

ORDINANCE NO. 22-__

AN ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO STANDBY LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO AND SUMITOMO MITSUI BANKING CORPORATION, ACTING THROUGH ITS NEW YORK BRANCH, AND AN AMENDED AND RESTATED FEE AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO AND SUMITOMO MITSUI BANKING CORPORATION, ACTING THROUGH ITS NEW YORK BRANCH, RELATING TO THE CITY OF COLORADO SPRINGS, COLORADO, VARIABLE RATE DEMAND UTILITIES SYSTEM REFUNDING REVENUE BONDS, SERIES 2009C; 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 Letter of Credit and Reimbursement Agreement dated September 1, 2017 (the “Standby Agreement”), between the City and Sumitomo Mitsui Banking Corporation, acting through its New York Branch (the “Bank”) pursuant to which the Bank issued a Standby Letter of Credit dated September 18, 2017 (the “Liquidity Facility”) with respect to the City of Colorado Springs, Colorado, Variable Rate Demand Utilities System Refunding Revenue Bonds, Series 2009C (the “2009C Bonds”); and

WHEREAS, the City has previously entered into a Fee Agreement dated September 18, 2017 (the “Fee Agreement”), between the City and the Bank which sets forth the fees, expenses, and charges payable by the City to the Bank with respect to the 2009C Bonds; and

WHEREAS, the 2009C 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 2009C Bonds, only to the extent such remarketing may not be successful, for the purchase of such 2009C Bonds by the Bank pursuant to the Liquidity Facility and the Standby Agreement; and

WHEREAS, the Liquidity Facility expires on September 16, 2022, unless extended; and

WHEREAS, the City wishes to extend the Expiration Date of the Liquidity Facility and make other modifications to the Standby Agreement pursuant to a First Amendment to Standby Letter of

Credit and Reimbursement Agreement between the City and the Bank (the “First Reimbursement Agreement Amendment”); and

WHEREAS, the City wishes to make certain changes to the Fee Agreement pursuant to an Amended and Restated Fee Agreement (the “Amended Fee Agreement” and together with the First Reimbursement Agreement 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 Standby Agreement, the Liquidity Facility, 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 of the Utilities (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 Standby Agreement, the Liquidity Facility, or the Fee Agreement required to implement such extension) are substantially similar to the terms and conditions of the Standby Agreement, the Liquidity Facility 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)