

ORDINANCE NO. 666

**AN ORDINANCE OF THE CITY OF LAS ANIMAS, COLORADO APPROVING THE ISSUANCE OF UP TO AN ADDITIONAL \$10 MILLION OF ARPA BONDS TO FINANCE THE REPOWERING PROJECT 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 City of Trinidad, Colorado; the Town of Springfield, 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**, the City has, pursuant to due notice from ARPA and by City ordinance, previously approved the development by ARPA of a project to repower 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 megawatts (the "Repowering Project") and further authorized and approved, together with the governing body of each of the Member Municipalities (collectively, the "Members' Authorization"), the Authority's issuance of bonds to finance the Repowering Project (the "Bonds"); and

**WHEREAS**, pursuant to the current Members' Authorization, 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; and

**WHEREAS**, the Authority has presented to the City a Second Supplemental Notice Of Intent To Commit Funds To Acquire, Construct, and Install The Lamar Repowering Project, dated October 17, 2005 (the "2005 Notice") which states in part that, due to future uncertainties in certain costs which are beyond the control of the Authority relating to fluctuations in market prices for critical material and labor, the costs of the Repowering Project could exceed the existing authorization for the issuance of the Bonds; and

**WHEREAS**, the Authority should have authority to cover a reasonable contingency amount in the event that current estimates are exceeded, and the Authority has determined that based on discussions with its consultants and advisors for the Bonds and the Repowering Project,

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the successful funding of the Bonds and prudent planning for completion of the Repowering Project necessitate an increase in the principal amount of the Members' Authorization by an additional \$10 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, to be used only if necessary (the "Supplemental Authorization"); and

**WHEREAS**, the City Council of the City (the "City Council"), having reviewed the 2005 Notice and being advised in the premises, now takes the following action;

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

**Section 1. Approval of Supplemental Authorization.** The Supplemental Authorization is in all respects approved and authorized by the City and such approval and authorization by the City shall equal the City's percentage share of all Member Municipality energy purchases from the Authority in calendar year 2004 (the "City's Supplemental Participation"). The City's approval shall be conditioned upon approval of the Supplemental Authorization by Member Municipalities representing not less than sixty-five percent of the energy purchased from the Authority in calendar year 2004 (the "Minimum Member Participation"). Further, in the event that the Minimum Member Participation for the Supplemental Authorization is received by the Authority but less than all Member Municipalities approve the Supplemental Authorization, the Authority's Supplemental Authorization (exclusive of the 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) shall equal an amount which is the total of the City's Supplemental Participation multiplied by \$10,000,000, together with the supplemental participation by other Member Municipalities calculated as the energy purchased by the respective approving Member Municipalities from the Authority in calendar year 2004 multiplied by \$10,000,000.

**Section 2. Findings and Determinations.** The City Council hereby finds and determines that:

(a) The Member Municipality percentage energy purchases from the Authority in calendar year 2004 were the Town of Holly, two percent (2%); the City of Lamar, twenty-nine percent (29%); the City of La Junta, twenty-two percent (22%); the City of Las Animas, nine percent (9%); the City of Raton, eighteen percent (18%); the Town of Springfield, four percent (4%); and the City of Trinidad, sixteen percent (16%); therefore, the City's Supplemental Participation shall be nine percent (9%).

(b) The successful funding and prudent planning for the completion of the Repowering Project necessitate the approval of the Supplemental Authorization.

(c) The failure of any Member Municipality to approve the Supplemental Authorization shall not be considered a repeal of entitlement to participate in the Repowering Project. Any provision concerning full or proportionate entitlement participation in the

Repowering Project for a Member Municipality which does not approve the Supplemental Authorization shall be as later determined by the Board of Directors of the Authority.

(d) This Ordinance shall constitute valid and binding approval and action by the City pursuant to the terms of the Organic Contract.

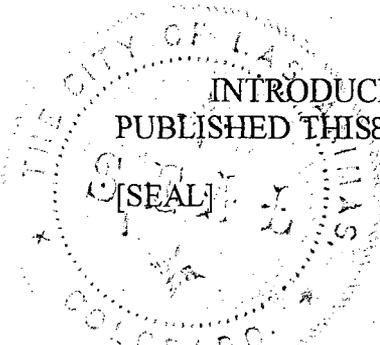
**Section 3. City Cooperation and Execution of Certificates and Instruments.** The Mayor, City Clerk and other officials and employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all certificates and instruments which may be reasonably requested in connection with the Supplemental Authorization, 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, to 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 4. 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 5. 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 6. Effective Date.** This Ordinance shall be in full force and effect 30 days after publication following final passage and adoption.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED  
PUBLISHED THIS 8th day of November, 2005.

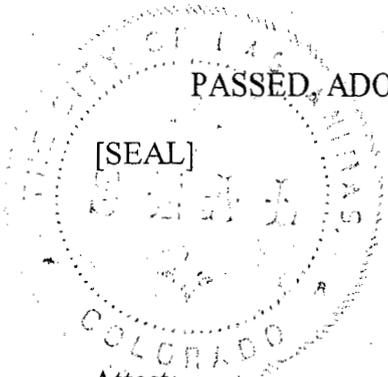


Attest:

By Charmaine D. Tripp  
Charmaine D. Tripp, City Clerk

By William Lutz  
William Lutz, Mayor

PASSED, ADOPTED AND ORDERED PUBLISHED this 21st day of NOVEMBER, 2005.



[SEAL]

By *William H. Lutz*  
William Lutz, Mayor

Attest:

By *Charmaine D. Tripp*  
Charmaine D. Tripp, City Clerk