

ORDINANCE NO. 653

AN ORDINANCE OF THE CITY OF LAS ANIMAS, COLORADO APPROVING, IN ACCORDANCE WITH THE REQUIREMENTS OF THE ORGANIC CONTRACT, THE ISSUANCE OF REVENUE BONDS BY THE ARKANSAS RIVER POWER AUTHORITY TO FINANCE THE LAMAR REPOWERING PROJECT; APPROVING THE ORGANIC CONTRACT THIRD AMENDMENT AND THE POWER SALES AGREEMENT FIRST AMENDMENT; AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the City of Las Animas, Colorado (the "City") is a member of the Arkansas River Power Authority, a separate governmental entity and political subdivision of the State of Colorado (the "Authority" or "ARPA"), having heretofore executed and delivered the "Organic Contract Creating and Establishing the Arkansas River Power Authority as a Separate Governmental Entity" and amendments thereto (collectively, the "Organic Contract"); and

WHEREAS, the Authority was established by the City, the Town of Holly, Colorado; the City of La Junta, Colorado; the City of Lamar, Colorado; the Town of Springfield, Colorado; the City of Trinidad, Colorado; and the City of Raton, New Mexico (collectively the "Member Municipalities" or individually each a "Member Municipality") to plan, develop and acquire the electric power resources needed by the Member Municipalities to reliably serve their respective electricity customers; and

WHEREAS, Section 2.4 of the Organic Contract provides that the Authority must request the approval of the Member Municipalities prior to issuing any bonds in connection with a Project (as said term is defined in the Organic Contract); and

WHEREAS, Section 2.4.2 of the Organic Contract provides that written notice of the Authority's intention to provide funds (through the issuance of bonds) for a Project must be submitted to each Member Municipality and that the notice must contain a description of the Project, the projected sources and uses of funds for all aspects of the construction and testing of the Project, and a statement that, in the opinion of the Authority, the Project is economically feasible and is necessary for the Authority to meet its commitment to supply the wholesale power and energy requirements of the Municipalities, together with an explanation of the Authority's basis for this opinion; and

WHEREAS, each Member Municipality, including the City, has received a written "Notice of Intent to Commit Funds" (the "Notice") from the Authority containing the information required pursuant to Section 2.4.2 of the Organic Contract and stating that the Authority intends to issue revenue bonds (the "Bonds") to finance the repowering of the existing 25 megawatt steam generating unit owned by the Lamar Utilities Board from a natural gas-fired operation to a coal-fired operation with a resulting increase in net output rating to approximately 38.5 megawatt, all as more specifically described in the Notice (the "Lamar Repowering Project"); and

WHEREAS, in connection with the development of the Lamar Repowering Project, the Authority, the City of Lamar and the Lamar Utilities Board must enter into a Joint Operating Agreement for the Development of the Lamar Repowering Project and Operations and Maintenance in Support of the Lamar Repowering Project (the "Joint Operating Agreement"); and

WHEREAS, in order for the Authority to issue the Bonds, the Notice states that revisions must be made to the Organic Contract and to the "Agreement For The Supply of Electric Power and Energy to Municipal Members of the Arkansas River Power Authority" (the "Power Sales Agreement"), including (a) extending the base terms of both documents; (b) clarifying the power supply commitments between the Authority and the Member Municipalities and the Member Municipalities to each other and to the Authority; and (c) incorporating several housekeeping amendments necessitated by changed circumstances since the Organic Contract and Power Sales Agreement were originally executed; and

WHEREAS, the revisions to the Organic Contract are embodied in the "Organic Contract Third Amendment Creating and Establishing the Arkansas River Power Authority as a Separate Governmental Entity" (the "Organic Contract Third Amendment") and the revisions to the Power Sales Agreement are embodied in the "First Amendment to the Agreement for the Supply of Electric Power and Energy to Municipal Members of the Arkansas River Power Authority" (the "Power Sales Agreement First Amendment"), both of which have been approved by the ARPA Board of Directors; and

WHEREAS, each Member Municipality is to give the Authority written notice of its approval or disapproval of (i) the financing of the Lamar Repowering Project from proceeds of the Bonds, (ii) the Organic Contract Third Amendment and (iii) the Power Sales Agreement First Amendment within a period of time specified in Section 2.4.3 of the Organic Contract; and

WHEREAS, the Las Animas Municipal Light and Power Board has considered and recommended the approval of the Lamar Repowering Project, the issuance of the Bonds, the Organic Contract Third Amendment and the Power Sales Agreement First Amendment and has recommended that the City Council of the City (the "City Council") approve this Ordinance; and

WHEREAS, the City Council has received copies of the Notice, the Organic Contract Third Amendment and the Power Sales Agreement First Amendment; further, representatives of ARPA have appeared before the City Council prior to the adoption of this Ordinance to presented the details of the Lamar Repowering Project and respond to questions of the City Council;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COLORADO:

Section 1. Approval of the Organic Contract Third Amendment. The Organic Contract Third Amendment, in the form and with the content presented to the City, is in all respects approved and authorized, and the Mayor is authorized and directed to execute the Organic Contract Third Amendment in the form and with the same content as presented to the City.

Section 2. Approval of the Power Sales Agreement First Amendment. The Power Sales Agreement First Amendment, in the form and with the content presented to the City, is in all respects approved and authorized, and the Mayor is authorized and directed to execute the Power Sales Agreement First Amendment in the form and with the same content presented to the City.

Section 3. Approval of the Financing of the Lamar Repowering Project through the issuance of the Bonds.

(a) The financing of the Lamar Repowering Project from the proceeds of the Bonds is in all respects approved and authorized. In accordance with the terms of the Notice, the Bonds may be issued in one or more series which shall, in the aggregate, incorporate and be subject to the following parameters:

(i) The principal amount of the financing for the engineering, equipment procurement, and construction of the Repowering Project shall not exceed \$66 million, plus such additional costs of issuance related to the financing, including, but not limited to, capitalized interest, the creation of a bond reserve fund, underwriting discount, legal costs, and bond insurance premiums;

(ii) The term of the Bonds (maturity) shall be for a period which, in the best judgment of the Authority after obtaining the advice and counsel of the Authority's expert financial advisors, does not exceed the useful life of the Repowering Project and results in annual debt service payments which enable the Authority to provide a long term supply of baseload energy at reasonable cost to the Member Municipalities; provided, however, that the maturity of the initial issue shall not extend beyond forty (40) years from the bond issuance date;

(iii) The Authority shall use its best efforts to obtain the lowest net effective interest rate on the Bonds, through a public or negotiated sale, giving due consideration to the length of the financing and market conditions at the time of closing; and

(iv) By approving the issuance of Bonds by the Authority, the City shall be deemed to also give its approval to the placement by the Authority of interim financing for the Repowering Project, as determined by the Authority's Board of Directors to be necessary or desirable prior to closing on the Bonds.

(b) In accordance with Section 29-1-204(5), Colorado Revised Statutes, the Bonds shall not be considered a debt, liability or obligation of the City.

Section 4. Findings and Determinations. The City Council hereby finds and determines as follows:

(a) The Notice, in form and content, meet the requirements established pursuant to Section 2.4.2 of the Organic Contract for written notice to Member Municipalities.

(b) In the event that a Member Municipality requests an extension to the sixty (60) day notice period provided in Section 2.4.3 of the Organic Contract, the City hereby consents to

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an extension of time for thirty (30) days provided that the request of the Member Municipality is received by the Authority within the original sixty (60) day period.

(c) this Ordinance shall constitute action by the City within the meaning of Section 2.4.3 of the Organic Contract.

(d) The City has established and covenants to continue to maintain the facilities, properties and operation comprising its municipally owned electric power system (the "Electric Utility") as an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution. The Electric Utility is a government owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined. The City Council is acting by and through its Electric Utility enterprise in the approval and adoption of this Ordinance which shall be valid and binding against the City, and the City covenants and agrees not to take, or fail to take, any action which adversely affects the validity or enforceability of this Ordinance.

Section 5. City Cooperation and Execution of Certificates and Instruments. The Mayor, City Clerk and other officials and employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all certificates and instruments which may be reasonably requested in connection with the issuance of the Bonds by the Authority, and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the purposes of this Ordinance. Without limitation of the foregoing provisions, the City Clerk is hereby authorized and directed to deliver a certified copy of this Ordinance to the Authority indicating that this Ordinance has been duly approved and, together with the Mayor or, in the absence of the Mayor the Mayor Pro Tem, provide a certification to the Authority when and if all provisions of this Ordinance are in full force and effect. Additionally, the Mayor or, in the absence of the Mayor the Mayor Pro Tem, shall be authorized to certify to the Authority that all conditions and parameters established pursuant to this Ordinance have been met and such certification shall be deemed to conclusively establish on behalf of the City that all conditions and parameters have been met.

Section 6. 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.

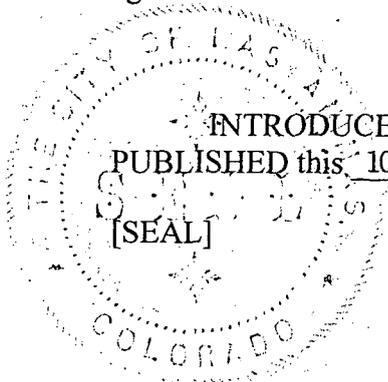
Section 7. Ratification. All actions heretofore taken by the City and its officers in connection with the Lamar Repowering Project and the Bonds are hereby ratified, approved and confirmed. The City Council hereby acknowledges and agrees that the Notice is sufficient for the purposes of the City and satisfies the requirements of the Organic Contract.

Section 8. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any other provision of this Ordinance.

Section 9. Repealer. All ordinances, resolutions, bylaws and regulations of the City in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency. This

repealer shall not be construed to revive any ordinance, resolution, bylaw or regulation, or part thereof, heretofore repealed.

Section 10. Effective Date. This Ordinance shall be in full force and effect 30 days after publication following final passage and adoption, provided however, Sections 1, 2 and 3 of this Ordinance shall not become effective until (i) all Member Municipalities have, by action of the Member Municipalities within the meaning of Section 2.4.3 of the Organic Contract, approved and authorized the financing of the Lamar Repowering Project from proceeds of the Bonds, and approved and authorized the Organic Contract Third Amendment and the Power Sales Agreement First Amendment and (ii) the Authority provides the City with written notification that the Joint Operating Agreement has been executed by all parties to said agreement.



INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED
PUBLISHED this 10 day of August, 2004.

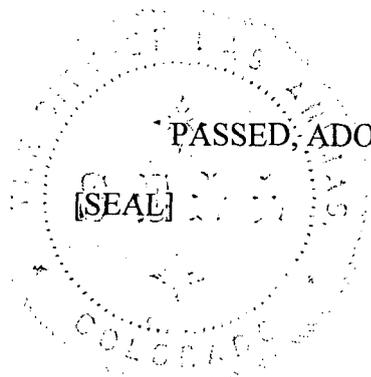
CAT

[SEAL]

By William H. Sugg
_____, Mayor

Attest:

By Chaumaine D. Tripp
_____, City Clerk



PASSED, ADOPTED AND ORDERED PUBLISHED this 14 day of September 2004.

[SEAL]

By William H. Sugg
_____, Mayor

Attest:

By Chaumaine D. Tripp
_____, City Clerk

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