

TOWN OF DERRY, NH
RESOLUTION #2022-035
AUTHORIZING THE ISSUANCE OF A CULVERT BOND
May 19, 2022

WHEREAS: The Town Council of the Town of Derry desires to issue bonds or notes to fund certain culvert replacement projects within the Town; and

WHEREAS: The Town Council intends to proceed with a bond issued with the New Hampshire Municipal Bond Bank as described herein;

NOW, THEREFORE, BE IT RESOLVED that the Town of Derry ("Town"), acting by and through its Town Council ("Council"), pursuant to the Municipal Finance Act, RSA Chapter 33, the New Hampshire Municipal Bond Bank Law, RSA Chapter 35-A, all other applicable law, and by adoption and approval of the Council of this Resolution, (collectively, the "Authorizations"), that the Treasurer and a member of the Town Council are authorized to execute, attest, and deliver a Loan Agreement between the Town and the New Hampshire Municipal Bond Bank (the "Bond Bank") substantially in such form as presented to this meeting, said approval to be conclusively evidenced by the execution and delivery thereof, to effect a borrowing from the Bond Bank in the principal amount not to exceed \$1,600,000.00 to finance the design and work for the replacement of three (3) culverts (the "Project");

IT IS FURTHER RESOLVED that pursuant to the terms of said Loan Agreement and the Authorizations, the Town is authorized to borrow from the Bond Bank a sum of up to \$1,600,000.00, and to evidence such indebtedness, the Treasurer and a 3/5 majority of the Council are authorized to issue a general obligation bond of the Town in an original principal amount of up to \$1,600,000.00 (the "Bond") and to pledge the full faith and credit of the Town in payment of the Bond;

IT IS FURTHER RESOLVED that the Bond be signed by 3/5 of the members of the Town Council and countersigned by the Town Treasurer, with the official seal of the Town, if any, affixed thereto, and otherwise be in such form and contain such terms and provisions not inconsistent herewith, as they shall approve, their approval to be conclusively evidenced by their execution thereof, and that any signature thereon may be by facsimile to the extent permitted by law;

IT IS FURTHER RESOLVED that the Bond shall be sold to the Bond Bank at par plus any applicable premium; and that, pursuant to RSA § 35-A:29, the Treasurer may apply any premium received by the Town on account of issuance of the Bond (i) to the payment of the costs of preparing, issuing, and marketing the issue of the Bond; (ii) to the cost of the Project; (iii) to deposit in the general fund of the Town and to be available to be appropriated for any lawful purpose of the Town; or (iv) to any combination of the foregoing;

IT IS FURTHER RESOLVED that (i) no part of the proceeds of the Bond shall be used, directly or indirectly, to acquire any securities and obligations, the acquisition of which would cause any portion of the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) the proceeds of the Bond and the Project shall not be used in a manner that would cause any portion of the Bond to be a "private activity bond" within the meaning of Section 141 of the Code;

IT IS FURTHER RESOLVED that in connection with the Bond, the Treasurer is authorized to execute and deliver on behalf of the Town an Arbitrage and Use of Proceeds Certificate in form approved by the Town's bond counsel, and to covenant on behalf of the Town to file any information report and pay any rebate due to the United States in connection with the issuance of the Bond, and to take all other lawful actions necessary to insure that the interest on the Bond will be excludable from the gross income of the owners thereof for purposes of federal income taxation and to refrain from taking any action which would cause interest on the Bond to become includable in the gross income of the owners thereof;

IT IS FURTHER RESOLVED that the Treasurer and other proper officials of the Town, acting singly, are authorized to execute and deliver on behalf of the Town such other documents and certificates, including such documents and certificates as may be required by bond counsel or the Bond Bank, and to do or cause to be done all such other acts and things as may be necessary or desirable in order to effect the transactions hereinbefore authorized, and any such prior action by them is hereby ratified and confirmed;

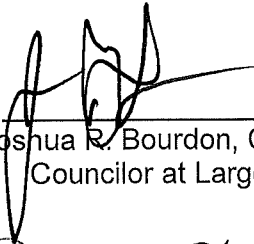
IT IS FURTHER RESOLVED that the Treasurer and other proper officials of the Town, acting singly, are authorized in consultation with Bond Counsel to implement written procedures with respect to the Bond for the purpose of: (i) ensuring timely "remedial action" for any portion of the Bond that may become "non-qualified bonds," as those terms are defined in the Code and regulations thereunder; and (ii) monitoring the Town's compliance following the issuance of the Bond with the arbitrage, yield restriction and rebate requirements of the Code and regulations thereunder;

IT IS FURTHER RESOLVED that if the Town Treasurer, Council Member, or Town Clerk for any reason are unavailable to, as applicable, approve, execute, or attest the Bond or any related financing documents, the person or persons then acting in any such capacity, whether as assistant, deputy, or otherwise, is authorized to act for such unavailable official with the same force and effect as if such official had himself/herself performed such act;

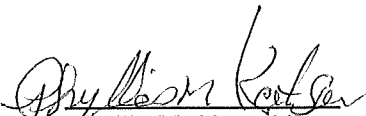
IT IS FURTHER RESOLVED that the Town hereby resolves and declares its official intent pursuant to Section 1.150-2(e) of the Treasury Regulations that the Town reasonably expects to use the proceeds of the Bond to reimburse certain original expenditures from the Town's general, reserve, or other fund, paid not earlier than 60 days prior to adoption of this Resolution or to be paid, which original expenditures have been or will be incurred in connection with costs of the Project; and that the Town reasonably expects that the maximum principal amount that the Town will issue to finance the Project is \$1,600,000;

IT IS FURTHER RESOLVED that if any of the officers or officials of the Town who have signed, attested, or sealed the Bond shall cease to be such officers or officials before the Bond so signed, attested, and sealed shall have been actually authenticated or delivered by the Town, such Bond nevertheless may be authenticated, delivered, and issued with the same force and effect as though the person or persons who signed, attested, or sealed the Bond had not ceased to be such officer or official; and also, any such Bond may be signed, attested, or sealed on behalf of the Town by those persons who, at the actual date of execution of the Bond, shall be the proper officers or officials of the Town, although at the nominal date of the Bond any such person shall not have been such officer or official; and


IT IS FURTHER RESOLVED that an attested copy of this Resolution be filed with the minutes of this meeting.



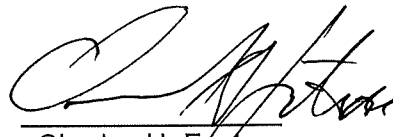
Joshua R. Bourdon, Chair
Councilor at Large



Phyllis M. Katsakiores
Councilor at Large

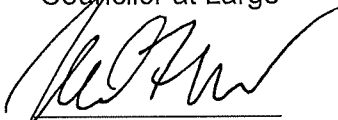


Douglas R. Flood
Councilor at Large




Charles H. Foote
Councilor District #2

Erin A. Spencer
Councilor District #1



Neil F. Wetherbee
Councilor District #3



Brian K. Chirichiello
Councilor District #4