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Resolutions

**RESOLUTION
OF PAGOSA AREA WATER AND SANITATION DISTRICT
READOPTING AND REESTABLISHING A WATER ACTIVITY ENTERPRISE**

WHEREAS, Pagosa Area Water and Sanitation District ("District") is a special district created pursuant to Article 1, Title 32, C.R.S. ("District Act"), and is authorized to provide water and sanitation activities, services, and facilities within and without the District with the power to issue its own revenue bonds; and

WHEREAS, such water activities include, but are not limited to, the acquisition, diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water and wastewater and all services and facilities related thereto ("Water Activity"); and

WHEREAS, District has historically conducted and operated such Water Activities as a government-owned business of the District providing services in exchange for the payment of fees and charges, and has previously established a Water Activity enterprise in conformance with the provisions of Article 45.1, Title 37, C.R.S. ("Act"), in order to exclude the enterprise from the provisions of Section 20, Article X of the State Constitution ("TABOR"); and

WHEREAS, in addition to any other authority or procedure provided by law, District desires to reestablish its Water Activity enterprise or enterprises ("Enterprise") pursuant to the Act, which shall be operated and maintained as an Enterprise (as defined in TABOR) and which shall be separate and distinct from the governmental activities of the District (that are subject to TABOR); and

WHEREAS, the adoption of this Resolution and the reestablishment, operation, and continuation of the Water Activity Enterprise of the District in conformance with the provisions of the Act and TABOR will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the customers of the Enterprise and the inhabitants of the District and of the people of the State,

THEREFORE, BE IT RESOLVED that the Board of Directors of the District hereby reestablishes its Water Activity Enterprise to be operated and maintained as a government-owned business, so as to exclude its activities from the application of TABOR, in accordance with the following terms:

1. Enterprise Activities and Facilities. The Enterprise shall manage, operate, use, maintain, and conduct all water and wastewater activities, services, and facilities of the District. The Enterprise is authorized to use, operate, improve, extend, enlarge, repair, replace, acquire, dispose of, encumber, contract with respect to, and otherwise control and supervise all Water Activity facilities and property of the District. The Enterprise itself shall be wholly owned by the District. All facilities, property, and assets which are utilized by the Enterprise or form part of the Water Activity Enterprise shall be the property of the District and upon termination of the Enterprise shall be returned to the District.

2. Multiple Enterprises. Each separate Water Activity or Project may be conducted as a separate Enterprise. The Enterprise may conduct or continue to conduct one or more Water Activities, including contracting with other governmental entities, enterprises, or nongovernmental entities or persons. The Board of Directors may, from time to time, establish other Water Activity Enterprises and restructure any Water Activity Enterprise as a separate Enterprise.

3. Governing Board. The Board of Directors of the District shall be the Governing Board of the Enterprise. The Governing Board shall conduct the business of the Enterprise in the same manner and follow the same procedures as the Board of Directors. All public business of the Enterprise shall be conducted only during regular or special meetings of the Board of Directors at which a quorum is present. The record of proceedings of the Governing Board may be incorporated into the minutes of the Board of Directors. No additional oaths, bonds, or other qualifications shall be required of the Governing Board. All actions of the Governing Board shall be considered as the actions and business of the Enterprise undertaken by the Board of Directors acting as the Governing Board of the Enterprise. All business of the Enterprise and actions of the Governing Board shall be governed by and made subject to all requirements, privileges, immunities, protections, limitations, and other provisions of law.

4. Powers. The Governing Board of the Enterprise may, without limitation, exercise the District's legal authority relating to Water Activities or otherwise available to any enterprise, except as expressly provided herein. Such authority shall include all powers set forth in the Act and those powers set forth in the District Act which are consistent with the authorities of an enterprise under the provisions of TABOR and are necessary to operate the Enterprise, including but not limited to the power to issue or reissue bonds, notes, or other obligations payable from revenues derived or to be derived

from the provision of services and to set rates, fees and charges for services provided by the Enterprise. The powers and authorities specifically conferred herein shall not modify, limit, or restrict the powers conferred by any other law directly or indirectly affecting the Water Activities of the Enterprise, except as expressly provided herein. The Enterprise shall have no power which adversely affects the status of the Enterprise for purposes of the application of TABOR.

5. Taxes. In no event shall the Enterprise have the power to levy or assess any tax which is subject to TABOR or to direct the District to exercise its taxing powers on behalf of the Enterprise.

6. Grants. The Enterprise shall not accept or receive any revenue in Grants (as defined in the Act) from the District, State or any local government, unless expressly authorized by the Board of Directors.

7. Contracts. All contracts relating to Water Activity functions shall be approved by the Governing Board and executed by District officers with the District as the contracting party. Any pre-existing contract relating to Water Activity functions shall be considered as having been approved by the Governing Board. All contracts relating to Water Activity functions shall be implemented and discharged by the Enterprise, unless otherwise provided by the Board of Directors. For all purposes under the Act and TABOR, this Resolution shall, without further action, be considered as a contract for service between the District and the Enterprise under which Water Activity services will be provided to all properties in the District by the Enterprise, and the District will pay for such services in an amount not to exceed the costs of such services as determined, from time to time, by the Governing Board and approved by the Board of Directors.

8. Revenue. All revenue for Water Activity services and facilities provided by the Enterprise, including rates, fees, tolls, charges, and all other income of the Enterprise shall be collected, used, and expended for Water Activity purposes as determined by the Governing Board in accordance with and as set forth in the fiscal budget of the Enterprise adopted pursuant to law. Rates for Water Activity services and facilities provided by the Enterprise shall be established by the Governing Board, approved by the Board of Directors, and collected and enforced in accordance with State law. No revenue or spending of the Enterprise shall be subject to TABOR.

9. Enterprise Fund. An Enterprise Fund shall be established to separately account for all revenue and expenditures of the Enterprise. The Enterprise shall prepare an annual budget and perform an annual audit which may be included in the budget or audit of the District. All budgets, reports, audits, and financial operations of the Enterprise shall conform to and be prepared in accordance with generally accepted accounting principles applicable to governmental (enterprise) units, with the particular requirements of TABOR, and other requirements of State law.

10. Miscellaneous. Nothing set forth in this Resolution shall be construed to limit the authority of the Governing Board or the Enterprise to utilize other policies or procedures for operating or continuing the Water Activity Enterprise in conformance with the Act and TABOR, except as otherwise expressly provided herein. It is the intent of the Board of Directors to reestablish the Water Activity Enterprise in conformance with the provisions of the Act and TABOR according to its most reasonable interpretations thereof. The application and effect of this Resolution with respect to the Water Activity Enterprise shall be both prospective and retrospective to the effective date of TABOR, unless otherwise determined by the Board of Directors. If any term, section, or provision of this Resolution shall be determined to be invalid or in violation of the enterprise qualification provisions of TABOR or the Act, the invalidity or disqualification of such section shall not affect any of the remaining provisions of this Resolution. This Resolution shall remain in effect, whether or not the Water Activity Enterprise currently qualifies as an enterprise pursuant to TABOR, until modified or repealed by the Board of Directors.

The foregoing Resolution was adopted at a meeting of the Board of Directors of the Pagosa Area Water and Sanitation District held on July 13, 1995, and is hereby certified as the final Resolution of the Board by me as President of the Board.

By: Harold K. Slavische
President of the Board of Directors

Pagosa Area Water and Sanitation District