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Denver Colo.

ORDINANCE NO. 362

AN ORDINANCE AUTHORIZING THE ISSUANCE OF
SECOND LIEN SEWER REVENUE BONDS OF THE
TOWN OF BERTHOUD, COLORADO, IN THE PRINCIPAL
AMOUNT OF \$340,000 FOR THE PURPOSE OF PRO-
VIDING FUNDS FOR EXTENDING AND IMPROVING
THE MUNICIPAL SANITARY SEWER SYSTEM; PRE-
SCRIBING THE FORM OF SAID BONDS AND PROVIDING
FOR THE APPLICATION OF THE INCOME AND REVENUE
OF THE SANITARY SEWER SYSTEM OF THE TOWN FOR
THE PAYMENT OF SAID BONDS AND THE INTEREST
THEREON; PROVIDING OTHER DETAILS IN CON-
NECTION THEREWITH, AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Berthoud has for many years owned
and operated a municipal sanitary sewer system for the Town and
the inhabitants thereof; and

WHEREAS, the Board of Trustees has previously determined
that it is necessary to extend and improve the sanitary sewer
system of the Town; and

WHEREAS, there are not sufficient funds in the treasury
of the Town to provide the necessary improvements and extensions,
and the Board of Trustees deems it advisable to authorize the is-
suance of sewer revenue bonds of the Town in the principal amount
of \$340,000, the principal of and interest on said bonds to be
payable solely from the net income and revenue of the sanitary
sewer system, and having a lien on such net income and revenue
subordinate to the lien of certain outstanding sewer revenue bonds
of the Town hereinafter referred to in this ordinance; and

WHEREAS, the bonds have been duly advertised for sale,
and the Board has determined to award said bonds to _____

Boettcher & Company, the highest
and best bidder therefor;

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF
BERTHOUD, LARIMER COUNTY, COLORADO:

Section 1. Authorization. That for the purpose of providing funds to extend and improve the municipal sanitary sewer system, together with necessary appurtenances and incidentals, there are hereby authorized Second Lien Sewer Revenue Bonds of the Town of Berthoud, in the total amount of \$340,000, (hereinafter sometimes referred to as "Bonds 1972") both the principal thereof and the interest thereon to be payable solely and only out of the net revenue and income to be derived by the Town from and through the operation of its sanitary sewer system. The Bonds 1972 shall have a lien on the income and revenue of the sanitary sewer system subordinate to the lien of the outstanding Sewer Revenue Bonds, dated October 1, 1963, in the original principal amount of \$35,000, (hereafter referred to as "Bonds 1963") authorized by Ordinance No. 298, passed and adopted on October 15, 1963, and also subordinate to the lien of the outstanding Sewer Revenue Bonds, dated October 1, 1964, in the original principal amount of \$90,000, (hereafter referred to as "Bonds 1964") authorized by Ordinance No. 305, passed and adopted on August 27, 1964.

It is hereby determined that the estimated life of the sanitary sewer extensions and improvements to be acquired by the proceeds of this bond issue is not less than twenty years.

Section 2. Bond Details. The Bonds 1972 shall be dated as of June 1, 1972, will consist of 68 bonds in the denomination of \$5,000 each, numbered from 1 to 68, inclusive. The net effective interest rate of this issue of bonds is 6.0922 %; said bonds shall bear interest payable on December 1, 1972 and semi-annually thereafter on June 1 and December 1, each year, and mature serially on December 1, as follows:

<u>Amount</u>	<u>Maturity</u>	<u>Interest Rate</u>
\$ 10,000	1982	5.40%
10,000	1983	5.50%
25,000	1984	5.60%
30,000	1985	5.70%
30,000	1986	5.80%
35,000	1987	5.90%
40,000	1988	6.00%
45,000	1989	6.00%
55,000	1990	6.00%
60,000	1991	6.00%

Bonds of this issue maturing on or before December 1, 1972 shall not be redeemable prior to their respective maturity dates. Bonds maturing in the years 1983 and thereafter, shall be redeemable at the option of the Town on December 1, 1982, and on any interest payment date thereafter, in inverse numerical order, upon payment of par and accrued interest. Notice of prior redemption shall be given by publication at least one time in a newspaper having general circulation in the Town of Berthoud, not less than thirty days prior to the date of redemption, and notice shall also be given by mailing a copy of the notice by registered, first class mail, to the original purchaser of the bonds, at least thirty days prior to the date of redemption.

The principal of and interest on said bonds shall be payable at the Berthoud National Bank, in Berthoud, Colorado.

Section 3. Form and Execution of Bonds. Said bonds shall be signed by the manual signature of the Mayor of the Town, sealed with an impression of the seal of the Town, attested by the manual signature of the Town Clerk and countersigned with the facsimile signature of the Town Treasurer, and the interest coupons attached thereto shall bear the facsimile signature of the Treasurer. When issued as aforesaid as part of said bonds, such interest coupons shall be the binding obligations of the Town according to their import. Should any officer whose manual or facsimile

signature appears on said bonds, or the interest coupons attached thereto, cease to be such officer before delivery of the bonds to the purchaser, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes.

Said bonds and interest coupons shall be in substantially the following form:

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF COLORADO

COUNTY OF LARIMER

TOWN OF BERTHOUD
SECOND LIEN SEWER REVENUE BOND

No. _____

\$5,000

The Town of Berthoud, in the County of Larimer and State of Colorado, hereby promises to pay to the bearer hereof, out of the special fund hereinafter designated, but not otherwise, the principal sum of

FIVE THOUSAND DOLLARS

on the 1st day of December, 19____, with interest thereon at the rate of _____ per centum (____%) per annum, payable on December 1, 1972 and semi-annually thereafter on June 1 and December 1 each year, as evidenced by interest coupons attached hereto, upon presentation and surrender of the annexed coupons and this Bond as they severally become due, both principal and interest being payable in lawful money of the United States of America, at the Berthoud National Bank in Berthoud, Colorado.

Bonds of this issue maturing on or before December 1, 1982, shall not be redeemable prior to their respective maturity dates. Bonds maturing in the years 1983 and thereafter, are redeemable in inverse numerical order, at the option of the Town, on December 1, 1982, and on interest payment dates thereafter, upon payment of par and accrued interest.

This Bond is issued by the Board of Trustees of the Town of Berthoud, Colorado, for the purpose of providing funds to extend and improve the municipal sanitary sewer system of the Town, under the authority of and in full conformity with the Constitution and Laws of the State of Colorado, particularly the provisions of Chapter 139, Article 52, Colorado Revised Statutes

1963, as amended, and all other laws thereunto enabling, and pursuant to Ordinance No. 362 of said Town, adopted and approved by the Board of Trustees of the Town on the 9th day of May, 1972. Pursuant to Section 139-52-13 of said Article 52, such recital shall conclusively impart full compliance with all of the provisions of said article, and this bond issued containing such recital is incontestable for any cause whatsoever after its delivery for value.

Both the principal of and the interest on this Bond are payable solely out of a special fund created in full conformity with law and designated as the "Sewer Revenue Bond Fund" of the Town, established by Ordinance No. 298, adopted and approved on October 15, 1963, which Fund shall contain the net income and revenue derived by the Town from the operation of the municipal sanitary sewer system, after paying the necessary costs of operating and maintaining such system, all as is more particularly set forth in the ordinance referred to above and the ordinance authorizing the issuance of this Bond. The bonds of this issue are equitably and ratably secured by a lien on the net income and revenue of said sanitary sewer system and Fund, and constitute a lien subordinate to the lien of the outstanding Sewer Revenue Bonds of the Town, dated October 1, 1963, and the outstanding Sewer Revenue Bonds of the Town, dated October 1, 1964 (but not necessarily an exclusive subordinate lien).

It is hereby recited, certified and warranted that for the payment of this Bond, the Town of Berthoud has created and will maintain said Fund and will deposit therein out of the income and revenue of the sanitary sewer system, the amounts and revenue specified in said Ordinance No. 298 and Ordinance No. 362, and out of said Fund, as an irrevocable charge thereon, will pay this Bond and the interest thereon, in the manner provided by said

ordinances. For a description of said Fund and the nature and extent of the security afforded thereby for the payment of this Bond, reference is made to each ordinance.

This Bond does not constitute a debt of the Town of Berthoud within the meaning of any constitutional or statutory limitation, and shall not be considered or held to be a general obligation of the Town.

It is hereby certified and recited that all the requirements of law have been fully complied with by the proper officers of the Town in the issuance of this Bond.

For the payment of this Bond and the interest thereon, the Town of Berthoud pledges the exercise of all its lawful powers.

IN TESTIMONY WHEREOF, the Board of Trustees of the Town of Berthoud, Colorado, has caused this Bond to be signed by the manual signature of the Mayor, sealed with an impression of the seal of the Town, attested by the manual signature of the Town Clerk, and countersigned with the facsimile signature of the Town Treasurer, and the attached coupons to be signed with the facsimile signature of the Town Treasurer, as of the 1st day of June, 1972.

(S E A L)

TOWN OF BERTHOUD, COLORADO

By R. B. Fickel
(Manual Signature)
Mayor

ATTEST:

Carol A. Mayo
(Manual Signature)
Town Clerk

COUNTERSIGNED:

(Facsimile Signature)
Town Treasurer

(Form of Interest Coupon)

No. _____

\$ _____

June

On the 1st day of December, 19 , unless the Bond to which this coupon is attached, if redeemable, has been called for prior redemption, the Town of Berthoud, in the County of Larimer and State of Colorado, will pay to bearer the amount shown hereon, in lawful money of the United States of America, at the Berthoud National Bank, in Berthoud, Colorado, out of the Sewer Revenue Bond Fund of said Town, but not otherwise, being interest then due on its Second Lien Sewer Revenue Bond, dated June 1, 1972, bearing

No. _____

(Facsimile Signature)

Town Treasurer

Section 4. Disposition of Bond Proceeds. Said bonds shall be sold and delivered to the purchaser, solely to provide the Town with money for the purpose hereinbefore stated. Neither the purchaser of said bonds, nor the subsequent holders of any of them shall be responsible for the application or disposal by the Town or any of its officers of the funds derived from the sale thereof.

The proceeds of the bonds herein authorized shall be used only for the purposes recited above; provided, however, that any portion of the bond proceeds may be temporarily invested pending such use in securities or obligations which are lawful investments for municipalities in the State of Colorado. The temporary investment of the bond proceeds, or any portion thereof, shall be of such nature and extent, and for such period, that the bonds shall not be or become arbitrage bonds within the meaning of Section 103(d) of the Internal Revenue Code, and pertinent regulations; and such proceeds, if so invested, shall be subject to the limitations and restrictions of said Section 103(d)(4), as the same now exists or may later be amended, and shall further be subject to any applicable regulations of the Internal Revenue Service.

The issue of said bonds by the Town shall constitute a warranty by and on behalf of the Town for the benefit of each and every holder of any of said bonds, that said bonds have been issued for a valuable consideration in full conformity with law.

Each bond shall recite that it is issued under the authority of Chapter 139, Article 52, Colorado Revised Statutes, 1963, as amended, and such recital shall conclusively impart full compliance with all of the provisions of said article, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

Section 5. Payment of Interest During Construction. If necessary, the interest due on said bonds during the construction of the extensions and improvements shall be advanced from any fund of the Town available therefor, said amount to be later reimbursed from the revenues of the sanitary sewer system. The principal of and interest on said bonds shall be payable solely out of the net income and revenue to be derived by the Town from the operation of its sanitary sewer system as specified in this Ordinance. The term "sanitary sewer system", as herein used, shall include not only the property comprising the sanitary sewer system at the present time, but all additions and betterments thereto and improvements and extensions hereafter constructed and acquired by the Town.

Section 6. Rates and Charges For Service by the Sanitary Sewer System. The Board of Trustees of the Town covenants that it will establish, maintain and enforce rates and charges for services rendered by the sanitary sewer system to create income and revenue each year sufficient to cover 1.25 times the average annual interest and principal requirements of the Bonds 1963 and Bonds 1964 and the reserve funds established for each issue of bonds, and also sufficient to pay annual operation and maintenance expenses and the annual principal and interest requirements on the Bonds 1972.

It shall be the duty of the Town to establish, maintain and enforce such rates continuously until all of said bonds and the interest thereon have been fully paid and discharged. In the event that such rates and charges at any time should not be sufficient to pay principal and interest and to accumulate funds in the amount indicated above, the Board will increase its rates and charges to such an extent as to insure the payments and accumulations required by the provisions of this ordinance.

Section 7. Payment of Principal and Interest. The Town of Berthoud has heretofore created and established, by said Ordinance No. 298, adopted and approved on October 15, 1963, a special fund known as the "Sewer Revenue Bond Fund"; the principal of and interest on the Bonds 1963 shall be payable from said Fund. The Bonds 1964 authorized by Ordinance No. 305, passed and adopted on August 27, 1964, are also payable from the Sewer Revenue Bond Fund created by Ordinance No. 298 referred to above.

The Sewer Revenue Bond Fund shall contain all of the revenue derived by the Town from the operation of its sanitary sewer system after paying the necessary costs of operating and maintaining said system in an efficient and economical manner. The Bonds 1963 and Bonds 1964 constitute a first and prior lien on the net revenue of the sanitary sewer system and Fund, and are equal and on the parity one with the other. Said Ordinance No. 298 and Ordinance No. 305 provide that the net revenues and Fund are irrevocably pledged for the following purposes and shall be disbursed in the following manner and order:

- (a) For the prompt payment of the interest on and the principal of the Bonds 1963 and Bonds 1964 when and as the same shall become due and payable respectively.
- (b) For the required payments into a "Reserve Fund" created by Ordinance No. 298 for the benefit of the Bonds 1963, and for an additional reserve fund designated "Reserve Fund 1964" for the benefit of the Bonds 1964.
- (c) After the payments and accumulations referred to in paragraph (a) and (b) have been made, any remaining revenue of the sanitary sewer system may be used for the purpose of, among other purposes, the payment of principal and interest of additional bonds payable out of the revenues of the system.

Accordingly, any remaining revenues of the sanitary sewer system after the payments and accumulations required by said Ordinance No. 298 and Ordinance No. 305, shall be used for the purpose of paying the interest and principal of the bonds authorized by this ordinance, dated June 1, 1972, in the principal amount of \$340,000, when the same become due and payable respectively. The lien of the Bonds 1972 on the net income of the sanitary sewer system and Fund shall constitute a lien subordinate to the lien of the outstanding Bonds 1963 and Bonds 1964 (but not necessarily an exclusive subordinate lien).

There is also hereby created and established a Reserve Fund 1972, to be accumulated in the total amount of not less than \$50,000, as follows:

- (1) The amount of \$20,000 shall be deposited to the Reserve Fund 1972 from the proceeds of the Bonds 1972, authorized by this Ordinance.
- (2) Any proceeds of the issue of Bonds 1972 not necessary or used for the extensions and improvements to the sanitary sewer system (i.e. the "project") shall be deposited to the Reserve Fund 1972; provided however, that in no event shall the amount so deposited from the proceeds of the Bonds 1972 exceed 15% of the principal amount of the Bonds 1972. Any amount from the proceeds of the Bonds 1972 not placed in the reserve fund or used for the project shall be used to pay the principal and interest on the bonds authorized herein, at the earliest possible date.
- (3) The interest derived from the investment of monies in the Reserve Fund 1972 shall be deposited back to the Reserve Fund 1972.

(4) In addition to the amounts set forth above which shall be deposited or transferred to the Reserve Fund 1972, the amounts on deposit and credited to the reserve funds for the Bonds 1963 and Bonds 1964 shall also be deposited to the Reserve Fund 1972, at such time when the outstanding bonds of such issue or issues have been paid in full and redeemed.

The money in said Reserve Fund 1972 may be used to prevent defaults in the payment of the bonds herein authorized and interest thereon, but if used for such purpose, it shall be restored to the fund as soon as possible. Said Reserve Fund 1972 shall be maintained until such time as the amount therein will be sufficient to pay all of the outstanding Second Lien Sewer Revenue Bonds authorized herein and the interest thereon. Moneys in the Reserve Fund 1972 may be invested in direct obligations of the United States Government or in obligations or securities of any agency or instrumentality thereof, and the interest from any such investments shall be deposited to said Reserve Fund 1972 as provided for in subparagraph (3) above. Such investments shall be subject to the limitations and restrictions of Section 103(d) of the Internal Revenue Code, and any applicable regulations of the Internal Revenue Service.

After the payments and accumulations hereinabove referred to have been made, any remaining revenues of the system may be used for any lawful purpose, and as more particularly set forth in Ordinance No. 298 and Ordinance No. 305 referred to above.

Section 8. Covenants of the Town. The Town hereby further irrevocably covenants and agrees with each and every holder of the Second Lien Sewer Revenue Bonds issued under the provisions of this Ordinance, that so long as any of said bonds remain outstanding:

(a) It will continue to operate and manage the sanitary sewer system in an efficient and economical manner and keep and

maintain separate accounts of the receipts and expenses thereof in such manner that the revenue thereof, payable into the Sewer Revenue Bond Fund may at all times be readily and accurately determined.

(b) The Town will furnish no free service for the sanitary sewer system and that if the Town shall use the facilities of the sanitary sewer system for municipal purposes, it shall pay monthly, a fair and reasonable amount for such service. In no event shall the Town pay a greater amount than would be charged a private consumer for the same amount of service. The Town shall include in its annual appropriation and budgets, amounts sufficient to pay for all municipal service so furnished.

(c) It will not sell or alienate any of the property constituting any part or all of the sanitary sewer system in any manner or to any extent as might reduce the security provided for the payment of said Second Lien Sewer Revenue Bonds out of the Sewer Revenue Bond Fund, 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 system; provided, however, that in the event of any sale or sales, as aforesaid, where the aggregate consideration exceeds the sum of \$1,000, such consideration shall be paid into the Sewer Revenue Bond Fund, and shall be used for the purposes of said Fund.

Start Here.

(d) It will promptly render bills for sanitary sewer services furnished and it will certify to the Board of County Commissioners of Larimer County, Colorado, delinquent rates and charges which shall become a lien on the delinquent property, the amount thereof to be collected in the same manner as general taxes are collected.

(e) At least once each year it will furnish the original purchaser of the bonds a statement of the receipts of and the disbursements for the sanitary sewer system for the fiscal year immediately preceding each statement.

(f) It will carry workmen's compensation, public liability and such other forms of insurance on insurable sanitary sewer property as would ordinarily be carried by utilities having similar properties of equal value, such insurance being in such amounts as will protect the system and its operation.

(g) For the protection of the health of the inhabitants of the Town, it will, by appropriate action, compel all owners of inhabited property capable of being served with the sanitary sewer facilities to connect their premises with the system.

Section 9. Additional Bonds. No additional bonds shall be issued by the Town payable from the income and revenue of the municipal sanitary sewer system and having a lien upon such income and revenue which is superior to the lien of the bonds authorized herein, or on a parity with or superior to the lien of the Sewer Revenue Bonds dated October 1, 1963, or the Sewer Revenue Bonds dated October 1, 1964.

However, nothing contained in this Ordinance shall be construed in such manner as to prevent the issuance by the Town of additional bonds payable from the income and revenue derived from the operation of the sanitary sewer system and constituting a lien upon said revenues equal to or on a parity with the lien of the bonds authorized herein, provided that the Town is current in the payments and accumulations required by said Ordinance No. 298 and Ordinance No. 305, and the payments and accumulations required

by this ordinance for the Bonds 1972; in addition, the annual revenues derived from the operation of the sanitary sewer system for the fiscal year immediately preceding the date of the issuance of such additional parity lien bonds shall have been sufficient to pay the operation and maintenance expenses of the system for said fiscal year, and in addition would be sufficient to pay the combined maximum annual principal and interest requirements of the outstanding second lien revenue bonds and the bonds proposed to be issued. A certification of sufficient revenues for such purpose shall be required prior to the issuance of such additional parity lien bonds, from a consulting engineer or an independent accountant.

Nothing herein shall prevent the Town from issuing bonds having a lien on the income and revenue of the sanitary sewer system, subordinate to the lien of the Bonds 1972.

Section 10. Payment of Costs of Issuing Bonds. All costs and expenses incurred in connection with the issuance and payment of the Second Lien Sewer Revenue Bonds, authorized herein, shall be paid exclusively from the proceeds of said bonds or from the net income and revenue of the system, and in no event shall any of such costs or expenses or the principal of or interest on said bonds be paid out of or charged to the general funds or tax levies of the Town.

Section 11. Repealer. All ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed.

Section 12. Ordinance Irrepealable. After the Sewer Revenue Bonds have been issued, this Ordinance shall be irrepealable until said bonds and the interest thereon shall be fully paid, satisfied and discharged in the manner herein provided.

Section 13. Severability. That if any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 14. Emergency Provision. By reason of the fact that the Town is not supplied with adequate sanitary sewer facilities and that it is necessary to issue revenue bonds to pay the costs and expenses of the extensions and improvements to the sanitary sewer system, which costs have become due, and will hereafter become due and payable, it is hereby declared that an emergency exists, that this Ordinance is necessary for the preservation of the public peace, health and safety, and that it shall take effect five days after its publication.

Section 15. Recording and Authentication. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and Town Clerk, and shall be published in accordance with law.

ADOPTED AND APPROVED This 9th day of May, 1972.

(S E A L)

R. B. Fickel
Mayor

ATTEST:

Carol A. Mayo

Town Clerk