

ORDINANCE NO. 462

AN ORDINANCE OF THE TOWN OF HOLLY, COLORADO, REGARDING THE ARKANSAS RIVER POWER AUTHORITY; AND AUTHORIZING AND APPROVING AMENDMENTS TO THE ORGANIC CONTRACT AND POWER SALES AGREEMENT AS A MEMBER MUNICIPALITY TO INCORPORATE SETTLEMENT TERMS OF LITIGATION BETWEEN THE AUTHORITY AND THE CITY OF RATON, NEW MEXICO

WHEREAS, the Town of Holly, Colorado (the "Town") is a member of the Arkansas River Power Authority, a separate governmental entity and political subdivision of the State of Colorado (the "Authority"), having heretofore executed and delivered the "Organic Contract Creating and Establishing the Arkansas River Power Authority as a separate government entity" and amendments thereto (collectively, the "Organic Contract"); and

WHEREAS, the Authority was established by the Town of Holly, Colorado, the City of La Junta, Colorado, the City of Lamar, Colorado, the City of Las Animas, Colorado, the Town of Springfield, Colorado, the City of Trinidad, Colorado and the City of Raton, New Mexico (collectively the "Member Municipalities") to plan, develop and acquire the electric power resources needed to supply the wholesale electricity requirements of the Member Municipalities; and

WHEREAS, each of the Member Municipalities and the Authority executed and delivered the Agreement for the Supply of Electric Power and Energy to Municipal Members of the Arkansas River Power Authority dated December 13, 1983, as amended November 18, 2004 (the "Power Sales Agreement"), pursuant to which each of the Member Municipalities agreed to purchase its wholesale electric requirements, in excess of certain enumerated sources, from the Authority for the term of the Power Sales Agreement; and

WHEREAS, each of the Member Municipalities, including the Town of Holly, approved a plan by the Authority to repower an existing electric generation facility in Lamar, Colorado, and increase its generation capacity to a new 38.5 megawatts (the "Lamar Repowering Project") to meet the long-term electricity requirements of the Member Municipalities, and approved the issuance of bonds to finance the design and construction of the Lamar Repowering Project; and

WHEREAS, a dispute has arisen between the City of Raton ("Raton") and the Authority regarding the future direction of the Authority and the means by which the Authority provides wholesale electricity to the Member Municipalities pursuant to the Organic Contract and the Power Sales Agreement, and Raton has commenced an action in the United States District Court, for the District of New Mexico styled *City of Raton v. Arkansas River Power Authority*, Case No. 1:08-cv-00026-GB-WDS (the "Raton Litigation") regarding Raton's obligation to fund its pro rata share of the Lamar Repowering Project and its continued electricity purchase obligations under the Organic Contract and Power Sales Agreement; and

WHEREAS, the Authority has entered into a settlement of the Raton Litigation (the "Settlement") which provides for the termination of Raton's interest in the Authority and its rights and obligations under the Organic Contract and Power Sales Agreement, subject to the approval of the remaining Member Municipalities of the Authority, the holders of any bonded indebtedness of the Authority, and the insurers of any bonded indebtedness of the Authority; and

WHEREAS, pursuant to the Settlement, Raton will enter into a short-term Power Sales Agreement for a duration of three years, during which it shall obtain all of its power requirements from the Authority in excess of what Raton generates from its own facilities, and it will purchase certain assets from the Authority that are no longer required for the efficient operation of the Authority upon termination of Raton's interest in the Authority; and

WHEREAS, in connection with the Settlement, certain amendments will be required to the Organic Contract and the Power Sales Agreement to terminate Raton's interest in the Authority and its rights and obligations under the Organic Contract and Power Sales Agreement; and

WHEREAS, the Settlement has been approved by the City Commission of the City of Raton as well as the Board of Directors of the Authority; and

WHEREAS, the Board of Trustees of the Town of Holly has received copies of the proposed amendments to the Organic Contract and Power Sales Agreement, and has received a presentation from the Authority prior to the adoption of this ordinance concerning the details of the Settlement and its implications for the Town and the other Member Municipalities of the Authority; and

WHEREAS, the Board of Trustees has found that the Settlement and amendments to the Organic Contract and Power Sales Agreement contemplated in the Settlement are in the best interest of the ratepayers of the Member Municipalities.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HOLLY, COLORADO:

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

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

Section 3. Town Cooperation. The Mayor, Clerk/Treasurer and other officials and employees of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all certificates and instruments which may be reasonably requested in order to implement and carry out the purposes of this ordinance.

Section 4. Headings. The headings to the various sections and paragraphs to this ordinance have been inserted solely for the convenience of the reader, and are not part of this ordinance, and shall not be used in any manner to interpret this ordinance.

Section 5. Ratification. All actions heretofore taken by the Town and its officers in connection with the Power Sales Agreement and Organic Contract are hereby ratified, approved and confirmed.

Section 6. 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 7. Repealer. All ordinances, resolutions, by-laws and regulations of the Town in conflict with the ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, by-law or regulation, or part thereof, heretofore repealed.

Section 8. Effective Date. This ordinance shall be in full force and effect 30 days after publication following final passage and adoption, provided, however, that Sections 1 and 2 of this ordinance shall not become effective until (i) all Member Municipalities have, by action of the Member Municipalities, approved and authorized the amendments to the Organic Contract and Power Sales Agreement; and (ii) the Settlement has been approved by the holders of any outstanding bonds of the Authority and the insurer of any such bonded indebtedness.

APPROVED AND ADOPTED THIS 5th DAY OF AUGUST, 2009.

/s/ W. Bruce Roup, Mayor

ATTEST:

/s/ Mary Rushton, Clerk/Treasurer