

RESOLUTION
OF
MORRISON CREEK METROPOLITAN WATER AND SANITATION DISTRICT
CREATING A WATER ACTIVITY ENTERPRISE,
CREATING A SPECIAL AREA WITHIN THE DISTRICT,
SETTING AND IMPOSING SPECIAL CHARGES WITHIN SUCH SPECIAL AREA,
PROVIDING FOR THE COLLECTION OF SUCH SPECIAL CHARGES,
AND
AUTHORIZING SUCH ENTERPRISE TO COLLECT CERTAIN TAP-ON FEES

WHEREAS, the Morrison Creek Metropolitan Water and Sanitation District (the “District”) is a special district with metropolitan district powers, engaged in the provision of water and sanitation services, pursuant to *Title 32 of Colorado Revised Statutes*, and entirely located within Routt County, Colorado; and

WHEREAS, the District owns a complete municipal water system, including certain water rights (including contracts for storage water), wells, raw water storage tanks, treatment and filtration facilities, and distribution trunk lines, together with curb stops, fire plugs, valving, and the like; and

WHEREAS, the District owns a complete sanitary sewer collection and treatment system, including a sanitary sewage treatment plant with back-up facilities, treated effluent return discharge and disposition facilities, and sewage collection trunk lines, including manholes and lift stations; and

WHEREAS, Colorado law permits certain local governmental entities to create Water Activity Enterprises within the meaning of *Article X, Section 20, of the Colorado Constitution*, pursuant to C.R.S. ' ' 37-45.1-101, et seq. (the “Water Activity Enterprise Statute”), to include for the purposes of pursuing or continuing water activities, including the construction of water or wastewater facilities including water distribution and central wastewater collection trunk lines; and

WHEREAS, the District is a local governmental entity which has authority to conduct water activities and is permitted by the Water Activity Enterprise Statute to create a Water Activity Enterprise; and

WHEREAS, the District has determined that the construction and installation of future water and wastewater trunk lines within the District which interconnect with existing trunk lines of the District, the encouragement of private parties to construct and install certain of such future trunk lines on terms and provisions mutually advantageous to such private parties and the District, and the adoption of rules and regulations and the imposition and collection special fees, costs, and charges to collect funds arising from the construction and installation of such future trunk lines, should be segregated and be a part of a separate Water Activity Enterprise; and

WHEREAS, the aforesaid activities should be made a part of a single Water Activity Enterprise under the authority of the Water Activity Enterprise Statute and Title 32 of the Colorado statutes, encompassing the entire boundary of the District; and

WHEREAS, the District should retain, outside of such Water Activity Enterprise, its raw water acquisition, filtration, and treatment facilities and assets (including all water rights), its existing water trunk lines and appurtenances, its sewage treatment facilities (including treated effluent return discharge and disposition), and its existing sewage collection trunk lines, all as part of the governmental activities of the District and not to be a part of such Water Activity Enterprise; and

WHEREAS, C.R.S. ' 32-1-1006(1)(b)(I) permits the District to divide the District land into "areas" according to the water or sanitation services furnished or to be furnished therein, and the Board, when such an "area" has been created, has the power under such statutory section to fix different rates, fees, tolls, or charges against the property within the several areas of the District according to the services and facilities furnished or to be furnished therein; and

WHEREAS, certain existing subdivisions within the boundaries of the District do not have central sewage collection and water distribution trunk lines to all of the platted lots within such subdivisions, and it is appropriate for the District to adopt procedures and create "areas" for the purpose of encouraging the construction and installation by third parties of such central sewage collection and water distribution trunk lines within such "areas" which connect to the facilities of the District; and

WHEREAS, it is the intention of the Board of Directors of the District to authorize and empower the Water Activity Enterprise, pursuant to the Water Activity Enterprise Statute, to engage in the business of accomplishing, by itself, by third parties, or by any combination or venture of itself with third parties, the construction and installation of new water distribution and wastewater collection trunk lines within the "areas" created by the District, and to impose and collect special fees and charges to accomplish the fair and equitable financing of such construction and installation within such "areas"; and

WHEREAS, the Board of Directors of the District may loan to such Water Activity Enterprise the cash tap-on fees payable to the District from new water distribution and wastewater collection trunk lines constructed or installed under the auspices of such Enterprise within a special "area," at an interest rate not less than the average earnings on District reserve funds over the preceding 6 months or year, such loan to be repaid to the District at such time and under such circumstances as may be from time to time mutually agreed by the District and such Enterprise; and

WHEREAS, the Enterprise may issue in any special "area" and sell to third parties or to the District Prepaid Special Charge Certificates as described herein, and the District may in its discretion elect from time to time to purchase any of such Certificates, all in aid of financing for

construction of new water distribution and wastewater collection trunk lines constructed or installed under the auspices of the Enterprise within an a special "area".

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MORRISON CREEK METROPOLITAN WATER AND SANITATION DISTRICT AS FOLLOWS:

1. **Creation of the Water Activity Enterprise.** There is hereby established and created a Water Activity Enterprise within the District, whose boundary shall be the same as and co-terminus with the boundary of the District, which shall be known as the “**Morrison Creek Water Activity Enterprise**” (hereinafter called the “Enterprise”). Such Enterprise is created under and pursuant to the power of the District by the *Water Activity Enterprise Statute*.

2. **Purpose and Authority of Enterprise.** The Enterprise shall conduct, pursue, and continue water and sanitary sewer activities within the boundary of the District limited to all aspects of the construction, installation, interconnections with District facilities, and placement in use of new water and sanitary sewer trunk lines within the boundaries of the District, and the imposition and assessment and collection of fees and charges for the financing and payment of the costs of such construction, installation, and interconnections, in addition to the District's tap-on fees, including but not limited to the Special Charges and Special Charge Certificates described in Sections 8 and 9 below. The Enterprise shall not own or have any authority or responsibility for raw water production, acquisition, filtration, and treatment within the District, water rights of the District, or for augmentation, exchange, development, or storage of water. The Enterprise shall not have any authority or responsibility for the treatment of wastewater, effluent, and sewage of the District, or for any District wastewater treatment plant, or for the discharge or disposition of the return effluent after such treatment.

3. **New Trunk lines.** The Enterprise is empowered and authorized to acquire, construct, lease, license, develop, use, abandon, improve, repair, maintain, reconstruct, finance, and manage all new potable water distribution trunk lines and appurtenances, and all new wastewater, effluent, and sewage collection trunk lines and appurtenances, within and without the boundary of the District. All such new trunk lines shall be installed in full compliance with the standards, rules and regulations of the District and, when finally accepted for maintenance by the District pursuant to resolution duly adopted by the Board of Directors of the District, shall be forthwith conveyed without charge to the District and shall be owned by the District. Until such final acceptance, however, the Enterprise shall assume the responsibility for repair, maintenance, and reconstruction of such new trunk lines and appurtenances.

4. **Ownership.** The Enterprise shall be wholly owned by the District.

5. **Governing Body.** The governing body of the Enterprise shall be the governing body of the District, being the Board of Directors of the District.

6. **Powers.** The Enterprise and the governing body of the Enterprise shall have all of the powers authorized or permitted by the Water Activity Enterprise Statute. The Enterprise shall be excluded from the provisions of *Section 20 of Article X of the Colorado Constitution*, sometimes referred to as the *TABOR Amendment*. The Enterprise shall have no authority to impose a mill levy or receive general property taxes from within the District. The Enterprise shall not receive ten percent (10%) or more of its annual revenue in grants from all Colorado state and local governments combined.

7. **Creation of Special Areas Within the District.** Pursuant to the authority of CRS ' 32-1-1006(1)(b), the Board of Directors of the District does hereby state and declare its intention to create special "areas" within the boundary of the District, and does hereby declare and determine in each such "area" hereafter created that (i) no part of the capital cost of constructing and installing water distribution and sewage collection trunk lines within such "area" shall be borne by or be the obligation of the District or Enterprise, except that the cash tap-on fees payable to the District for connection of future residential improvements to any such trunk line (excluding tap-on fees prepaid by 1978 Contribution Certificates or otherwise) may be loaned by the District to the Enterprise for financing all or a portion of such capital cost, or may be used by the District to purchase Prepaid Special Charge Certificates described in Section 9 below, (ii) the entire cost of constructing and installing water distribution and sewage collection lines within such "area" shall be borne by and the obligation of third parties, except that the cash tap-on fees payable to the District for connection of future residential improvements to any such trunk line (excluding tap-on fees prepaid by 1978 Contribution Certificates or otherwise) may be loaned by the District to the Enterprise for financing all or a portion of such capital cost, or may be used by the District to purchase Prepaid Special Charge Certificates described in Section 9 below, and except that the Enterprise may impose special charges and fees in aid of or to pay or finance all or a portion of such capital cost. Each such special "area" must be created by resolution of the Board of Directors of the Enterprise. If included in any such resolution, the District may further authorize and empower the Enterprise to subdivide a special "area" into smaller special "areas" if the Enterprise determines that such subdivision will benefit the construction and installation of trunk lines in a subdivided special "area." A special "area" may be formed solely for construction of water distribution trunk lines, or solely for the construction of wastewater collection trunk lines, or for both.

The District reserves the power and authority granted to it by Colorado law to create special "areas" within the District in the future, provided that no such special "area" shall include residential or multi-family platted lots within the District to which water and wastewater trunk line services are presently available as of the date of adoption of this Resolution. The Enterprise shall not be empowered or authorized to impose Special Charges or Prepaid Special Charge Certificates (as described in Sections 8 and 9 below) within any subdivided portion of a special "area" until after the Enterprise has also created such subdivided special "area" by resolution duly adopted by the Board of Directors of the Enterprise.

8. **SETTING AND IMPOSING OF SPECIAL CHARGES WITHIN SPECIAL AREAS.** The Enterprise is authorized and empowered to set and impose within each special

"area" hereafter created by the Board of Directors of the District and also created by resolution of the Board of Directors of the Enterprise (including but not limited to any subdivided portion of a special "area" authorized for subdivision by the resolution of the Board of Directors of the District and the Board of Directors of the Enterprise) special one-time charges payable by the owner or owners of each residential lot within the created special "area" or subdivided special "area," in addition to the District's tap-on fees, for the privilege of connecting improvements on such lot to new water distribution and/or sanitary sewer collection trunk lines interconnecting with District facilities which are hereafter constructed and installed by or under contract with the Enterprise within such special "area." Such special charges shall be determined and set for such special "area" or subdivided special "area" by resolution of the Board of Directors of the Enterprise and shall be approximately the cost of planning, developing, and constructing such new trunk line(s) and the cost of the Enterprise in supervising such construction, including appropriate contingency factors, divided by the number of residential platted lots within the special "area" or subdivided special "area" capable of being served by such new trunk line(s). The Enterprise may also provide that such special charges will automatically increase by up to 10% each year on the anniversary of the setting of such charges, for a period of not more than 20 years after the initial setting of such charges.

9. **ISSUANCE OF PREPAID SPECIAL CHARGE CERTIFICATES.** The Enterprise is authorized in its discretion in any special "area" or subdivided special "area" now or hereafter created by the Board of Directors of the District and by the Board of Directors of the Enterprise to issue and sell to third parties or the public or to the District Prepaid Special Charge Certificates applicable only within such special "area" or subdivided special "area" which may, at any time within 20 years after completion of new water distribution and/or wastewater collection trunk lines by the Enterprise be surrendered and tendered up to the Enterprise for payment in full of the special charge of the Enterprise for such trunk line(s) against a platted residential lot within the special "area" or subdivided special "area" identified by the surrendering party when surrendering such Certificate, regardless of the increase of such special charge as provided in Section 8 above. No such Certificate may be used to pay or prepay any tap-on fees of the District, or any special charges imposed by the Enterprise in any other special "area" or subdivided special "area." The Enterprise shall reserve the right in its sole discretion to call and redeem only on any anniversary of the issuance of such Certificates any or all such Certificates by payment to the holders thereof of the face amount for which such Certificate was sold, plus interest thereon as may be set by the Enterprise at the creation of such Certificate but not less than 1.0% per annum nor more than 8% per annum, compounded annually. If less than all Certificates are redeemed, then such redemption shall be in numerical order of issuance of such Certificates. Such Certificates shall be in such form and contain such provisions and information and shall be redeemable or surrendered up in the manner and pursuant to the terms as may be determined by the Enterprise in its sole discretion in the resolution creating such particular Certificates, subject to compliance with the parameters established by this Paragraph 9.

10. **DISTRICT TAP-ON FEES.** The District shall continue to collect, where applicable, all water and wastewater tap-on fees otherwise payable to the District under its then current rate schedules for connection of improvements to new water distribution and new

wastewater collection trunk lines of the District constructed by or under the auspices of the Enterprise within any special "area" or subdivided special "area" of the District, and thereafter to hold such fees, collect any interest or earnings thereon, and/or to use such fees for any lawful purposes. Among the uses of such fees may be a loan by the District to the Enterprise, at an interest rate not less than the average earnings on District reserve funds over the preceding 6 months or year, such loan to be repaid to the District at such time and under such circumstances as may be from time to time mutually agreed by the District and such Enterprise.

APPROVED AND ADOPTED this ____ day of _____, 2003.

MORRISON CREEK METROPOLITAN WATER AND
SANITATION DISTRICT

By: _____
Director

Director

Director

Director

Director