

ORDINANCE NO. 17-118

AN EMERGENCY 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 REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2017, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$30,000,000; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING SUCH MATTERS; PROVIDING FOR OTHER MATTERS RELATED THERETO; AND DECLARING AN EMERGENCY AND PROVIDING THE EFFECTIVE DATE OF THIS ORDINANCE

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, the City has previously authorized and directed the creation of The City of Colorado Springs Public Facilities Authority (the "Authority"), a nonprofit corporation under the provisions of the Colorado Nonprofit Corporation Act, Articles 20 through 29, Title 7, Colorado Revised Statutes; and

WHEREAS, pursuant to Section 1-20(b) 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, pursuant to that certain Lease Purchase Agreement dated as of October 1, 2009 (the "2009 Lease") between the Authority, as lessor, and the City, as lessee, the City leased certain property owned by the Authority consisting of the City's Police Operations Center, including the related parking garage, and Fire Station No. 8 (collectively, the "2009 Leased Property");

WHEREAS, pursuant to the Mortgage and Indenture of Trust dated as of October 1, 2009 (the "2009 Indenture") by and between the Authority, as grantor, and U.S. Bank National Association, as trustee (the "2009 Trustee"), The City of Colorado Springs Public Facilities Authority Certificates of Participation, Series 2009 (the "Series 2009 Certificates"), evidencing undivided interests in the right to receive certain revenues payable by the City under the 2009 Lease were issued in the original aggregate principal amount of \$31,470,000, which Series 2009 Certificates are currently outstanding in the aggregate principal amount of \$29,815,000; and

WHEREAS, the Series 2009 Certificates maturing on and after November 1, 2020 are subject to redemption prior to maturity on November 1, 2019 and any date thereafter; and

WHEREAS, the City Council of the City (the "Council") has determined that it is in the best interests of the City and its inhabitants to refund all of the outstanding Series 2009 Certificates and terminate the 2009 Lease by exercising its purchase option right under the 2009 Lease and causing the proceeds therefrom to be deposited into an escrow account pursuant to a refunding escrow agreement (the "Escrow Agreement") by and between the City and U.S. Bank National Association, as escrow agent (the "Escrow Agent") and applied to the defeasance of the outstanding Series 2009 Certificates in accordance with the 2009 Indenture (collectively, the "Refunding Project"); and

WHEREAS, the City will acquire fee simple ownership of the 2009 Leased Property from the Authority upon the defeasance of the outstanding Series 2009 Certificates and the exercise of the City's purchase option under the 2009 Lease; and

WHEREAS, in order to finance the costs of the Refunding 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 the 2009 Leased Property (hereinafter, 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 Refunding Project, the City intends to effect the issuance of the "Refunding Certificates of Participation, Series 2017" (the "Series 2017 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 \$30,000,000, 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 2017 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 2017 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 2017 Certificates a Preliminary Official Statement (the "Preliminary Official Statement") and a final Official Statement (the "Final Official Statement"); and

WHEREAS, the Series 2017 Certificates shall be sold through negotiated sale with RBC Capital Markets, LLC (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, the Indenture, the Escrow Agreement, the Certificate Purchase Agreement and 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. Based on advice of the personnel of the City's administration, the Council has determined that present and future uncertainties exist as to the imminent passage of federal tax laws affecting the municipal bond markets and the City's ability to sell the Series 2017 Certificates on a tax-exempt basis, and that such ability to sell the Series 2017 Certificates on a tax-exempt basis may be lost in the event of delay in the effectiveness of this Ordinance. The Council has been advised that it should proceed immediately with this issue for the needs of the City. Therefore a public emergency is declared to exist; this Ordinance is declared to be necessary for the immediate preservation of the public peace, property, health and safety.

Section 2. 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 2017 Certificates are hereby ratified, approved and confirmed.

Section 3. 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 refunding of the Series 2009 Certificates, the termination of the 2009 Lease and the issuance of the Series 2017 Certificates are necessary, convenient and in furtherance of the governmental 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 4. The execution and delivery of the Site Lease and the Lease are hereby approved, authorized and confirmed, and the Mayor is authorized and directed 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 \$2,800,000 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 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 5. 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 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) shall not exceed \$30,000,000;

(b) the interest component of Base Rentals shall accrue at the net effective interest rate not to exceed 4.00% 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 the Lease;

(d) the City's execution and delivery of the Site Lease and the Lease shall result in a present value savings of not less than three percent, expressed as a percentage change in the aggregate amount of the Base Rentals (as provided in the 2009 Lease and the Lease) and computed based upon the arbitrage yield for the Series 2017 Certificates to the date of delivery of the Series 2017 Certificates, assuming semi-annual compounding; and

(e) the City shall have the option to purchase the interest of the Trustee in the Leased Property in the manner provided in the Lease.

Section 6. The Council hereby acknowledges and approves of the form of the Indenture and the Series 2017 Certificates, provided the principal amount of the Series 2017 Certificates does not exceed \$30,000,000, the final maturity of the Series 2017 Certificates will be no later than December 1, 2039, and the maximum net effective interest rate on the Series 2017 Certificates will not exceed 4.00% per annum.

Section 7. The Council hereby authorizes the exercise of the City's purchase option under the 2009 Lease. The Council hereby determines and declares that such action is in the best interests of the City and its inhabitants.

Section 8. The Council hereby approves the distribution of the Preliminary Official Statement to prospective purchasers of the Series 2017 Certificates. A Final Official Statement, but with such changes thereto as are deemed necessary or appropriate, is in all respects authorized and approved.

Section 9. 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 10. 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 2017 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 11. 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 the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and use of the Leased Property pursuant to the terms and provisions of the Lease, and the City's option to purchase the Leased Property.

Section 12. This Ordinance shall be irrevocable following its adoption so long as the Lease is in effect.

Section 13. 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 14. 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 15. 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 16. Upon the recommendation of the City's financial advisor (the "Financial Advisor") based upon market conditions and the rating on the Series 2017 Certificates, one or more bond insurers may be requested to submit bids to issue the bond insurance policy in connection with the Series 2017 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 2017 Certificates. If the Series 2017 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 17. This Ordinance shall be in full force and effect immediately upon final passage and adoption at a single meeting upon Council approval as required by the Charter. This Ordinance upon such final passage shall be entered upon the journal of the Council's proceedings, shall be kept in the book marked "Ordinance Record" and authenticated as required by the Charter, and on the date following its passage, or as soon thereafter as possible, shall be published in a newspaper of general or limited circulation within the City. The Council hereby deems it is appropriate that this Ordinance be published by title with a summary written by the City Clerk, and that this ordinance shall be available for public inspection and acquisition in the office of the Clerk, which shall be sufficient publication pursuant to Section 3-80 of the Charter and this Ordinance shall be so published.

ORDINANCE WAS INTRODUCED, READ, AND FINALLY PASSED, ADOPTED AND APPROVED AS AN EMERGENCY ORDINANCE AND ORDERED PUBLISHED THIS 12TH DAY OF DECEMBER, 2017.

Finally passed: December 12th, 2017




Council President


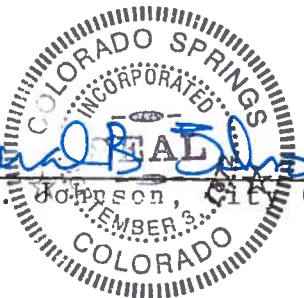
ATTEST:


Sarah B. Johnson, City Clerk


APPROVED:


MAYOR

ATTEST:


Sarah B. Johnson, City Clerk


I HEREBY CERTIFY, that the foregoing emergency ordinance entitled “AN EMERGENCY 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 REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2017, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$30,000,000; RATIFYING ACTION PREVIOUSLY TAKEN CONCERNING SUCH MATTERS; PROVIDING FOR OTHER MATTERS RELATED THERETO; AND DECLARING AN EMERGENCY AND PROVIDING THE EFFECTIVE DATE OF THIS ORDINANCE” was introduced, read, finally passed, adopted, and approved as an emergency ordinance and was ordered published this 13th day of December, 2017, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Gazette, a newspaper published and in general circulation in said City, on the day following its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 13th day of December, 2017.


Sarah B. Johnson, City Clerk



1st Publication Date: December 13th, 2017

2nd Publication Date: none

Effective Date: December 12th, 2017

Initial: SBS
City Clerk