

TOWN OF OPHIR, COLORADO
ORDINANCE No. 2017-4

**AUTHORIZING INCURRING DEBT IN THE FORM OF A LOAN FROM
ALPINE BANK FOR BROADBAND SYSTEM PURPOSES AND AMENDING
THE 2017 BUDGET IN CONNECTION THEREWITH AND WITH RESPECT TO
UNANTICIPATED REVENUES**

WHEREAS, the Town of Ophir has received a grant from the Colorado Department of Local Affairs (DOLA) for construction of a municipal broadband system in the amount of \$159,102.00, and has received or is expected to receive at least a total of \$20,000.00 in grants for similar purposes from San Miguel County and the Telluride R-1 School District; and

WHEREAS, the Town of Ophir must provide a local match for the DOLA grant and has negotiated with Alpine Bank for a line-of-credit loan in the maximum amount of \$150,000.00, for a term of ten years. The loan will be an advancing note for 3 months after origination of the loan, providing for the loan proceeds to be advanced as needed and saving the Town of Ophir on interest costs. At the end of 3 months the existing principal balance of the loan will be placed on a 15 year amortization schedule with a balloon payment due in 10 years after loan origination. The interest rate will be 3.875% fixed for 5 years, adjusting annually thereafter to a rate of JP Morgan Chase Prime minus .125%. The Loan Origination Fee will be \$1,125.00. Interest only payments will be due during the 3 month advancing term of the loan. Monthly payments of principal and interest will be due starting in month 4 based on the 15 year amortization schedule. The Town of Ophir will provide collateral in the form a UCC security filing on Town of Ophir bank accounts. This will provide Alpine Bank with a lien on current deposit accounts and accounts receivable. The foregoing is referred to herein below as the Loan"; and

WHEREAS, a ballot measure passed at a special election of the Town of Ophir on January 16, 2001, effectively "de-Brucing"¹ the Town of Ophir. The measure asked:

"Shall the Town of Ophir, without any increase in the property tax mill levy, be authorized to increase its revenue and expenditure limitations established under Article X, Section 20 of the Colorado Constitution during 2001 and subsequent years to receive and expend state and federal grants and all donations and to receive and expend all property tax revenues generated by the existing mill levy, all real estate transfer tax revenues including existing revenues, and all other revenues without any limitation established by Article X, Section 20, of the Colorado Constitution, effective January 1, 2001?"; and

WHEREAS, on November 3, 2015 the Ophir electorate approved the following ballot measure "A":

SHALL THE TOWN OF OPHIR TAXES BE INCREASED \$45,000 ANNUALLY, COMMENCING IN 2016, OR BY SUCH GREATER OR LESSER ANNUAL AMOUNT AS MAY BE DERIVED FROM AN AD VALOREM MILL LEVY NOT IN EXCESS OF 15.5 MILLS ANNUALLY (PROVIDED THAT SUCH MAXIMUM MILL LEVY SHALL BE ADJUSTED UP OR DOWN TO ACCOUNT FOR CHANGES IN LAW OR THE METHOD BY WHICH ASSESSED VALUATION IS CALCULATED OCCURRING AFTER 2016, SO THAT TO THE EXTENT POSSIBLE, THE ACTUAL TAX REVENUES GENERATED BY THE MILL LEVY, AS ADJUSTED, ARE NEITHER DIMINISHED NOR ENHANCED AS A RESULT OF SUCH CHANGES), THE REVENUES THEREFROM TO BE USED FOR THE PURPOSE OF FUNDING THE OPHIR MUNICIPAL BROADBAND FUND TO THE MINIMUM AMOUNT OF \$10,500 PER YEAR UNTIL THE PURPOSES OF SUCH FUND ARE ACHIEVED, WITH ALL REMAINING REVENUES FROM THE TAX INCREASE AND ALL REVENUES REMAINING IN THE BROADBAND FUND AFTER THE PURPOSES OF THE FUND HAVE BEEN ACHIEVED, BEING ALLOCATED TO THE OPHIR GENERAL FUND, CAPITAL FUND OR RESERVES AS DETERMINED BY THE OPHIR GENERAL ASSEMBLY EACH YEAR AND FOR PAYING THE TOWN'S OPERATIONS, MAINTENANCE, AND OTHER EXPENSES, AND IN CONNECTION THEREWITH SHALL BALLOT ISSUE "A" ADOPTED ON NOVEMBER 1, 2011 THAT RESTRICTED THE GENERAL FUND MILL LEVY BASED ON THE PREVIOUS YEAR'S REAL ESTATE TRANSFER TAX REVENUE BE REPEALED; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE CHANGE IN 2016 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR SECTION 29-1-301, COLORADO REVISED STATUTES, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE TOWN?;

and

WHEREAS, on November 3, 2015 the Ophir electorate approved the following ballot measure 2C:

SHALL THE TOWN OF OPHIR'S DEBT BE INCREASED \$150,000, WITH A TOTAL REPAYMENT COST NOT TO EXCEED \$228,000; SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS ISSUED OR INCURRED TO PAY THE COSTS TO CARRY OUT THE PURPOSES FOR WHICH THE TOWN'S MUNICIPAL BROADBAND FUND WAS ESTABLISHED AS SET FORTH IN TOWN OF OPHIR RESOLUTION 2015-1, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE TOWN, OR THE PROCEEDS OF AD VALOREM PROPERTY TAXES IMPOSED ON ALL TAXABLE PROPERTY OF THE TOWN, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATION AND ON SUCH TERMS AND CONDITIONS, INCLUDING PROVISIONS FOR REDEMPTION PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM AS MAY BE DETERMINED BY THE OPHIR GENERAL ASSEMBLY AND SHALL THE PROCEEDS OF THE DEBT, TAXES, AND REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THERON, BE COLLECTED AND SPENT BY THE TOWN AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATIONS CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE

COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE TOWN?;
and

WHEREAS, the Ophir Municipal Broadband Fund was authorized by Ordinance 2015-1;
and

WHEREAS, the Ophir General Assembly has considered the terms and conditions of the Loan in connection with Alpine bank Loan #2645871501 and the General Assembly finds and declares that the it is in the interest of the Town to approve and agree to the Loan; and

WHEREAS, the Ophir Municipal Broadband System Total Project Cost will be expected to be \$ 318,205, including a 4.45% contingency; and

WHEREAS, the Town of Ophir has received excess revenues and anticipates receiving additional unappropriated excess revenues in 2017 in the approximate total amount of \$30,170.00; and

WHEREAS, the 2017 Ophir Budget includes a General Fund line item entitled Broadband Incentive Program in the amount of \$10,500.00; and

WHEREAS, the 2017 Budget does not currently contain a Special Revenue Fund or a line item appropriation for Municipal Broadband Fund, nor a Reserve line item in the General Fund; and

WHEREAS, the Ophir General Assembly desires to authorize incurring debt as described above, and to amend the Ophir 2017 budget to recognize the grant revenues and un-anticipated revenues and Loan revenues and to appropriate funds for expenditure in connection with creation and construction and management of the Ophir Municipal Broadband System.

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

SECTION 1. Debt Authorized.

The General Assembly hereby approves and agrees to the Loan transaction upon Loan terms and conditions as proposed by Alpine Bank. The Town covenants and agrees to perform all acts within its power which are or may be necessary to insure that the interest portion of the Loan will at all times remain exempt from federal income taxation under the laws and regulations of the United States of America as presently enacted and construed or as hereafter amended. The Town Mayor or Town Manager and Town Clerk are authorized and directed to enter into and execute a Loan transaction with Alpine Bank for the amount and subject to the Loan terms and conditions as set forth in the second Recital above. The Loan documents that the Mayor or Town Manager and Town Clerk are authorized to execute and deliver the following Loan documents: government certificate; security agreement; promissory note; disbursement request and authorization;

errors and omissions agreement; and are authorized to execute and deliver all documents necessary to consummate the Loan transaction. The General Assembly certifies that it has not issued or effected the issuance of, and reasonably anticipates that it shall not issue or effect the issuance of more than thirty million dollars (\$30,000,000.00) of tax-exempt obligations during the 2017 calendar year, and hereby designates the Loan as a "qualified tax exempt obligation" as defined by Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The Town will cause IRS form 8030-G to be prepared and filed with the Internal Revenue Service.

SECTION 2. 2017 Budget Amendment.

- A. The 2017 Ophir Budget General Fund is hereby amended to establish a Special Fund designated as the Ophir Municipal Broadband Fund. Said Fund includes a New Revenue line item for a \$159,102 DOLA grant, \$150,000 Alpine Bank Loan, \$10,000 County grant, \$10,000 R-1 School District Fund grant, and transfer of \$10,500 from the General Fund Mill Levy Revenue in the total amount of \$339,602.

and new expenditure line item appropriations as follows:

Ophir Municipal Broadband System Construction:	\$273,900.00;
Municipal Broadband legal and consultant services:	\$30,000.00;
Contingency:	\$14,305.00
Alpine Bank Loan Fees and Interest	\$3,550.30
TOTAL:	\$321,755.30

- B. The Broadband Incentive Program line item is deleted and the Broadband Incentive Program \$10,500.00 appropriation line item is transferred to the Municipal Broadband Fund. The General Fund budget revenues and expenditures are reduced by \$10,500.00, respectively.
- C. There is hereby established in the General Fund a RESERVE line item and 2017 Reserves are established at \$87,969.47. The Mayor is authorized to direct the Treasurer to transfer in 2017 a maximum of \$10,500.00 from General Fund Mill Levy Revenue to the Ophir Municipal Broadband Fund without further action of the General Assembly.

SECTION 3. PUBLICATION.

After final adoption, notice of passage shall be published in the manner prescribed by the Town Charter.

SECTION 4. SEVERABILITY.

If any one or more sections or parts of this Ordinance is adjudged unenforceable or invalid by a court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various provisions herein are severable.

SECTION 5: EFFECTIVE DATE:

This Ordinance shall take effect upon publication of notice of passage.

Introduced, Read and Approved on First Reading by the General Assembly on the 20th day of June, 2017.

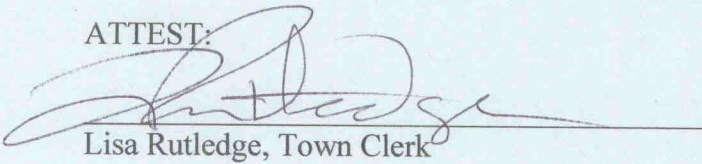
Approved and Adopted as Amended on Second and Final Reading by the General Assembly of the Town of Ophir on the 18th day of July, 2017.

(SEAL)

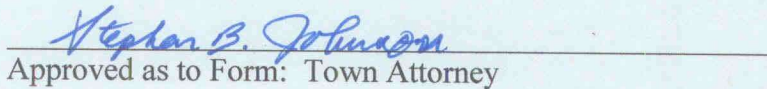


Paul Emrick, Mayor Pro tem

ATTEST:



Lisa Rutledge, Town Clerk



Approved as to Form: Town Attorney