

ORDINANCE NO. 21-\_\_

AN ORDINANCE OF THE CITY OF COLORADO SPRINGS AUTHORIZING THE TERMINATION BY THE CITY OF EXISTING INTEREST RATE EXCHANGE AGREEMENTS; DELEGATING TO THE UTILITIES CHIEF EXECUTIVE OFFICER OR THE UTILITIES CHIEF PLANNING AND FINANCE OFFICER THE AUTHORITY TO DETERMINE THE FINANCIAL TERMS OF TRANSACTIONS TERMINATING SUCH AGREEMENTS; RATIFYING ACTION HERETOFORE TAKEN AND RELATING TO SUCH AGREEMENTS; AND PROVIDING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Colorado Springs, Colorado (the “City”) is a municipal corporation 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 City’s Charter (the “Charter”);

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 (the “System”), constituting the Utilities created by the Charter;

WHEREAS, the City has heretofore issued utilities system revenue bonds and will in the future issue additional utilities system revenue bonds (“Utilities Revenue Bonds”), which are special obligations of the City payable solely from the gross revenues derived from the operation of the System, after provision is made for the payment of the operation and maintenance expenses of the System (such remaining revenues being the “Net Pledged Revenues”), and the payment of the Utilities Revenue Bonds is and will be secured by a pledge of and by an irrevocable lien on the Net Pledged Revenues;

WHEREAS, in connection with certain outstanding Utilities Revenue Bonds, the City has entered into the following interest rate exchange transactions (individually, an “Interest Rate Transaction” and collectively, the “Interest Rate Transactions”) with financial institutions (individually, an “Interest Rate Counterparty” and collectively, the “Interest Rate Counterparties”) whereby the City pays a fixed rate of interest specified in the confirmation of each Interest Rate Transaction on a notional amount specified in the confirmation of each Interest Rate Transaction and the Interest Rate Counterparty to such Interest Rate Transaction pays the City a variable rate of interest on such notional amount:

<u>Interest Rate Transaction</u>	<u>Interest Rate Counterparty</u>	<u>Associated Bond Issue</u>	<u>Effective Date</u>	<u>Termination Date</u>
2005 SIFMA Swap	Bank of America, N.A.	2005A	09/15/05	11/1/35
2005 SIFMA Swap	J. Aron & Co.	2005A	09/15/05	11/1/35
2006 New Money LIBOR Swap	Morgan Stanley Capital Group Inc.	2006B	09/14/06	11/1/36
2006 New Money LIBOR Swap	JP Morgan Chase Bank	2006B	09/14/06	11/1/36
2007 New Money LIBOR Swap	J. Aron & Co.	2007A	09/13/07	11/1/37
2007 New Money LIBOR Swap	Morgan Stanley Capital Group Inc.	2007A	09/13/07	11/1/37
2008 SIFMA Swap	Bank of America, N.A.	2008A	09/12/08	11/1/38
2009 LIBOR Swap	Wells Fargo Bank, N.A.	2009C	10/01/09	11/1/28
2010 LIBOR Swap	Morgan Stanley Capital Group Inc.	2010C	10/26/10	11/1/40
2012 LIBOR Swap	Morgan Stanley Capital Group Inc.	2012A	03/15/12	11/1/41

WHEREAS, upon termination of an Interest Rate Transaction, the City or the Interest Rate Counterparty may be obligated to pay a settlement amount (a “Settlement Amount”) to the other party as described in the related interest rate exchange agreement;

WHEREAS, the City is possessed of plenary power under the Colorado Constitution and the Charter as to matters of local or municipal concern;

WHEREAS, the City has determined to exercise its plenary powers under the Colorado Constitution and the Charter to terminate existing Interest Rate Transactions in the future if deemed advantageous to the Utilities;

WHEREAS, the Council desires to delegate to the Chief Planning and Finance Officer of the Utilities or, in such officer’s absence, the Chief Executive Officer of the Utilities, the power to determine the precise timing and circumstances under which any existing Interest Rate Transaction may be terminated when deemed advantageous to the Utilities consistent with the provisions of this ordinance (this “Ordinance”); provided that such delegated authority shall expire on December 31, 2022 (the “Delegation Expiration Date”); and

WHEREAS, it is the purpose of this Ordinance to specifically authorize the execution and delivery of whatever agreements, notices, instruments or other documents with specific Interest Rate Counterparties are necessary to terminate an existing Interest Rate Transaction.

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

Section 1. All action (not inconsistent with the provisions of this Ordinance) heretofore taken by the City Council and the officers of the City (including the officers of the Utilities) directed toward the execution and delivery of the agreements, notices, instruments or other documents, if any, necessary to terminate an existing Interest Rate Transaction is hereby ratified, approved and confirmed.

Section 2. The City Council hereby delegates to the Chief Planning and Finance Officer of the Utilities or, in such officer’s absence, the Chief Executive Officer of the Utilities the power to approve (i) the precise timing and circumstances under which an existing Interest Rate Transaction may be terminated, (ii) agreements or documents necessary to effectuate such termination, and (iii) such other terms as the officer making such approval determines are in the best interest of the Utilities and are not inconsistent with the provisions of this Ordinance; provided

that the termination of an Interest Rate Transaction or more than one Interest Rate Transaction terminated at the same time will result, when considered either individually or in the aggregate, in a net present value cost of no more than 5% of the outstanding principal amount of the Utilities Revenue Bonds related to the Interest Rate Transaction or Transactions after taking into account all costs of such termination or terminations, including the Settlement Amount, if any, and the reasonably estimated future costs, including liquidity fees, that could arise in the absence of such termination or terminations and provided further that such delegated actions occur prior to the Delegation Expiration Date.

Section 3. Prior to terminating any existing Interest Rate Transaction pursuant to Section 2 above, the Chief Planning and Finance Officer of the Utilities or, in such officer's absence, the Chief Executive Officer of the Utilities, shall notify the Board of the Directors of Colorado Springs Utilities (the "Utilities Board") of any such termination. Such notification shall be submitted electronically and at a meeting of the Utilities Board or Finance Committee and shall include key financial information related to the termination.

Section 4. The officers of the City, including officers of the Utilities, are hereby authorized to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limitation, the execution and delivery of the agreements or documents necessary to effectuate termination of an existing Interest Rate Transaction and payment of any required Settlement Amount.

Section 5. If any section, paragraph, clause or other 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 other provision shall not affect any of the remaining provisions of this Ordinance.

Section 6. All bylaws, orders, resolutions and ordinances, or parts hereof, inconsistent herewith and with the documents hereby approved, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 7. 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 daily, 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 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.

Section 8. 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 \_\_ day of \_\_\_\_\_, 2021.

**Finally Passed:** \_\_\_\_\_, 2021

\_\_\_\_\_  
Council President

(SEAL)

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

EXHIBIT A  
(AFFIDAVIT OF PUBLICATION AFTER FIRST READING)

**EXHIBIT B**  
**(AFFIDAVIT OF PUBLICATION AFTER SECOND READING)**