.S., the approval and signature by the Mayor or, in the absence of such approval, upon subsequent approval by the Board in accordance with §31-16-104, C.R.S..

INTRODUCED AND ADOPTED AS AN EMERGENCY MEASURE the ____ day of _____, 2014.

(S E A L)

TOWN OF IGNACIO, COLORADO

Mayor

ATTESTED:

Town Clerk

STATE OF COLORADO)
)
 COUNTY OF LA PLATA) SS. **CERTIFICATE OF TOWN CLERK**
)
 TOWN OF IGNACIO)

I, the Town Clerk of the Town of Ignacio, Colorado, do hereby certify that:

1. The foregoing pages are a true, perfect and complete copy of an ordinance adopted by the Board of Trustees (the "Board") constituting the governing board of the Town of Ignacio, Colorado (the "Town"), at an open, regular meeting of the Board held at the Town Hall, in Ignacio, Colorado, on _____, 2014 (the "Meeting"), convening at the hour of _____.m. as recorded in the regular book of official records of the proceedings of said Town kept in my office.

2. The Ordinance was duly moved and seconded, and the Ordinance was passed on first and final reading by an affirmative vote of 3/4 of the members of the Board as follows:

Name	"Yes"	"No"	Absent	Abstain

3. The Ordinance was published *[in full] [by title]*, in the _____, a newspaper of general circulation meeting the requirements of §31-16-105, C.R.S. The affidavit of publication is attached hereto as Exhibit A.

4. The members of the Board were present at the Meeting and voted on the passage of such Ordinance as set forth above.

5. The Ordinance was approved and authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk, and recorded in the minutes of the Board.

6. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Ordinance.

7. Notice of the Meeting in the form attached hereto as Exhibit B was duly given to the Mayor and each member of the Board and was duly posted in the Town at least 24 hours prior to the meeting in accordance with law.

WITNESS my hand and the seal of said Town affixed as of the ____ day of _____, 2014.

(SEAL)

Town Clerk

EXHIBIT A

to

CERTIFICATE OF TOWN CLERK

(Attach affidavit of publication of Ordinance)

EXHIBIT B

to

CERTIFICATE OF TOWN CLERK

(Attach notice of Meeting)