

ORDINANCE NO. 19-_____

AN ORDINANCE AUTHORIZING AND APPROVING THE LEASE-PURCHASE OF CERTAIN PROPERTY AND THE EXECUTION OF DOCUMENTS RELATED THERETO BY THE CITY OF COLORADO SPRINGS, COLORADO, IN CONNECTION WITH THE ISSUANCE OF CERTIFICATES OF PARTICIPATION, SERIES 2019, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$12,500,000; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING SUCH MATTERS; AND PROVIDING FOR OTHER MATTERS RELATED THERETO.

WHEREAS, the City of Colorado Springs, in the County of El Paso and State of Colorado (the “City”), is a municipal corporation duly organized and existing as a home rule city pursuant to Article XX of the Constitution of the State of Colorado (the “Constitution”) and the home rule charter of the City (the “Charter”); and

WHEREAS, pursuant to Article 1 of the Charter and Sections 1 and 6 of Article XX of the Constitution, the City is authorized to enter into one or more leases for land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, in order to provide for the capital asset needs of the City, the City Council of the City (the “Council”) hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease-purchase financing for the construction of various capital improvements , including, without limitation, the construction and equipping of a new fire station and radio shop at the Lester L. Williams Fire Department Complex, the construction and equipping of various improvements at Sertich Ice Center, and the construction and equipping of a new firing range 15 miles south of the City (collectively, the “Project”), for use by the City for governmental or proprietary purposes; and

WHEREAS, in order to finance the costs of the Project, the Council has determined to enter into a Site Lease (the “Site Lease”), by and between the City, as lessor, and U.S. Bank National Association (as trustee under the Indenture defined below, the “Trustee”), as lessee, whereby the City will lease certain real property and improvements (the “Site Leased Property”) to the Trustee, and a Lease Purchase Agreement (the “Lease”), by and between the Trustee, as lessor, and the City, as lessee, whereby the Trustee will convey a leasehold interest in the Site Leased Property (the “Leased Property”) back to the City and the City will pay certain revenues to the Trustee pursuant to the terms of the Lease; and

WHEREAS, in order to provide funding for the Project, the City intends to effect the issuance of the “Certificates of Participation, Series 2019” (the “Series 2019 Certificates”), evidencing undivided interests in the right to receive certain revenues payable by the City under the Lease, in an aggregate principal amount not to exceed \$12,500,000, pursuant to the terms of an Indenture of Trust, dated as of the date of the Lease (the “Indenture”), by the Trustee, as trustee thereunder; and

WHEREAS, the Council has determined that it is in the best interests of the City and its inhabitants for the City to lease the Site Leased Property in accordance with the Site Lease and to lease the Leased Property in accordance with the Lease; and

WHEREAS, the obligation of the City to pay Base Rentals and Additional Rentals (both as defined in the Lease) shall be from year to year only, subject to annual renewal by the City, and no provision of the Series 2019 Certificates, the Indenture the Site Lease or the Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Constitution, the Charter or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Constitution; and

WHEREAS, neither the Site Lease, the Lease, the Indenture, nor the execution and delivery of the Series 2019 Certificates, shall directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, there will be distributed in connection with the offering of the Series 2019 Certificates a Preliminary Official Statement (the "Preliminary Official Statement") and a final Official Statement (the "Final Official Statement"); and

WHEREAS, the Series 2019 Certificates shall be sold through a negotiated sale with ~~Stifel, Nicolaus & Company, Incorporated~~ a qualified financial institution selected by the Chief Financial Officer of the City (the "Underwriter") pursuant to a Certificate Purchase Agreement (the "Certificate Purchase Agreement"); and

WHEREAS, the Council has been presented with or had made available to it forms of the Site Lease, the Lease; ~~and the Indenture and the Certificate Purchase Agreement~~ (the "Financing Documents") as well as the form of the Preliminary Official Statement; and

WHEREAS, the Council is desirous of authorizing, approving and directing the execution of the agreements and instruments described above and the transactions evidenced thereby;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or the officers, employees and agents of the Council or the City, directed toward the lease of the Site Leased Property to the Trustee pursuant to the terms of the Site Lease and the lease of the Leased Property from the Trustee pursuant to the terms of the Lease as provided herein and the execution and delivery of the Series 2019 Certificates are hereby ratified, approved and confirmed.

Section 2. The Council hereby finds and determines, pursuant to the Constitution and laws of the State of Colorado, that the leasing of property by the City to and from the Trustee as contemplated herein, the completion of the Project and the issuance of the Series 2019 Certificates are necessary, convenient and in furtherance of the governmental or proprietary purposes of the City and are in the best interests of the City; and the Council hereby authorizes, approves and directs the accomplishment of the foregoing under the terms and provisions of the Site Lease, the Lease and the Indenture.

Section 3. The execution and delivery of the Site Lease and the Lease are hereby approved, authorized and confirmed, and the Mayor is authorized and requested to execute the Site Lease and the Lease for and on behalf of the City. The Council hereby approves the leasing of the Site Leased Property by the City to the Trustee for the lump-sum dollar amount to be set forth in the Site Lease and the leasing of the Leased Property by the City from the Trustee for the dollar amounts to be set forth in the Lease, not to exceed \$1,012,000 in any year. Execution and delivery of the Site Lease and the Lease by the Mayor, within the parameters herein contained, shall constitute conclusive evidence of the approval of all details of the Site Lease and the Lease. The Site Lease and the Lease are each being entered into pursuant to the Charter and the laws of the State of Colorado, including without limitation the Supplemental Public Securities Act, Title 11 Article 57, Part 2 C.R.S. (the “Supplemental Act”). This Ordinance constitutes an act of issuance under the Supplemental Act and the City elects to apply the provisions of the Supplemental Act to this Ordinance.

Section 4. Prior to the execution and delivery of the Site Lease and the Lease, the final forms thereof and the final terms of the lease purchase financing, including the identity of the Underwriter, shall be approved by a certificate (a “Final Terms Certificate”) signed by the Chief Financial Officer of the City or her designee, subject to the following limitations:

- (a) the aggregate amount of the principal component of Base Rentals (as defined in the Lease) under the Lease shall not exceed \$12,500,000;
- (b) the interest component of Base Rentals under the Lease shall accrue at the interest rate not to exceed 5.0% per annum;
- (c) the Lease, including all renewal terms thereof, shall terminate not later than December 31, 2039 and may also be made subject to prepayment limitations and termination provisions as provided in such Lease; ~~and~~
- (e) the City shall have the option to purchase the interest of the Trustee in Leased Property in the manner provided in the Lease; and
- (f) the Underwriter shall be a qualified financial institution approved by the Chief Financial Officer of the City and the City Attorney.

Section 5. The Council hereby acknowledges and approves of the forms of the Indenture and the Series 2019B Certificates, provided the aggregate principal amount of the Series 2019 Certificates does not exceed \$12,500,000, the final maturity of the 2019 Certificates will be no later than December 1, 2039, and the maximum net effective interest rate on the 2019 Certificates will not exceed 5.0% per annum.

Section 6. The City hereby declares its current need for the Project. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until all of the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

Section 7. Pursuant to the Lease, the City shall act as the agent of the Trustee solely for the purposes of the acquisition and construction of the Project, solely with proceeds of the Series 2019 Certificates and legally available moneys of the City.

Section 8. The City Clerk or any assistant or deputy clerk is hereby authorized and directed to attest all signatures and acts of any official of the Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Site Lease, the Lease and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Mayor, the Chief Financial Officer, the City Clerk, any assistant or deputy clerk and other officials, employees and agents of the Council or the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance.

Section 9. The obligation of the City to pay Base Rentals and Additional Rentals shall be from year to year only, subject to annual renewal by the City, and no provision of the Series 2019 Certificates, the Indenture, the Site Lease or the Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Constitution, the Charter or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Constitution.

Section 10. The Council hereby determines and declares that, after execution and delivery of the Lease within the parameters authorized in Section 4 of this Ordinance, the rental payments due thereunder will represent the fair value of the use of the Leased Property. The Council hereby determines and declares that the base rentals at such level do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the cost of acquiring such Leased Property, the uses and purposes for which such Leased Property will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and use of such Leased Property pursuant to the terms and provisions of the Lease, and the City's option to purchase such Leased Property.

Section 11. This Ordinance shall be irrevocable following its adoption so long as the Lease is in effect.

Section 12. The delegations contained herein to the officials and officers of the City shall remain in effect to the date of the issuance of the execution and delivery of the Site Lease and the Lease, such delegations being made as may be permitted for a home rule city and notwithstanding any other statutes of the State.

Section 13. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 14. All bylaws, orders and resolutions, or parts thereof, inconsistent with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or resolution, or part thereof.

Section 15. Upon the recommendation of the City's financial advisor (the "Financial Advisor") based upon market conditions and the rating on the Series 2019 Certificates, one or more bond insurers may be requested to submit bids to issue the bond insurance policy in connection with the Series 2019 Certificates to reduce the amount of the Base Rentals due in connection with the Lease. In the event that the City determines, based upon information provided by the Financial Advisor, that the savings to be realized by the City as a result of the issuance of the bond insurance policy, the Mayor, the Chief Financial Officer, or any authorized designee shall be authorized to accept the commitment issued by the bond insurer, including any agreements in the best interests of the City in connection with the issuance of a surety reserve securing the Series 2019 Certificates. If the Series 2019 Certificates are issued insured by a bond insurance policy, the Council and the officers and employees of the City are hereby authorized and directed to take all actions necessary to cause the bond insurer selected to issue the bond insurance policy in accordance with the commitment, including without limitation, payment of the premium due in connection therewith and entering into any authorizing agreements.

Section 16. This Ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Introduced, read, passed on first reading and ordered published this 27th day of August, 2019.

Finally passed: _____
Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk

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