

ORDINANCE NO. 976

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, APPROVING AN INTERIM LOAN BETWEEN THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY AND THE TOWN FOR THE PURPOSE OF PROVIDING ADDITIONAL FINANCING FOR A WASTEWATER TREATMENT PLANT AND RELATED WASTEWATER IMPROVEMENTS; 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; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH

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, pursuant to Article X, Section 20 and Article XI, Section 6 of the State Constitution, and Section 31-15-302(1)(d), Colorado Revised Statutes, prior to contracting any debt by loan in any form, the Town is required to submit the question of incurring the same to the electors of the Town; and

WHEREAS, at an election on November 6, 2001, the following ballot question (the "Ballot Question") was approved by a majority of the eligible electors of the Town voting on the Ballot Question:

SHALL THE TOWN OF BERTHOUD'S DEBT BE INCREASED UP TO A MAXIMUM OF \$10,300,000, WITH A MAXIMUM REPAYMENT COST OF UP TO \$16,950,000, AND SHALL THE TOWN'S TAXES BE INCREASED BY UP TO \$860,000 ANNUALLY WITH A MAXIMUM NET EFFECTIVE INTEREST RATE OF 4.75%, WHICH TAXES ARE TO BE LEVIED ONLY IF THE NET REVENUES FROM THE OPERATION OF THE TOWN'S WASTEWATER SYSTEM, WHICH ARE INTENDED TO BE THE PRIMARY SOURCE FOR THE PAYMENT OF THE BONDS, ARE INSUFFICIENT TO PAY THE BOND OBLIGATIONS WHICH ARE BEING ISSUED FOR THE PURPOSES OF COMPLYING WITH THE REQUIREMENTS OF THE STATE OF COLORADO DEPARTMENT OF HEALTH AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WHICH ARE REQUIRING THE TOWN TO CONSTRUCT NEW WASTEWATER SYSTEM IMPROVEMENTS INCLUDING THE CONSTRUCTION OF A NEW WASTEWATER TREATMENT FACILITY; WITH THE INTENT AND PURPOSE THAT THESE GENERAL OBLIGATION BONDS SHALL GUARANTEE THE PAYMENT OF THIS INDEBTEDNESS AND THEREBY RESULT IN A LOW INTEREST RATE; WITH THE BONDS TO MATURE AND BE SUBJECT TO REDEMPTION, WITH OR WITHOUT PREMIUM AND THE BONDS TO BE ISSUED, DATED AND SOLD AT SUCH TIME OR TIMES, AND IN SUCH MANNER AND CONTAINING SUCH TERMS THAT ARE NOT INCONSISTENT HERewith, AS THE BOARD OF TRUSTEES MAY DETERMINE WITH THE PROPERTY TAXES BEING LEVIED IN ANY YEAR, WITHOUT LIMITATION AS TO RATE OR AMOUNT OR ANY OTHER CONDITION IN ACCORDANCE WITH ARTICLE XI, SECTION 6 OF THE COLORADO CONSTITUTION, TO PAY THE

PRINCIPAL OR, PREMIUM IF ANY, AND INTEREST ON SUCH BONDS; AND SHALL ANY EARNINGS FROM THE INVESTMENT OF THE PROCEEDS OF SUCH TAXES AND BONDS, REGARDLESS OF AMOUNT, CONSTITUTE A VOTER-APPROVED REVENUE CHANGE?

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 construct a second 1.0 million-gallon-per-day module to complete the expansion of the new wastewater treatment plant currently under construction to a total capacity of 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, to finance a portion of the estimated costs of the Project, the Board previously entered into a 2003 Loan Agreement with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which the Authority loaned the Town an amount not to exceed \$6,995,000 (the "2002 Loan Agreement"); and

WHEREAS, the Board has determined that it is necessary and in the best interests of the Town and its residents to borrow additional moneys from the Authority in order to finance an additional portion of the Project; and

WHEREAS, to finance an additional portion of the estimated costs of the Project, the Board has determined to enter into an Interim Loan Agreement with the Authority, pursuant to which the Authority is to loan the Town an amount not to exceed \$2,400,000 (the "2003 Loan Agreement"); and

WHEREAS, the Town's repayment obligations under the 2003 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 authorized pursuant to the 2002 Loan Agreement and the 2003 Loan Agreement is 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 each of the 2003 Loan Agreement and the 2003 Bond have been made available to the Board; and

WHEREAS, as provided in the Acts, which include but are not limited to Title 11, Article 57, Part 2, C.R.S., by this Ordinance the Board will authorize the execution of the 2003 Loan Agreement and the 2003 Bond, and will delegate to the Mayor the authority approve, among other things, the amount of principal of the 2003 Bond maturing in any particular year as well as the rate of interest on the 2003 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 to be issued by the Town to the Authority pursuant to the 2003 Loan Agreement, a form of which is set forth in Exhibit D to the 2003 Loan Agreement.

"2003 Loan Agreement" means that certain Interim Loan Agreement between the Town and the Authority, dated prior to the issuance of the 2003 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 Title 31, Article 15, Part 3, C.R.S. and Title 11, Article 57, Part 2, 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 2003 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 2003 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 (i) the construction of a second 1.0 million-gallon-per-day module to complete the expansion of the new wastewater treatment plant currently under construction to a total capacity of 2.0 million gallons per day, (ii) the decommissioning of the existing wastewater

treatment plant, and (iii) making such additional capital improvements to the Wastewater System as may be permitted by the terms of the 2003 Loan Agreement.

“*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 2003 Loan Agreement and Authorization of the 2003 Bond.* Pursuant to and in accordance with the State Constitution; the Acts; and all other laws of the State thereunto enabling, the 2003 Bond shall be issued by the Town. The form of the 2003 Loan Agreement, setting forth *inter alia* the terms, conditions and details of the 2003 Bond and the procedures relating thereto, are incorporated herein by reference and are hereby approved; and the Town shall enter into the 2003 Loan Agreement and deliver the 2003 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.

Section 3. *2003 Bond Details.* The 2003 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 2003 Loan Agreement. The maximum net effective interest rate authorized for the 2003 Bond is 4.75% per annum, and the actual net effective interest rate of the 2003 Bond shall not exceed such rate. The Board hereby delegates to the Mayor the right to determine the amount of principal of the 2003 Bond maturing in any particular year and the rate of interest on the 2003 Bond, which information shall be set forth in the loan repayment schedule in Exhibit C to the 2003 Loan Agreement.

Section 4. *Pledge for Payment of the 2003 Bond.*

(a) *General Obligation Pledge.* The 2003 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 2003 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 2003 Bond when due. The 2003 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 2003 Bond when due. Such lien of the 2003 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 2003 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 2003 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 2003 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 2003 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 2003 Bond and for no other purpose until the 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 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 2003 Bond has been issued, this Ordinance shall constitute a contract between the Authority, the 2003 Bond Insurer and the Town, and shall be and remain irrepealable until the 2003 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. ***Effective Date; Recording and Authentication.*** This Ordinance shall be in full force and effect 30 days after its publication. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signatures of the Mayor and the Town Clerk, and shall be published in accordance with law.

At its meeting Oct. 21, 2003, a public hearing was set by the Board of Trustees of the Town of Berthoud for its meeting held on the 28th day of October, 2003. After the public hearing, the Ordinance was read, passed and ordered published by the Board of Trustees at its meeting this 28th day of October, 2003.

ATTEST:

TOWN OF BERTHOUD, COLORADO

By Mary K. Couder
Town Clerk

By Milan Karspeck
Mayor

PUBLISH: Nov. 6, 2003