

RESOLUTION NO. 7-04

A RESOLUTION OF THE TOWN OF BERTHOUD, COLORADO, ACTING BY AND THROUGH ITS WASTEWATER UTILITY ENTERPRISE, DECLARING ITS INTENT THAT THE AVAILABLE NET REVENUE FROM THE OPERATION OF THE TOWN'S WASTEWATER SYSTEM BE USED TO SUPPORT THE PAYMENT OF A LOAN BETWEEN THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN TO REFINANCE A WASTEWATER TREATMENT PLANT

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 Resolution); 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, pursuant to Resolution No. 9-93, Resolution No. 11-94 and Ordinance No. 773-1997 of the Town, the Board of Trustees of the Town has identified the sources of revenue for the funds comprising its Wastewater Utility Enterprise as well as the identification of the appropriate expenditures from said funds; 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, at an election on November 6, 2001, a majority of the voting eligible electors of the Town approved a ballot question authorizing debt of the Town but otherwise providing that taxes are to be levied to repay such debt only if the net revenues from the operation of the Wastewater System, which are intended to be the primary source for the payment of the bonds, are insufficient to pay the bond obligations which to be issued; and

WHEREAS, the purpose of this Resolution is to reaffirm the intent of the Board to operate the Wastewater System in a manner which is to generate net revenue from the operation of the Wastewater System in an amount sufficient to support the payment of the Authority loan to the Town; therefore,

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO, AS THE GOVERNING BODY OF THE TOWN OF BERTHOUD WASTEWATER UTILITY ENTERPRISE:

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

“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.

“2004 Bond Ordinance” means Ordinance No. 993 of the Town authorizing and approving the execution of the 2004 Loan Agreement and the issuance of the 2004 Bond.

“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.

“Act” means Title 37, Article 45.1, C.R.S.

“Authority” means the Colorado Water Resources and Power Development Authority.

“Board” means the Board of Trustees of the Town acting as the governing body of the Town of Berthoud Wastewater Utility Enterprise.

“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.

“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.

“Wastewater Utility Enterprise” means the Town’s Wastewater Utility Enterprise which have been established pursuant to the provisions of the Act.

Section 2. *Declaration of Intent to Generate Sufficient New Wastewater Revenue.* The Board hereby acknowledges the provisions of the 2004 Bond Ordinance and the intent of the Town that ad valorem property taxes are to be levied for repayment of the 2004 Bond only if available Net Wastewater Revenue is insufficient to pay the principal of and interest on the 2004 Bond when due. The Board further acknowledges that such lien of the 2004 Bond shall be on parity with the lien of the 2002 Bond. The Board hereby declares its intent to maintain the rates, fees and charges for the services furnished by, or the use of, the Wastewater System in an amount necessary to generate Net Wastewater Revenue annually in an amount which will be sufficient to pay the principal of and interest on the 2004 Bond when due.

Section 3. *Effective Date.* This Resolution shall be in full force and effect upon its approval and adoption.

Adopted and Approved at its meeting this 27th day of April, 2004.

ATTEST:

TOWN OF BERTHOUD, COLORADO

By Mary K Coadin
Town Clerk

By Milan Kausbeck
Mayor