

ORDINANCE NO. 20-__

AN ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT BY AND AMONG THE CITY OF COLORADO SPRINGS, COLORADO AND WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TENDER AGENT AND PAYING AGENT AND U.S. BANK NATIONAL ASSOCIATION AND A SECOND AMENDED AND RESTATED FEE AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO AND U.S. BANK NATIONAL ASSOCIATION RELATING TO THE CITY OF COLORADO SPRINGS, COLORADO, VARIABLE RATE DEMAND UTILITIES SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2008A; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Colorado Springs, Colorado (the “City”) is a municipal corporation and a home rule city duly organized and existing under the laws of the State of Colorado and in particular under the provisions of Article XX of the Constitution of the State of Colorado and the Charter of the City (the “Charter”); and

WHEREAS, the City now owns and operates a municipal water system, electric light and power system, gas system, wastewater system and certain other systems heretofore designated by the City Council (the “Council”) of the City, constituting the Utilities created by the Charter; and

WHEREAS, the City has previously entered into a Standby Bond Purchase Agreement dated September 1, 2014 among the City, Wells Fargo Bank, N.A., as tender agent and paying agent (the “Tender Agent”) and U.S. Bank National Association (the “Bank”), which was previously amended pursuant to a First Amendment to Standby Bond Purchase Agreement dated September 1, 2017 (as so amended, the “Agreement”), and an Amended and Restated Fee Agreement dated September 1, 2017 (the “Fee Agreement”) between the City and the Bank with respect to the City of Colorado Springs, Colorado, Variable Rate Demand Utilities System Improvement Revenue Bonds, Series 2008A (the “2008A Bonds”); and

WHEREAS, the 2008A Bonds are subject to purchase from time to time at the option of the owners thereof and are required to be purchased in certain events and, to further assure the availability of funds for the payment of the purchase price therefor, the City has provided for the remarketing of such 2008A Bonds, only to the extent such remarketing may not be successful, for the purchase of such 2008A Bonds by the Bank pursuant to the Agreement; and

WHEREAS, the Agreement expires on August 31, 2020, unless extended; and

WHEREAS, the City wishes to amend the Agreement and the Fee Agreement to provide, among other things, for the extension of the Agreement by entering into the Second Amendment to Standby Bond Purchase Agreement (the “SBPA Amendment”) among the City, the Tender Agent and the Bank and the Second Amended and Restated Fee Agreement (the “Fee Agreement Amendment” and together with the SBPA Amendment, the “Amendments”) between the City and the Bank; and

WHEREAS, the Council has determined that the public interest and necessity require the City to enter into the Amendments; and

WHEREAS, there has been presented to the Council proposed forms of the Amendments.

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

Section 1. Ratification and Approval of Prior Actions. The Council hereby ratifies, approves and confirms all action heretofore taken (not inconsistent with the provisions of this ordinance) with respect to the Agreement, the Fee Agreement and the Amendments.

Section 2. Approval of Amendments. The forms, terms and provisions of the Amendments are hereby approved and the City shall enter into the Amendments in the forms presented to the Council at this meeting, with only such changes therein, if any, as are not inconsistent herewith; and the Chief Executive Officer of the Utilities, the Acting Chief Planning and Finance Officer or Chief Planning and Finance Officer, as applicable, and the Acting General Manager of Financial Services or General Manager of Financial Services, as applicable, of the Utilities (each an "Authorized Officer") are each hereby authorized and directed to execute and deliver the Amendments.

Section 3. Future Extensions. The Authorized Officers are hereby authorized to enter into and execute and deliver such documents as may be necessary in connection with amendments to the Amendments from time-to-time to facilitate the extension for one or more years without further action by the Council so long as: (i) the fee rates shall not be greater than 1% (100 basis points) higher than fees set forth in the related Fee Agreement for the prior term, (ii) the other terms and conditions of any such extension (including any amendment to the Standby Bond Purchase Agreement required to implement such extension) are substantially similar to the terms and conditions of the Agreement, as amended by the SBPA Amendment, and (iii) the municipal advisor to the Utilities certifies in writing that the fee rates in such extension are consistent with the market at such time (taking into account, among other considerations, the costs of securing and negotiating a replacement credit agreement with a replacement bank with comparable credit ratings, including attorney fees, as well as any trading advantage or disadvantage associated with a replacement bank).

Section 4. Other Actions. The officers of the City and the officers of the Utilities of the City shall take all action necessary or reasonably required to effectuate the provisions of the Amendments.

Section 5. Repealer. All bylaws, orders, resolutions and ordinances of the City, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any other such bylaw, order, resolution or ordinance of the City, or part thereof, heretofore repealed.

Section 6. Severability. If any section, subsection, paragraph, clause or other provision of this ordinance for any reason is invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this ordinance.

Section 7. Effective Date and Publication. This ordinance upon 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, shall be published twice in a legal newspaper of general circulation in the City in compliance with the requirements of the Charter, with the first publication to be at least ten (10) days before final passage by Council of this ordinance, and the second publication to be any time after its final adoption. The Council hereby determines that it is appropriate that publication of this ordinance by title with a summary written by the City Clerk, together with a statement that this ordinance is available for public inspection and acquisition in the office of the City Clerk, shall be

sufficient publication pursuant to Section 3-80 of the Charter and this ordinance shall be so published. This ordinance shall be in full force and effective five (5) days after its final publication.

INTRODUCED, READ, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED BY TITLE AND SUMMARY THIS 12TH DAY OF MAY, 2020.

FINALLY PASSED: MAY 26, 2020.

[Remainder of page intentionally left blank]

Introduced, read, passed on first reading and ordered published this _____ day of April, 2020.

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

(Attach Affidavit of Publication, by Title and Summary, of Ordinance No. 20-__
upon First Reading)

(Attach Affidavit of Publication, by Title and Summary, of Ordinance No. 20-__
after Second Reading)