

**RESOLUTION NO. 1447**

A RESOLUTION SUPPLEMENTING ORDINANCE NO. 1639, AND PROVIDING CERTAIN DETAILS IN CONNECTION WITH THE ISSUANCE OF EXTENDIBLE SUBORDINATE LIEN WATER REVENUE NOTES, SERIES 2003, IN AN AGGREGATE PRINCIPAL AMOUNT OF \$6,000,000.

WHEREAS, the City of Golden, Colorado (the "City") is a home rule municipality duly organized and existing pursuant to Article XX of the Constitution (the "Constitution") of the State of Colorado (the "State"); and

WHEREAS, by Ordinance No. 1639 (the "Note Ordinance") the City Council of the City (the "Council") acting as the governing body of the City of Golden Water and Waste Water Enterprise (the "Enterprise"), authorized the issuance by the City, acting by and through the Enterprise, of not to exceed \$6,500,000 aggregate principal amount of Subordinate Lien Water Revenue Notes, Series 2003 (the "Series 2003 Notes"); and

WHEREAS, the Note Ordinance provides that before the Series 2003 Notes are issued, certain details with respect to the terms and provisions of the Series 2003 Notes shall be determined by a resolution (the "Supplemental Resolution") of the Council, acting as the governing body of the Enterprise; and

WHEREAS, the Council intends that this Resolution shall constitute a Supplemental Resolution with respect to the Series 2003 Notes within the meaning of the Note Ordinance;

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO,

**Section 1. Definitions.** Capitalized terms used in this Supplemental Resolution and not otherwise defined shall have the same meanings, respectively, as provided in the Note Ordinance. In addition, for all purposes of this Supplemental Resolution, the following terms shall have the meanings specified below:

*"Applicable Interest Rate"* means, with respect to any particular Reset Period, the rate of interest accruing on the Series 2003 Notes during such Reset Period. The Applicable Interest Rate shall be determined as of the Reset Date (or the last Business Day preceding the Reset Date if the Reset Date is not a Business Day), and shall be equal to 70% of the sum of LIBOR plus 1%, but not in excess of 8%.

*"Business Day"* means a day other than a Saturday, a Sunday or a day on which the Purchaser or the City are authorized or required to remain closed.

*"Initial Reset Date"* means November 14, 2003.

*"Initial Reset Period"* means the Reset Period commencing November 14, 2003 and ending May 15, 2004.

*"LIBOR"* means, with reference to any particular Reset Period, the published one-month, three-month or six-month London Interbank Offered Rate for the number of days closest to the number of days in the Reset Period in question.

“*Purchaser*” means Bank One, National Association.

“*Reset Date*” means the first day of a Reset Period.

“*Reset Period*” means, as to all Reset Periods except the Initial Reset Period and the Reset Period ending November 15, 2005, a period of one, three or six months, commencing on the 16<sup>th</sup> day of the first month and ending on the 15<sup>th</sup> day of the last month of such period, all as designated by the City pursuant to Section 4 hereof. The Reset Period ending November 15, 2005 may commence on the 16<sup>th</sup> day of any month not earlier than May 16, 2005 nor later than October 16, 2005.

**Section 2. Sale of Series 2003 Notes.** The Series 2003 Notes, in the aggregate principal amount of \$6,000,000, maturing and bearing interest from their date of issuance as provided herein, are hereby awarded to Bank One National Association (the “Purchaser”) at a price of \$6,000,000 (without accrued interest) and upon the terms provided in the Note Ordinance and this Supplemental Resolution.

**Section 3. General.** The Series 2003 Notes shall be dated their date of issuance, shall be issued in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof, shall mature on November 15, 2005, subject to a one-year extension of maturity at the option of the City as provided herein, and shall bear interest accruing as provided in Section 4 hereof, said interest payable May 15, 2004 and each November 15 and May 15 through their maturity or earlier redemption. The net effective interest rate of the Series 2003 Notes is hereby determined to be not greater than 8%. The net effective interest rate of the Series 2003 Notes over their term, including any extension of maturity, shall not exceed 8%. To the extent the maturity of the Series 2003 Notes is extended the Series 2003 Notes shall bear interest at a rate or rates determined according to Section 5 hereof. The Series 2003 Notes shall be issued in substantially the form provided in the Note Ordinance, and shall not be issued in book-entry form. The Director of Finance of the City is hereby designated Paying Agent, Registrar and Transfer Agent with respect to the Series 2003 Notes.

**Section 4. Accrual and Payment of Interest on the Series 2003 Notes.** Interest shall accrue on the Series 2003 Notes during each Reset Period at the Applicable Interest Rate, and said interest shall be paid on November 15 and May 15 in each year commencing on May 15, 2004. Not less than five (5) days before the last Business Day of each Reset Period, the City shall notify the Owner(s) of the Series 2003 Notes of whether the next ensuing Reset Period will be a one, three or six month period. In the event no such notice is given, the ensuing Reset Period shall be a one month period. No Reset Period may exceed the number of months remaining to the original maturity of the Series 2003 Notes.

**Section 5. Extension of Maturity and Adjustment of Interest Rate.** Subject to and conditioned upon the making by the City, on November 15, 2005, of a prepayment of principal of the Series 2003 Notes at least equal to the greater of (i) the balance of the Additional Security Account or (ii) 20% of the Outstanding amount of the Series 2003 Notes, and provided that the City certifies that no material adverse change has occurred in the financial condition of the City since the date of issuance of the Series 2003 Notes, the City may elect, by facsimile, electronic or telephonic notice given to the Purchaser not later than ten days prior to November 15, 2005 and promptly confirmed in writing by mail or hand delivery, to extend the maturity of the Series 2003 Notes, and following such election and prepayment the maturity date of the Series 2003 Notes shall automatically be extended by a period (the “Extension Period”) equal to one year from the maturity date which would otherwise have applied. During the Extension Period, the Notes shall bear interest at a per annum rate (the “Extended Rate”) equal to the six-month LIBOR rate in effect on the date the City’s notice of extension with respect to such Extension Period is given plus 200 basis points (2.00%), but in no event either (i) greater than the maximum rate permitted under the Note Ordinance or (ii) equal to or greater than that rate which would

cause the net effective interest rate of the Series 2003 Notes over their term to exceed the maximum net effective interest rate permitted under the Note Ordinance.

**Section 6. Redemption.** The Series 2003 Notes shall be subject to redemption in advance of their maturity, in whole or in part, on any Reset Date, and on November 15, 2005, at a redemption price equal to the principal amount of the Series 2003 Notes redeemed plus accrued interest to the redemption date. Notice of any redemption shall be given as provided in the Note Ordinance.

**Section 7. Financial Covenants; Additional Obligations.** The City shall maintain, for as long as the Series 2003 Notes are Outstanding, unrestricted cash and short-term investments in the funds of the Enterprise at least equal to 50% of the principal amount of Series 2003 Notes Outstanding, less any amounts credited to the Additional Security Account. For so long as the Series 2003 Notes are Outstanding, the City shall not issue any obligations secured by a lien on the Net Pledged Revenues superior to or on a parity with the lien thereon securing the Series 2003 Notes without the written consent of the Owners of all of the Series 2003 Notes unless the balance of the Additional Security Account is sufficient to discharge the principal of and interest in the Series 2003 Notes in full upon maturity.

**Section 8. Ratification.** All action not inconsistent with the provisions of this Resolution heretofore taken by the City or its officers, and otherwise by the City directed toward the Construction Project or the issuance of the Series 2003 Notes for the purposes described herein and in the Note Ordinance is hereby ratified, approved and confirmed.

**Section 9. Facsimile Signatures.** Pursuant to the Uniform Facsimile Signature of Public Officials Act, Part 1, Article 55, Title 11, C.R.S., as amended, the Mayor and the City Clerk shall forthwith, and in any event prior to the time the Series 2003 Notes are delivered to the Purchaser, file with the Colorado Secretary of State their manual signatures certified by them under oath.

**Section 10. Resolution Irrepealable.** This Resolution and the Note Ordinance together constitute a legislative measure of the City, and after any of the Series 2003 Notes are issued, the Note Ordinance and this Resolution shall constitute an irrevocable contract between the City and the Owner or Owners of the Series 2003 Notes and shall be and shall remain irrepealable, except as provided in the Note Ordinance, until the Series 2003 Notes, as to all Debt Service Requirements, shall be fully paid, cancelled and discharged, as herein provided.

**Section 11. Repealer.** All resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any Resolution, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

**Section 12. Severability.** If any section, subsection, paragraph, clause or other provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions of this Resolution.

**Section 13. Effectiveness.** This Resolution shall take effect immediately upon its passage.

Adopted this 13th day of November, 2003

City Of Golden, Colorado, Acting By and Through  
Its Water and Waste Water Enterprise

(SEAL)

By CJ Baroch  
Charles J. Baroch, Mayor

ATTEST:

Susan M. Brooks MMC, Deputy  
Susan M. Brooks MMC, City Clerk

Approved as to Form:

James Windholz  
James Windholz, City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing Resolution was passed and adopted at a regular meeting of the City Council of said City, held on the 13<sup>th</sup> day of November, 2003, and the said Resolution has not been amended or modified and remains in full force and effect as of this date.

Witness my hand and official seal of the City of Golden, Colorado, this 13th day of November, 2003.

ATTEST:

(SEAL)

By Susan M. Brooks MMC, Deputy  
Susan M. Brooks, MMC, City Clerk of the  
City of Golden, Colorado