

CITY OF COLORADO SPRINGS, COLORADO

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF COLORADO SPRINGS OF A SITE LEASE BETWEEN THE CITY AS LESSOR AND A FINANCIAL INSTITUTION TO BE IDENTIFIED, AND, IN CONNECTION THEREWITH, A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND SUCH FINANCIAL INSTITUTION, WITH RESPECT TO CERTAIN REAL PROPERTY FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND IMPROVEMENT OF A POLICE SUBSTATION; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY AND PROVIDING FOR RELATED MATTERS

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 Colorado Springs City Council (the “Council”) has previously determined and hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease purchase financing of sites, buildings, equipment and other property owned by the City for governmental or proprietary purposes; and

WHEREAS, the Council desires to undertake the financing of the construction and improvement of certain facilities to be used as the Colorado Springs Police Department’s Sand Creek Division Substation (the “Project”) within the City limits; and

WHEREAS, the City is the owner of the fee simple interest in the real property and improvements described in Exhibit A to the Site Lease (defined below) (the “Leased Property”); and

WHEREAS, the City has issued its Request for Proposals (the “RFP”), soliciting bids from potential investors specifying terms and other details in order to identify a suitable financial institution (as more particularly described herein, the “Investor”) to assist the City in completing the Project; and

WHEREAS, in order to finance the costs of the Project, the Council has determined that the City shall demise to the Investor pursuant to that certain Site Lease to be dated as of its date of execution and delivery (the “Site Lease”) between the City, as lessor, and the Investor, as lessee, a leasehold interest in the Leased Property for a lump-sum payment of not to exceed

\$14,000,000 and sublease the Leased Property back from the Investor pursuant to that certain Lease Purchase Agreement dated as of the date of the Site Lease (the “Lease”) between the Investor, as sublessor, and the City, as sublessee; and

WHEREAS, by entering into the Site Lease and the Lease with respect to the Leased Property, the City can have the use, on a current basis, of the Leased Property while paying installments of rent not exceeding the fair rental value of the Leased Property; and

WHEREAS, the funds paid by the Investor may be required to be held in escrow pursuant to an escrow agreement (the “Escrow Agreement”) among the City, the Investor and a third-party escrow agent to be identified in a final terms certificate of the City (the “Escrow Agent”); therefore

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

Section 1. Ratification of Actions. All action heretofore taken, not inconsistent with the provisions of this ordinance (the “Ordinance”), by the Council or the officers of the City, directed toward the implementation of the Project, including without limitation the preparation of the forms of Lease and the Site Lease, the Escrow Agreement, if any, and related documents, are hereby ratified, approved and confirmed.

Section 2. Findings; Authorizations. The Council hereby finds and determines, pursuant to the City’s home rule powers and all applicable laws of the State of Colorado, that the Project is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its inhabitants; and the Council hereby authorizes the Project. The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the “Supplemental Securities Act”), to the extent applicable and not inconsistent herewith, to the Lease.

Section 3. Approval and Execution of Documents; Authorized Officers; Variations in Documents. The Site Lease, the Lease and the Escrow Agreement, in substantially the forms delivered to the office of the City Clerk prior to the final adoption of this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor of the City or any member of the Council are hereby authorized and directed to execute and deliver, and the City Clerk of the City or any Deputy or Assistant City Clerk are hereby authorized and directed to affix the seal of the City to, and attest, the Lease, the Site Lease and the Escrow Agreement, if any, in substantially the forms so delivered to the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney. The Council hereby authorizes and directs the Mayor and Finance Director (and any persons authorized by law to act on their behalf in their absence) to select Bank of America Merrill Lynch, or a suitable alternative financial institution, to act as the Investor, and the Council hereby designates the Mayor and the Chief Financial Officer (and any persons authorized by law to act on their behalf in their absence) to act as the “Authorized Officer” under the Lease. Prior to the execution of the Site Lease, the Lease or any other instrument contemplated by this Ordinance, the final forms thereof and the final Base Rentals (as defined in the Lease) due under the Lease shall be approved by a certificate signed by an Authorized Officer (a “Final Terms Certificate”).

Section 4. Additional Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance. The Mayor, the members of the Council and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the City any and all related 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 by this Ordinance. The appropriate officers of the City are also authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

Section 5. Lease Terms. The Lease shall provide for the payment of Base Rentals consisting of an interest component and a principal component, and the schedule of Base Rentals incorporated in the Lease shall be approved by Final Terms Certificate, subject to the following limitations:

- (a) the aggregate amount of the principal component of Base Rentals shall be determined by Final Terms Certificate and shall not exceed \$14,000,000;
- (b) the interest component of Base Rentals shall accrue at a net effective interest rate not to exceed 3.00%;
- (c) the Lease, including all renewal terms thereof, shall terminate not later than December 31, 2027; and
- (d) the City shall have the option to purchase the Investor's interest in the Leased Property and terminate the Site Lease in the manner provided in the Site Lease and the Lease;

Section 6. No General Obligation or Other Indebtedness. The obligation of the City to make rental payments under the Lease is subject to annual appropriation by the Council and constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance, the Lease or the Site Lease shall be construed, individually or collectively with other provisions, as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

Section 7. Expression of Need. The City hereby declares its current need for the Leased Property. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until the Site Lease is terminated and all of the Investor's interest in 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 8. Reasonable Rentals. The Council hereby determines and declares that the Base Rentals due under the Lease, so long as they are within the limits provided in this

Ordinance, will represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the City may exercise its option to purchase the Investor's interest in such Leased Property, the fair purchase price thereof. The Council further hereby determines and declares that the Base Rentals due under the Lease and authorized hereby will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Investor's interest in 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 is employed by the City, the term of the Site Lease, the use of the Leased Property pursuant to the terms and provisions of the Site Lease and the Lease, the City's option to purchase the Investor's leasehold interest in the Leased Property, the City's right to cause the termination of the Lease by declining to appropriate funds, and the expected eventual vesting, release or reversion in or to the City of both title to and possession of the Leased Property, free and clear of the Site Lease. The Council hereby determines and declares that the leasing of the Leased Property pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition and installation of the Leased Property were performed by the City other than pursuant to the Lease. The Council hereby determines and declares that, after execution and delivery of the Lease, the maximum duration of the Lease, or the portion thereof allocable to any item of Leased Property separately identified in the Lease, will not exceed the weighted average useful life of such item or items of Leased Property.

Section 9. Severability. If any section, paragraph, clause or provision of this Ordinance, the Lease or the Site Lease (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease, and provisions for the conveyance or release of the Investor's interest in the Leased Property to the City under the conditions provided in the Site Lease and the Lease) 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 10. Repealer of Measures. All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

Section 11. Public Inspection. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Section 12. Effective Date. 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 ____ day of September, 2016.

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