

ORDINANCE NO. 22-__

AN ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A THIRD AMENDMENT TO STANDBY BOND PURCHASE AGREEMENT BY AND AMONG THE CITY OF COLORADO SPRINGS, COLORADO, U.S. BANK NATIONAL ASSOCIATION, AND COMPUTERSHARE TRUST COMPANY, N.A., AS AGENT FOR WELLS FARGO BANK, N.A., AS TENDER AGENT AND PAYING AGENT AND A SECOND AMENDED AND RESTATED FEE AGREEMENT BY AND AMONG THE CITY OF COLORADO SPRINGS, COLORADO, U.S. BANK NATIONAL ASSOCIATION, AND COMPUTERSHARE TRUST COMPANY, N.A., AS AGENT WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TENDER AGENT AND PAYING AGENT, RELATING TO THE CITY OF COLORADO SPRINGS, COLORADO, VARIABLE RATE DEMAND UTILITIES SYSTEM IMPROVEMENT REVENUE BONDS, SERIES 2012A; 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 March 1, 2012 (the “Original Agreement”), as amended by that certain First Amendment to Standby Bond Purchase Agreement dated December 17, 2014 (the “First Amendment”) and that certain Second Amendment to Standby Bond Purchase Agreement dated September 13, 2018 (the “Second Amendment” and collectively with the Original Agreement and the First Amendment, the “Agreement”) each among the City, Computershare Trust Company, N.A., as agent for Wells Fargo Bank, N.A., as tender agent and paying agent (the “Tender Agent”), and U.S. Bank National Association (the “Bank”), and that certain Fee Agreement dated March 15, 2012 (the “Original Fee Agreement”) between the City and the Bank, as amended by that certain Amended and Restated Fee Agreement dated September 13, 2018 (the “First Fee Agreement Amendment” and collectively with the Original Fee Agreement, the “Fee Agreement”) between the the City and the Bank, in each case with respect to the City of Colorado Springs, Colorado, Variable Rate Demand Utilities System Improvement Revenue Bonds, Series 2012A (the “2012A Bonds”); and

WHEREAS, the 2012A 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 2012A Bonds, only to the extent such remarketing may not be successful, for the purchase of such 2012A Bonds by the Bank pursuant to the Agreement; and

WHEREAS, the Agreement expires on September 14, 2022, unless extended; and

WHEREAS, the City wishes to extend the Expiration Date of the Agreement and make other modifications to the Agreement pursuant to a Third Amendment to Standby Bond Purchase Agreement (the “Third Amendment”) among the City, the Tender Agent, and the Bank;

WHEREAS, the City wishes to make certain changes to the Fee Agreement pursuant to a Second Amended and Restated Fee Agreement (the “Second Fee Agreement Amendment” and collectively with the Third Amendment, the “Extension Documents”) 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 Extension Documents; and

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

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 Extension Documents.

Section 2. Approval of Extension Documents. The forms, terms and provisions of the Extension Documents are hereby approved and the City shall enter into and perform the Extension Documents in the forms presented to the Council at this meeting, with only such changes therein, if any, as are not inconsistent herewith (the approval of such changes shall be evidenced by an Authorized Officer’s execution thereof); and the Chief Executive Officer of the Utilities and the Chief Planning and Finance Officer (each an “Authorized Officer”) are each hereby authorized and directed to execute and deliver the Extension Documents.

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 Extension Documents from time-to-time to facilitate the extension for one or more years without further action by the Council so long as: (i) the initial fee rates shall not be greater than 1% (100 basis points) higher than fees set forth in the related documents for the prior term, (ii) the other terms and conditions of any such extension (including any amendment to the Agreement or the Fee Agreement required to implement such extension) are substantially similar to the terms and conditions of the Agreement and the Fee Agreement, as amended by the Extension Documents, 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 execute and deliver such other agreements, certificates, instruments and documents and

take all action necessary or reasonably required to effectuate the provisions of the Extension Documents.

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 26th DAY OF JULY, 2022.

Finally Passed: August 9, 2022

Tom Strand, Council President

ATTEST:

John W. Suthers, Mayor

Sarah B. Johnson, City Clerk

(Attach Affidavit of Publication, by Title and Summary, of Ordinance No. 22-__
upon First Reading)

(Attach Affidavit of Publication, by Title and Summary, of Ordinance No. 22-__
after Second Reading)