

**ORDINANCE NO. 09-09**

**AN ORDINANCE OF THE TOWN OF RIDGWAY, COLORADO, ACTING BY AND THROUGH ITS WATER ENTERPRISE, APPROVING LOANS FROM THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY TO FINANCE UPGRADES AND REPLACEMENT OF FAILING SERVICE LINES; AUTHORIZING THE EXECUTION OF LOAN AGREEMENTS AND BONDS TO DOCUMENT THE LOANS; PROVIDING FOR PAYMENT OF THE BONDS; AND DECLARING AN EMERGENCY.**

WHEREAS, the Town of Ridgway, Colorado, is a municipal corporation duly organized and operating as a home rule Town under Article XX of the Constitution (the "Constitution") of the State of Colorado and the Home Rule Charter (the "Town 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, pursuant to Section 8-3 of the Town Charter, Town utilities may be operated as an enterprise or enterprise fund by the Town; and

WHEREAS, the Town is the owner and operator of a public water system, which system has in recent years been operated on a self-supporting basis by the Town with all revenues of the system accounted for in a separate proprietary fund known as the "Water Enterprise Fund" and such system is considered to be a government-owned business and an "enterprise" of the Town; and

WHEREAS, pursuant to Section 10-3 of the Town Charter, any Town owned business, enterprise or enterprise fund is authorized to issue its own revenue bonds or such bonds may be issued on behalf of such business, enterprise or enterprise fund in the name of the Town; and

WHEREAS, pursuant to Section 10-3 of the Town Charter, the Town Council remains the governing body and is to act in accordance with the requirements of the Town Charter and applicable ordinances with respect to the administration of any Town owned business, enterprise or enterprise fund and the issuance of any revenue bonds therefore, except as may otherwise be prescribed by ordinance; and

WHEREAS, the Town is acting hereunder by and through its Water Enterprise, which is an enterprise within the meaning of Article X, Section 20 of the Constitution.; and

WHEREAS, the Town Council has determined that it is necessary to provide for the upgrade and replacement of failing service lines of its water system utility, to finance such Project the Town Council has determined to enter into two separate loan agreements with the Colorado Water Resources and Power Development Authority, a body corporate and political subdivision of the State, pursuant to which the Authority is (a) pursuant to the ARRA Program Loan Agreement to provide a loan to the Town in the current anticipated principal amount of \$467,016, which loan does not bear interest on the unpaid principal of the loan and (b) pursuant to the Base Loan Agreement to provide a loan to the Town in the current anticipated principal

amount of \$32,984, which loan bears interest at a rate of 2% per annum, both of which Project Loan Agreements are funded under the Drinking Water Revolving Fund of the Authority; and

WHEREAS, the Town's repayment obligations under the Project Loan Agreements will be evidenced by governmental agency bonds to be issued by the Town to the Authority, which Bonds shall constitute a special revenue obligation of the Town which is to be paid from 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 Agreements) and, after consideration, the Town Council has determined that the execution of the Project Loan Agreements and the issuance of the Project Bonds to the Authority is to the best advantage of the Town; and

WHEREAS, voter approval in advance is not required under Article X, Section 20 of the Colorado Constitution or pursuant to section 10-2(C) of the Town Charter for the execution of the Project Loan Agreements or the issuance of the Project Bonds; and

WHEREAS, the Town has outstanding multi-year obligations which are secured by the Pledged Property (as defined in the Project Loan Agreements) and which generally consist of (i) an Energy and Mineral Impact Assistance Program Loan from the State of Colorado (for the benefit of the Department of Local Affairs) executed on or about June 29, 2006 and identified as Contract No. FO6MSL5394 and (ii) a loan from the State of Colorado (for the benefit of the Department of Natural Resources - Colorado Water Conservation Board) executed on or about January 15, 1980 and identified as Contract No. C153321; and

WHEREAS, the form of the Project Loan Agreements and the Project Bonds have been reviewed by the Town staff and presented to the Town Council; and

WHEREAS, as provided in the Acting Authority, which include but are not limited to Title 11, Article 57, Part 2, C.R.S., by this Ordinance the Town authorizes the execution of the Project Loan Agreements and the Project Bonds, and delegates to the Mayor of the Town (the "Mayor"), for a period not to exceed ninety days, the authority to approve, among other things, the principal amount of the Project Bonds; therefore,

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO:

**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.

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

“*Financing Documents*” means the Project Loan Agreements and the Project Bonds.

“*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 the upgrade and replacement of failing service lines of its System, and other System appurtenances as set forth in the Project Loan Agreements and as the Project may be later modified by determination of the Town Council.

“*Project Bonds*” means the ARRA Bond and 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 Agreements*” means the ARRA Program Loan Agreement and the Base Program Loan Agreement collectively.

“*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 Ridgway, Colorado, acting by and through its Water Enterprise.

“*Town Council*” means the Town Council of the Town, acting as the governing body of the Water Enterprise of the Town.

“*Water Enterprise*” means the government owned business of the Town for water services which is authorized to issue its own revenue bonds and which receives under 10% of annual revenue in grants from all Colorado state and local governments combined. The Water Enterprise is accounted for by the Town in the Water Enterprise Fund.

**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 Bonds shall be issued by the Town acting by and through its Water Enterprise. The form of the Project Loan Agreements setting forth the terms, conditions and details of the Project Bonds 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 Agreements and deliver the Project Bonds in substantially the form presented to the Town at or prior to this meeting of the Town Council 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 Bonds Details.** The Project Bonds shall be in an aggregate principal amount not to exceed \$500,000, with the allocation between the ARRA Bond and the Base Bond as finally determined by the Town Mayor. 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 Bonds 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. Pledge for Payment of the Project Bonds.** The principal of and interest on the Project Bonds shall be payable solely from the Pledged Property (which term is defined in the Project Loan Agreements). The Town irrevocably pledges the Pledged Property for the payment of the Project Bonds and the amounts due under the Project Loan Agreements. The Authority may not look to any general or other fund of the Town for the payment of the principal of or interest on the Project Bonds, except the funds and accounts pledged thereto pursuant to authority of this Ordinance, and the Project Bonds shall not constitute a debt or an indebtedness of the Town within the meaning of any constitutional or statutory provision or limitation; nor shall they be considered or held to be a general obligation of the Town.

**Section 5. Maintenance of Enterprise Status.** The Town Council hereby determines that the Water Enterprise is currently an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and hereby reaffirms the establishment of the System as an “enterprise” within the meaning of Article X, Section 20 of the Colorado Constitution. The Town will continue to maintain the System as an “enterprise” within the meaning of Article X,

Section 20 of the Colorado Constitution; provided, however, after the current calendar year the Town may disqualify the System as an “enterprise” in any year in which said disqualification does not materially, adversely affect the enforceability of the covenants made in the Financing Documents. In the event that the System is disqualified as an enterprise and the enforceability of the covenants made by the Town in the Financing Documents are materially, adversely affected, the Town covenants to (i) immediately take all actions necessary to qualify the System as an enterprise within the meaning of Article X, Section 20 of the Colorado Constitution and (ii) permit the enforcement of the covenants made in the Financing Documents.

**Section 6. 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 Agreements and all documents and certificates necessary or desirable to effectuate the issuance of the Project Bonds and the financing contemplated by this Ordinance.

**Section 7. Amendment of Ordinance.** This Ordinance may be amended only with the prior written consent of the Authority.

**Section 8. Limitation of Actions.** The Town Council elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. to the execution of the Project Loan Agreements and to the issuance of the Project Bonds. In accordance with Section 11-57-212, Colorado Revised Statutes, no action or proceeding concerning the issuance of the Project Bonds shall be maintained against the Town unless commenced within 30 days after the date of passage of this Ordinance.

**Section 9. Ratification of Prior Actions.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Town Council or by the officers and employees of the Town directed toward the issuance of the Project Bonds for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 10. 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 11. Ordinance Irrepealable.** After the ARRA Bond or the Base Bond has been issued, this Ordinance shall constitute a contract between the Authority and the Town, and shall be and remain irrepealable until the ARRA Bond or the Base Bond, respectively, and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as herein provided.

**Section 12. 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 13. 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 14. Emergency Declared.** The Town Council hereby finds that this Ordinance is necessary to the immediate preservation of the public peace, health, and safety and, due to the requirement in ARRA Program Loan Agreement that Project construction begin no later than October 20, 2009 and for the reasons stated hereinabove, declares that an emergency exists. This Ordinance shall take effect immediately upon adoption.

ADOPTED by the Ridgway Town Council on September 9, 2009.

TOWN OF RIDGWAY, COLORADO

By \_\_\_\_\_  
Pat Willits, Mayor

ATTEST:

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Pam Kraft, MMC, Town Clerk

CERTIFICATE OF TOWN CLERK

The foregoing Ordinance was adopted as an emergency measure at a meeting of the Ridgway Town Council held on September 9, 2009 and published by title thereafter.

(SEAL)

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Pam Kraft, MMC  
Town Clerk