

ORDINANCE TAKEN OFF THE TABLE SEPTEMBER 26, 2019 PER ARPA.

~~ORDINANCE NO. 522~~

AN ORDINANCE OF THE TOWN OF HOLLY, COLORADO, APPROVING A POWER PURCHASE AGREEMENT BETWEEN THE TOWN AND SOUTHEAST COLORADO POWER ASSOCIATION (“SECPA”), A MEMBER OF THE TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. (“TRI-STATE”) AND THE TERMINATION OF THE POWER SUPPLY AGREEMENT BETWEEN THE TOWN AND THE ARKANSAS RIVER POWER AUTHORITY (“ARPA”) AND APPROVING ARPA’S EXECUTION OF THE DEFEASANCE FUNDING AND ASSIGNMENT AGREEMENT WITH TRI-STATE, AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH

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 (“ARPA”), having heretofore executed and delivered the “Organic Contract Creating and Establishing the Arkansas River Power Authority as a Separate Governmental Entity,” dated November 8, 1979, as amended (the “Organic Contract”); and

WHEREAS, the Town’s membership in ARPA is expressly authorized and acknowledged in the Agreement Admitting the Town of Holly, Colorado to Membership in the Arkansas River Power Authority per Resolution 4-85 adopted March 14, 1985; and

WHEREAS, ARPA is in the business of supplying and delivering wholesale electric power and energy to its members; and

WHEREAS, the Town obtains all its requirements for electric power and energy, subject to limited exceptions, from ARPA under 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 (the “Power Supply Agreement”); and

WHEREAS, the members of ARPA at the effective date hereof (each, a “Municipality” and collectively the “Municipalities”) consist of: the Town, the City of Las Animas, Colorado; the City of La Junta, Colorado; the City of Lamar, Colorado; the City of Trinidad, Colorado; and the Town of Springfield, Colorado; and

WHEREAS, Tri-State Generation and Transmission Association, Inc. (“Tri-State”), is a Colorado corporation and an electric generation and transmission cooperative engaged in generating, purchasing, and transmitting electric energy to its members in the states of Colorado, Nebraska, New Mexico, and Wyoming; and

WHEREAS, SECPA is a cooperative corporation and Class A Member of Tri-State engaged in purchasing, selling and transmitting electric energy to its members in the state of Colorado; and

WHEREAS, in March 2018, SECPA, in collaboration with Tri-State submitted a proposal to ARPA regarding a proposed transaction (the “Transaction”) which, to the extent the Transaction involves the Town, would consist of and include the following: (a) the termination and cancellation of the Power Supply Agreement; (b) the Town entering into a new agreement with SECPA, providing for the Town’s purchase of all its electric power and energy requirements, with limited exceptions, from SECPA (the

“New Power Purchase Agreement”); (c) the defeasance of all of ARPA’s outstanding bonds, including: (i) Power Revenue Refunding and Improvement Bonds issued by ARPA in 2003, (ii) Power Revenue Improvement Bonds issued by ARPA in 2006, 2007, 2008, and 2010, and (iii) Refunding Bonds (as defined below) that may be issued by ARPA prior to the closing under the Defeasance Agreement (as defined below) (together, the “Outstanding Bonds”); (d) the amendment of the Organic Contract to release the Municipalities from their obligations to buy all or nearly all their electric power and energy requirements from ARPA; (e) the assignment by ARPA of certain contracts and the rights and benefits thereunder; and (f) the assumption by Tri-State of certain contracts and the obligations of ARPA thereunder; and

WHEREAS, with the authority of the Board of Directors of ARPA (“ARPA Board”), representatives of ARPA, the Town, and other Municipalities have negotiated the principal documents and other materials relating to the Transaction as it involves the Town (the “Transaction Documents”); and

WHEREAS, the material Transaction Documents consist of the following: a Defeasance Funding and Assignment Agreement between Tri-State and ARPA (“Defeasance Agreement”); the New Power Purchase Agreement; and an agreement or instrument between and among ARPA and the Municipalities pursuant to which the Power Supply Agreement will be terminated (“PSA Termination Agreement”); and

WHEREAS, ARPA and its officers, together with the designated representatives of the Town who are members of the ARPA Board: have presented the material terms of the Transaction to the Board of Trustees; have delivered to the Board of Trustees copies of the proposed Transaction Documents; have answered all questions asked, and provided all materials requested, by the Board of Trustees regarding the Transaction; and have recommended that the Board of Trustees accept, implement, and effectuate the Transaction; and

WHEREAS, the Board of Trustees has previously, by Resolution No. 2018-3, dated March 7, 2018 (“Resolution”), approved the issuance by ARPA of bonds (“Refunding Bonds”) to refund and defease the Outstanding Bonds, and wishes to confirm that the Resolution remains in full force and effect, so that ARPA, in its discretion, may proceed with the issuance of the Refunding Bonds to achieve purposes beneficial to the City and the other Municipalities if the Transaction is delayed or is not consummated for any reason; and

WHEREAS, the Board of Trustees, having reviewed the terms of the Transaction, including those stated in the Transaction Documents, and having considered the recommendations, presentations, and materials made and submitted to the Board of Trustees, including such other information relating thereto as it deemed necessary and appropriate, now takes the following action.

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

Section 1. Approval of Transaction. The Transaction is approved in all respects, and (a) the Town is authorized to enter into the New Power Purchase Agreement, the PSA Termination Agreement, the amendment to the Organic Contract, and such other documents as may be necessary to consummate the Transaction in all respects, and (b) ARPA’s execution of the Defeasance Agreement, together with all additional contracts, documents, certificates and opinions required by the Defeasance Agreement, is hereby authorized and approved. The Mayor of the Town and all other appropriate officers of the Town are authorized to cause the Town to do the following: to enter into and effectuate the New Power Purchase Agreement and the PSA Termination Agreement; to execute, deliver, and perform any other agreements, documents, or instruments relating to the Transaction; and to perform such other acts as

they may deem necessary or appropriate in connection with the Transaction. The Mayor of the Town is authorized to make or consent to such non-material changes to the New Power Purchase Agreement, the PSA Termination Agreement, or any other documents relating to the Transaction to which the Town is a party, as the Mayor, in consultation with counsel, deems necessary, appropriate, or advisable.

Section 2. Confirmation of Resolution. The Board of Trustees hereby confirms that the Resolution remains in full force and effect, so that ARPA, in its discretion, may proceed with the issuance of the Refunding Bonds to refund and defease some or all of the Outstanding Bonds that were issued in 2003, 2006, 2007, 2008 and 2010 if the Transaction is delayed or is not consummated for any reason. The Town and its officers and legal counsel shall cooperate with ARPA in the issuance of the Refunding Bonds and shall deliver all documents, certificates and legal opinions authorized by the Resolution to and upon the request of ARPA.

Section 3. Findings and Determinations. The Board of Trustees hereby finds and determines that consummating the Transaction on the terms stated in the Transaction documents is in the best interests of the Town, its residents and its community. The foregoing finding and determination is based in part on the fact that the Transaction offers the Town the opportunity to meet its electric power and energy requirements at lower prices than those currently available through ARPA.

Section 4. Validity and Binding Nature. This Ordinance shall constitute valid and binding approval and action by the Town for all lawful purposes. Unless and until the Transaction is consummated in all respects, the Organic Contract and the Power Supply Agreement remain valid, in full force and effect, and enforceable in accordance with their terms, subject to principles of equity and any applicable bankruptcy laws.

Section 5. Safety Clause. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the Town.

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. 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 8. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after publication following final passage and adoption.

INTRODUCED, READ, AND ORDERED PUBLISHED THIS 9th DAY OF MAY, 2018.

PASSED, ADOPTED, AND APPROVED THIS _____ DAY OF MAY, 2018.

EFFECTIVE DATE OF THIS ORDINANCE SHALL BE THE _____ DAY OF JUNE, 2018.

(Ordinance taken off table)

ATTEST:

Tony Garcia, Mayor

(Ordinance taken off table)

Megan Jara, Clerk/Treasurer