

ORDINANCE NO. 993

AN EMERGENCY ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, APPROVING A LOAN BETWEEN THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN FOR THE PURPOSE OF REFINANCING THE 2003 INTERIM LOAN BETWEEN THE TOWN AND THE AUTHORITY; AUTHORIZING THE FORM AND EXECUTION OF A LOAN AGREEMENT AND A GOVERNMENTAL AGENCY BOND EVIDENCING THE LOAN; PROVIDING FOR PAYMENT OF THE GOVERNMENTAL AGENCY BOND FROM REVENUES OF THE TOWN'S WASTEWATER SYSTEM OR IF NECESSARY FROM THE IMPOSITION OF AD VALOREM PROPERTY TAXES; PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Berthoud, Colorado, is a statutory town and political subdivision of the State of Colorado, duly organized and operating under the constitution and laws of the State of Colorado (capitalized terms not defined in this preamble shall have the meaning set forth in Section 1 of this Ordinance); and

WHEREAS, the Town is the owner and operator of a public wastewater system which has historically been operated on a self-supporting basis by the Town and is considered to be a government-owned business; and

WHEREAS, the Board previously determined it necessary and in the best interests of the Town and its residents to obtain interim financing evidenced by the 2003 Bond to construct a second 1.0 million-gallon-per-day module expanding the total capacity of the new wastewater treatment plant currently under construction to 2.0 million gallons per day, to decommission the existing wastewater treatment plant, and to make such additional capital improvements to the Wastewater System as may be permitted by the terms of the 2003 Loan Agreement; and

WHEREAS, the Board previously entered into the 2002 Loan Agreement, as well as the 2003 Loan Agreement, with the Authority to finance the new 2.0 million gallons-per-day wastewater treatment plant and related improvements; and

WHEREAS, the 2002 Bond and the 2003 Bond evidencing the loans under the agreement referred to in the preceding paragraph were authorized by the voters of the Town at an election held on November 6, 2001; and

WHEREAS, the 2003 Bond was intended by the Town and the Authority to be an interim financing, to be refunded at such time as convenient to the Authority and permitted by Colorado law, and the Town and the Authority now desire to pay and retire the 2003 Bond with proceeds from the 2004 Loan Agreement; and

WHEREAS, pursuant to Article X, Section 20 of the Colorado Constitution and Section 11-56-105, Colorado Revised Statutes, a refinancing of the 2003 Bond may be made by the Town without an election; and

WHEREAS, the Town's repayment obligations under the 2004 Loan Agreement shall be evidenced by a governmental agency bond to be issued by the Town to the Authority, which bond shall constitute a general obligation of the Town but which is intended to be paid from the Net Wastewater Revenue from the operation of the Town's Wastewater System; and

WHEREAS, the Town is subject to the limitation established pursuant to Section 31-15-302(1)(d)(II), C.R.S. and the maximum aggregate principal amount of indebtedness evidenced by the 2002 Bond and the 2004 Bond will be less than three percent of the actual value of all taxable property in the Town; and

WHEREAS, prior to the approval of this Ordinance, a form of the 2004 Loan Agreement and the 2004 Bond have been made available to the Board; and

WHEREAS, as provided in the Acts, by this Ordinance the Board will authorize the execution of the 2004 Loan Agreement and the 2004 Bond, and will delegate to the Mayor the authority to approve, among other things, the amount of principal of the 2004 Bond maturing in any particular year as well as the rate of interest on the 2004 Bond; therefore,

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

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

"2002 Bond" means the governmental agency bond issued by the Town to the Authority pursuant to the 2002 Loan Agreement.

"2003 Bond" means the governmental agency bond issued by the Town to the Authority pursuant to the 2003 Loan Agreement.

"2004 Bond" means the governmental agency bond to be issued by the Town to the Authority pursuant to the 2004 Loan Agreement, a form of which is set forth in Exhibit D to the 2004 Loan Agreement.

"2002 Loan Agreement" means the 2002 Loan Agreement between the Town and the Authority, pursuant to which the Authority loaned the Town an amount not to exceed \$6,995,000.

"2003 Loan Agreement" means that certain Interim Loan Agreement between the Town and the Authority, pursuant to which the Authority loaned the Town an amount not to exceed \$2,400,000.

"2004 Loan Agreement" means that certain Loan Agreement between the Town and the Authority, dated prior to the issuance of the 2004 Bond, pursuant to which the Authority is to loan a portion of the proceeds of its bonds to the Town and which concerns the Water Pollution Control Revolving Fund established by the Authority.

"*Acts*" means Section 31-15-302(d), Title 11, Article 57, Part 2, C.R.S., Title 11, Article 56, C.R.S., and all other laws of the State establishing the power of the Town to complete the financing contemplated by this ordinance.

"*Authority*" means the Colorado Water Resources and Power Development Authority.

"*Board*" means the Board of Trustees of the Town.

"*Counties*" means each county in which the Town is located, which Counties currently include Larimer and Weld.

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

"*Net Wastewater Revenue*" means all user fees, charges and revenues directly or indirectly derived by the Town for the services furnished by, or use of, the Wastewater System, or any part thereof, which are required to be deposited into the Wastewater Enterprise Fund after deducting (i) all reasonable and necessary current expenses of the Town, paid or accrued, for operating, maintaining, and repairing the Wastewater System, (ii) all amounts required to be set aside which are not otherwise available for payment of obligations such as the 2004 Bond and (iii) all payments and deposits made or required to be made to pay or secure outstanding revenue bonds or other obligations having a lien on the Wastewater Enterprise Fund, or any portion thereof. It is intended that the application of Net Wastewater Revenue used for payment of the 2004 Bond shall be subordinate to any existing or future liens which may be lawfully established by the Town upon said moneys, but shall be on parity with the lien of the 2002 Bond.

"*Project*" means the payment and retirement of the 2003 Bond and the obligations evidenced by the interim financing.

"*Project Costs*" means the Town's costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Acts.

"*State*" means the State of Colorado.

"*Town*" means the Town of Berthoud, Colorado.

"*Wastewater Enterprise Fund*" means that certain fund created by Resolution No. 9-93 of the Town to account for the Town's wastewater enterprise operations.

"*Wastewater System*" means all of the Town's wastewater facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto.

Section 2. *Approval of the 2004 Loan Agreement and Authorization of the 2004 Bond.* Pursuant to and in accordance with the State Constitution; the Acts; and all other laws of the State thereunto enabling, the 2004 Bond shall be issued by the Town. The form of the 2004 Loan Agreement, setting forth *inter alia* the terms, conditions and details of the 2004 Bond and the procedures relating thereto, are incorporated herein by reference and are hereby approved;

and the Town shall enter into the 2004 Loan Agreement and deliver the 2004 Bond, and perform its obligations thereunder, in substantially the form presented at this meeting with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered. The net proceeds of the 2004 Loan Agreement and the issuance of the 2004 Bond shall be immediately applied to the payment and retirement of the 2003 Bond and the obligations evidenced by the interim financing. The Board hereby declares that the provisions and limitations of Title 11, Article 56, C.R.S., and any other applicable law have been met.

Section 3. ***2004 Bond Details.*** The 2004 Bond shall be in the principal amount not to exceed \$2,400,000, shall be subject to repayment in the amounts and on the dates, and shall be subject to prior redemption as set forth in the 2004 Loan Agreement. The maximum net effective interest rate authorized for the 2004 Bond is 4.75% per annum, and the actual net effective interest rate of the 2004 Bond shall be less than such rate. The Board hereby delegates to the Mayor the right to determine the amount of principal of the 2004 Bond maturing in any particular year and the rate of interest on the 2004 Bond, which information shall be set forth in the loan repayment schedule in Exhibit C to the 2004 Loan Agreement.

Section 4. ***Pledge for Payment of the 2004 Bond.***

(a) ***General Obligation Pledge.*** The 2004 Bond shall constitute a general obligation of the Town and the full faith and credit of the Town are pledged for the punctual payment of the principal of and interest on the 2004 Bond; however, it is the intent of the Board that ad valorem property taxes are to be levied only if available Net Wastewater Revenue is insufficient to pay the principal of and interest on the 2004 Bond when due. The 2004 Bond shall not constitute a debt or indebtedness of the County, the State or any political subdivision of the State other than the Town.

(b) ***Use of Net Wastewater Revenue.*** It is the intent of the Board that Net Wastewater Revenue, to the extent sufficient, shall be used to pay the principal of and interest on the 2004 Bond when due. Such lien of the 2004 Bond shall be on parity with the lien of the 2002 Bond. Nothing herein shall be interpreted to prohibit or limit the ability of the Town to use available Net Wastewater Revenue or other legally available moneys other than the proceeds of the general ad valorem property taxes levied pursuant to subsection (c) of this Section to pay all or any portion of the principal of or interest on the 2004 Bond. If and to the extent Net Wastewater Revenue or such other legally available moneys are used to pay the principal of or interest on the 2004 Bond, the Town may reduce the amount of taxes levied for such purpose pursuant to subsection (c) of this Section.

(c) ***Levy of Ad Valorem Taxes.*** For the purpose of paying the principal of and interest on the 2004 Bond when due, respectively, the Board shall annually determine and certify to the Board of County Commissioners of the Counties, respectively, a rate of levy for general ad valorem taxes, without limitation as to rate or amount, on all of the taxable property in the Town, sufficient to pay the principal of and interest on the 2004 Bond when due, respectively. The general ad valorem taxes levied pursuant to this subsection,

when collected, shall be deposited in a bond account to be applied solely to the payment of the principal of and interest on the 2004 Bond and for no other purpose until the 2004 Bond, including principal and interest, is fully paid, satisfied and discharged.

(d) *Appropriation and Budgeting of Proceeds of Ad Valorem Taxes.* To the extent necessary to pay the principal of and interest on the 2004 Bond, moneys received from the general ad valorem taxes levied pursuant to subsection (c) of this Section are hereby appropriated for that purpose, and all amounts necessary to pay the principal of and interest on the 2004 Bond due, respectively, in each year shall be included in the annual budget and appropriation ordinance or other measure to be adopted and passed by the Board for such year.

(e) *Certification to County Commissioners.* It is hereby declared that if the Town does not otherwise determine and certify to the Board of County Commissioners of the Counties, respectively, a rate of levy for general ad valorem property taxes as required by the preceding subsections of this Section and if the amounts required to be paid to the Authority pursuant to the 2004 Loan Agreement are not paid in a timely manner, it shall be deemed to be a declaration by the Board that that Net Wastewater Revenue was insufficient to pay the principal of and interest on the 2004 Bond when due and the foregoing provisions of this Section shall constitute a certificate from the Board to the Board of County Commissioners of the Counties, respectively, showing the aggregate amount of ad valorem taxes to be levied by the Board of County Commissioners of the Counties, respectively, from time to time, as required by law, for the purpose of paying the principal of and interest on the 2004 Bond when due.

Section 5. *Amendment of Ordinance.* This Ordinance may be amended only with the prior written consent of the Authority.

Section 6. *Findings and Determinations.* The Board hereby finds, determines and declares that voter approval of the Ballot Question was obtained in accordance with all applicable provisions of law and that it is in the best interest of the Town and its residents that the 2004 Bond be authorized, issued and delivered at the time, in the manner and for the purposes provided herein.

Section 7. *Approval of Miscellaneous Documents.* The Mayor, the Town Clerk and all other officers of the Town are hereby authorized and directed to execute all documents and certificates necessary or desirable to effectuate the issuance of the 2004 Bond and the financing contemplated thereby.

Section 8. *Ratification of Prior Actions.* All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Board or by the officers and employees of the Town directed toward the issuance of the 2004 Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 9. *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 10. **Ordinance Irrepealable.** After the 2004 Bond has been issued, this Ordinance shall constitute a contract between the Authority, the 2004 Bond Insurer and the Town, and shall be and remain irrepealable until the 2004 Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

Section 11. **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 12. **Repealer.** All orders, bylaws, ordinances, and resolutions 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 13. **Emergency Declaration; Effective Date.** The Board desires to lock in interest rates as soon as possible in the current economic environment. The use of an emergency provision will enable the Town to lock in interest rates and mitigate the interest rate volatility in the current market; therefore, it is hereby declared that an emergency exists, that this Ordinance is necessary for the immediate preservation of the public peace, and that this Ordinance shall be in full force and effect immediately upon adoption, and directs that publication of this Ordinance be made as provided by law.

PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE and ordered published this 27th day of April, 2004.

ATTEST:

TOWN OF BERTHOUD, COLORADO

By Mary K. Cowdin
Town Clerk

By Milan Karpeck
Mayor

PUBLISH: MAY 6, 2004