

**ORDINANCE NO. 2009 - 8**

**AN ORDINANCE OF THE TOWN OF OPHIR, COLORADO, APPROVING A LOAN FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE WATER SYSTEM IMPROVEMENTS APPROVED AT THE TOWN ELECTION HELD ON NOVEMBER 3, 2009; AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND BOND TO DOCUMENT THE LOAN; AND PROVIDING FOR PAYMENT OF THE BOND.**

**WHEREAS**, the Town of Ophir, Colorado, is a municipal corporation duly organized and operating as a home rule Town under Article XX of the Constitution of the State of Colorado and the Home Rule Charter of the Town (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Ordinance); and

**WHEREAS**, at an election on Tuesday, November 3, 2009, the electors of the Town approved the following ballot issue:

SHALL TOWN OF OPHIR DEBT BE INCREASED UP TO \$500,000, WITH A MAXIMUM REPAYMENT COST OF UP TO \$625,000, AND SHALL TOWN TAXES BE INCREASED UP TO \$18,250 ANNUALLY (WHICH DOLLAR AMOUNT REPRESENTS ESTIMATED 2010 TAX COLLECTIONS) THROUGH THE EXTENSION OF THE EXISTING TOWN BOND REDEMPTION MILL LEVY TO CONTINUE TO BE IMPOSED AT THE LIMITED FIXED RATE OF 2.9 MILLS AND TERMINATING ON DECEMBER 31, 2030, FOR THE PURPOSE OF:

- WATER TRANSMISSION AND DISTRIBUTION LINE REPLACEMENT, STORAGE TANK, INFILTRATION GALLERY, WATER METERS AND/OR TREATMENT PLANT CONSTRUCTION

SUCH DEBT TO CONSIST OF A LIMITED TAX AND WATER REVENUE BOND ISSUED TO, AND EVIDENCING A LOAN FROM, THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY, WHICH BOND (I) SHALL BE PAYABLE FROM THE EXTENSION OF THE TOWN'S EXISTING BOND REDEMPTION LEVY OF 2.9 MILLS (INCLUDING EXISTING FUND BALANCES FROM SUCH MILL LEVY) AND WATER SYSTEM RATES AND CHARGES TO BE IMPOSED BY THE TOWN IN SUCH AMOUNTS AS NECESSARY TO REPAY THE BOND WHEN DUE, AND (II) SHALL BEAR INTEREST AT A RATE OF 2% PER ANNUM AND BE ISSUED IN SUCH MANNER AND CONTAINING SUCH TERMS, NOT INCONSISTENT HERewith, AS THE GENERAL ASSEMBLY MAY DETERMINE; AND SHALL ANY EARNINGS ON THE INVESTMENT OF THE REVENUES FROM SUCH TAXES AND REVENUES (REGARDLESS OF AMOUNT) CONSTITUTE A VOTER-APPROVED REVENUE CHANGE WITHIN THE MEANING OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

**WHEREAS**, the General Assembly has determined that it is necessary to provide for water transmission and distribution line replacement, storage tank, water meters and/or treatment

plant construction and, to finance such Project, the General Assembly has determined to enter a loan agreement with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, either in the form of (i) a Base Loan Agreement, which loan bears interest at a rate of 2% per annum or (ii) an ARRA Program Loan Agreement, which loan does not bear interest on the unpaid principal of the loan but is subject to additional federal regulatory requirements; and

**WHEREAS**, the Town is currently in the process of finalizing the documentation necessary for qualification for the ARRA Program Loan Agreement and, if it qualifies, it is the current intent of the General Assembly to pursue such loan; and

**WHEREAS**, the Town's repayment obligations under the Project Loan Agreement will be evidenced by a governmental agency bond to be issued by the Town to the Authority, which Bond shall constitute a limited tax general obligation of the Town which is to be paid from (i) a bond redemption mill levy to continue to be imposed at the limited fixed rate of 2.9 mills and terminating on December 31, 2030 and (ii) the net revenues (which are generally defined as all income and revenues directly or indirectly derived from the operation of the water system utility less all reasonable and necessary current expenses for operating, maintaining and repairing the water system utility, all as more specifically defined in the Project Loan Agreement) and, after consideration, the General Assembly has determined that the execution of the Project Loan Agreement and the issuance of the Project Bond to the Authority is to the best advantage of the Town; and

**WHEREAS**, Section 2 of Article VII of the Town Charter provides that no bonds or other evidences of indebtedness payable in whole or in part from the proceeds of ad valorem property taxes, or to which the full faith and credit of the Town are pledged, shall be issued until the question of their issuance shall be submitted to, and approved by a majority of the electors of, the Town voting on such question and, with the approval of the ballot issue set forth above, such requirement has been met; and

**WHEREAS**, the Town does not have any outstanding obligations which are secured by the Pledged Property (as defined in the Project Loan Agreement); and

**WHEREAS**, the form of the Project Loan Agreement and the Project Bond have been reviewed by the Town staff and presented to the General Assembly; and

**WHEREAS**, as provided in the Acting Authority, which include but are not limited to the Town Charter and Title 11, Article 57, Part 2, C.R.S., by this Ordinance the Town authorizes the execution of the Project Loan Agreement and the Project Bond, and delegates to the Mayor of the Town the authority to approve, among other things, the final principal amount of the Project Bond;

**NOW THEREFORE, THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR HEREBY ORDAINS:**

**Section 1. Definitions.** The following terms shall have the following meanings as used in this Ordinance:

“*Acting Authority*” means the Town Charter, Title 11, Article 57, Part 2, C.R.S. and all other laws of the State establishing the power of the Town to complete the financing contemplated by this Ordinance.

“*ARRA Bond*” means the governmental agency bond to be issued by the Town to the Authority pursuant to the ARRA Program Loan Agreement, the form of which is set forth in Exhibit D to the ARRA Program Loan Agreement.

“*ARRA Program Loan Agreement*” means that certain ARRA Program Loan Agreement between the Town and the Authority pursuant to which the Authority is to loan revenues from its Drinking Water Revolving Fund to the Town at no interest cost to the Town (exclusive of charges to be imposed for late payments).

“*Authority*” means the Colorado Water Resources and Power Development Authority.

“*Base Program Loan Agreement*” means that certain Base Program Loan Agreement between the Town and the Authority pursuant to which the Authority is to loan revenues from its Drinking Water Revolving Fund to the Town at an annual interest rate of 2% per annum (exclusive of charges to be imposed for late payments).

“*Base Bond*” means the governmental agency bond to be issued by the Town to the Authority pursuant to the Base Program Loan Agreement, the form of which is set forth in Exhibit D to the Base Program Loan Agreement.

“*Charter*” means the home rule Charter of the Town.

“*County*” means San Miguel County, Colorado.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Financing Documents*” means the Project Loan Agreement and the Project Bond.

“*General Assembly*” means the General Assembly of the Town.

“*Loan Repayments*” means the payments payable by the Town under the Project Bond, which includes those payments payable by the Town pursuant to Section 3.03 of the Project Loan Agreement.

“*Prime Rate*” means the prevailing commercial interest rate announced by the Wall Street Journal from time to time, or, if the Wall Street Journal ceases announcing a prime rate, shall be the prevailing commercial interest rate announced by Citibank, N.A. as its prime lending rate.

“*Project*” means water transmission and distribution line replacement, storage tank, water meters and/or treatment plant construction as set forth in the Project Loan Agreement and as the Project may be later modified by determination of the General Assembly.

“*Project Bond*” means the ARRA Bond or the Base Bond.

“*Project Costs*” means the Town’s costs properly attributable to the Project, or any parts thereof, and permitted by the provisions of the Acting Authority.

“*Project Loan Agreement*” means the ARRA Program Loan Agreement or the Base Program Loan Agreement.

“*State*” means the State of Colorado.

“*System*” means the water system utility of the Town, as more particularly described in the Loan Agreement.

“*Town*” means the Town of Ophir, Colorado.

“*Town Charter*” means the Home Rule Charter of the Town, adopted in 1979, as amended.

**Section 2. Approval of Loan Agreement and Authorization of Bond.** Pursuant to and in accordance with the State Constitution and the Acting Authority, the Project Bond shall be issued by the Town. The form of the Project Loan Agreement setting forth the terms, conditions and details of the Project Bond and the procedures relating thereto, is incorporated herein by reference and is hereby approved; all Town officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Town under the Financing Documents. The Town shall enter into the Project Loan Agreement and deliver the Project Bond in substantially the form presented to the Town at or prior to this meeting of the General Assembly with only such changes as are not inconsistent herewith; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The accomplishment of the Project and the payment of Project Costs are hereby authorized, approved, and ordered to be done.

**Section 3. Project Bond Details.** The Project Bond shall be in an aggregate principal amount not to exceed \$500,000, with the final determination regarding the issuance of the ARRA Bond, if available, or the Base Bond, as well as the final principal amount and maturity date (which shall be not later than December 1, 2030), to be made by the Town Mayor within ninety days from the effective date of this Ordinance. The ARRA Bond shall bear no interest and shall be payable as to principal and mature as more particularly set forth in the ARRA Program Loan Agreement. The Base Bond shall bear interest at a rate of 2.0% per annum (which shall be calculated based on the actual number of days elapsed and a 360 day year), and shall be payable and mature as more particularly set forth in the Base Loan Agreement. The Project Bond may also provide for a penalty rate in an amount equal to the greater of twelve percent (12%) per annum or the Prime Rate plus one half of one percent per annum on late payments.

**Section 4. Security for the Financing Documents.**

(a) **Limited General Obligation.** The Project Bond shall be a limited tax general obligation of the Town. The Loan Repayments shall be payable solely from the Pledged Property (which term is defined in the Project Loan Agreement). The Town irrevocably pledges the Pledged Property for the payment of the Project Bond and the amounts due under the Project Loan Agreement.

(b) ***Pledged Property and Limited Levy of Ad Valorem Taxes.*** For the purpose of paying the Loan Repayments when due, the General Assembly shall, until December 31, 2030 if necessary, certify to the Board of County Commissioners of the County a rate of levy for general ad valorem taxes of 2.9 mills on all of the taxable property in the Town. Such levy may be reduced to the extent that the moneys generated from a lesser rate are sufficient to pay the Loan Repayments when due. To the extent that moneys generated from the annual levy of general ad valorem property taxes of 2.9 mills are not sufficient to pay punctually the Loan Repayments, the Loan Repayments shall be paid from the "Net Revenues" of the Town's water system utility (as more specifically stated in Exhibit A in the Project Loan Agreement).

(c) ***Bond Account.*** There is hereby created and the Town covenants to maintain a special account designated as the "2009 Project Bond Account." The Town shall deposit into the Bond Account (i) the general ad valorem taxes levied pursuant to subsection (b) of this Section as such taxes are collected and (ii) net revenues comprising the Pledged Property (as defined in the Project Loan Agreement) that are to be applied to the payment of the Loan Repayments. Earnings from the investment of moneys on deposit in the Bond Account shall be retained therein. Moneys on deposit in the Bond Account shall be applied solely to the payment of the Loan Repayments and for no other purpose until the payment obligations represented by the Project Bond are fully paid, satisfied and discharged.

(d) ***Appropriation and Budgeting of Proceeds of Ad Valorem Taxes and Other Moneys on Deposit in the Bond Account.*** Moneys received from the general ad valorem taxes levied pursuant to subsection (b) of this Section and other moneys on deposit in the Bond Account in an amount sufficient to pay the Loan Repayments when due are hereby appropriated for that purpose, and all amounts required to pay the Loan Repayments in each year shall be included in the annual budget and appropriation ordinance to be adopted and passed by the General Assembly for such year.

(e) ***Certification to Board of County Commissioners.*** It is hereby declared that, if the Town does not otherwise determine and certify to the Board of County Commissioners of the County a rate of levy for general ad valorem property taxes as required by subsection (b) of this Section, the foregoing provisions of this Section, together with Exhibit C to the Loan Agreement, shall constitute a certificate from the General Assembly to the Board of County Commissioners of the County that there shall be levied 2.9 mills, as required pursuant to this Ordinance and the Financing Documents, for the purpose of paying the Loan Repayments when due. In addition, the Authority shall have such rights and remedies to enforce payment of the Project Bond as set forth in the Financing Documents.

**Section 5. Approval of Miscellaneous Documents.** The Mayor (or in the Mayor's absence the Mayor Pro Tem) is hereby authorized and directed to execute the Project Loan Agreement and all documents and certificates necessary or desirable to effectuate the issuance of the Project Bond and the financing contemplated by this Ordinance.

**Section 6. Amendment of Ordinance.** This Ordinance may be amended only with the prior written consent of the Authority.

**Section 7. Limitation of Actions.** The General Assembly elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Project Loan Agreement

and to the issuance of the Project Bond. In accordance with Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Project Bond shall be maintained against the Town unless commenced within 30 days after the date of passage of this Ordinance.

**Section 8. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the General Assembly or by the officers and employees of the Town directed toward the issuance of the Project Bond for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 9. 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.

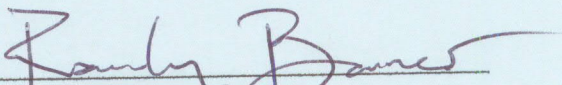
**Section 10. Ordinance Irrepealable.** After the Project Bond has been issued, this Ordinance shall constitute a contract between the Authority and the Town, and shall be and remain irrepealable until the Project Bond and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 11. Severability.** It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

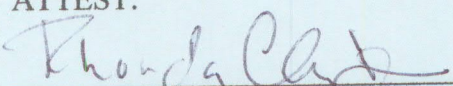
**Section 12. Repealer.** All orders, bylaws, resolutions and ordinances of the Town, or parts thereof, inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

**Section 13. Effective Date and Publication.** This Ordinance shall take effect upon final adoption. Following final adoption there shall be published a public notice containing a brief description of this Ordinance, stating the effective date of this Ordinance, and indicating that copies of this Ordinance are available for inspection with the Town Clerk.

Read and approved on first reading on the 17<sup>th</sup> day of November, 2009.  
Read and approved on second reading on the 8<sup>th</sup> day of December, 2009.

By   
Randy Barnes, Mayor

ATTEST:

  
Rhonda Claridge, Town Clerk