

ORDINANCE NO. 24-\_\_

AN ORDINANCE OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF 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 THE FEE AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO AND SUMITOMO MITSUI BANKING CORPORATION, ACTING THROUGH ITS NEW YORK BRANCH; AND RATIFYING CERTAIN ACTION HERETOFORE TAKEN.

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 (the “Utilities”); and

WHEREAS, the Utilities has entered into a Project Shipper Precedent Agreement (the “Precedent Agreement”) with Rockies Express Pipeline, LLC (the “Transporter”) to provide natural gas transportation to the Utilities; and

WHEREAS, pursuant to the terms of the Precedent Agreement, the Utilities is required to deliver an irrevocable letter of credit to secure the Utilities’ payment obligations, if any, prior to the in-service date of the proposed pipeline; and

WHEREAS, the City desires to fulfill the letter of credit obligation contained in the Precedent Agreement by entering into a Standby Letter of Credit and Reimbursement Agreement dated as of the date of its execution and delivery (the “Reimbursement Agreement”) with Sumitomo Mitsui Banking Corporation, acting through its New York Branch (the “Bank”) pursuant to which the Bank will issue a standby letter of credit (the “Letter of Credit”) for the account of the City, for and on behalf of the Utilities, in an aggregate stated amount of not to exceed \$115,000,000; and

WHEREAS, the City will additionally (i) enter into a fee agreement with the Bank to be dated the date of its execution and delivery (the “Fee Agreement”), which will set forth the fees, expenses, and charges payable by the City to the Bank in connection with the Reimbursement Agreement and the Letter of Credit and (ii) issue a promissory note (the “Bank Note”) to evidence and secure the City’s obligations under the Reimbursement Agreement and the Fee Agreement; and

WHEREAS, the Council has determined that the public interest and necessity require the City to enter into and perform the Reimbursement Agreement, the Bank Note and the Fee Agreement and to cause the Bank to issue the Letter of Credit; and

WHEREAS, there have been presented to the Council the proposed forms of the Reimbursement Agreement, the Bank Note and the Fee Agreement.

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 obtaining the Letter of Credit and the Reimbursement Agreement.

Section 2. Approval of the Letter of Credit, the Reimbursement Agreement, the Bank Note and the Fee Agreement. The forms, terms and provisions of the Letter of Credit, the Reimbursement Agreement, the Bank Note and the Fee Agreement are hereby approved. The City shall enter into and perform the Reimbursement Agreement, the Bank Note and the Fee Agreement in the forms presented to the Council, in each case with only such changes therein, if any, as are not inconsistent herewith, the approval of such changes to be conclusively evidenced by such the City's execution and delivery thereof. The Chief Executive Officer of the Utilities and the Chief Planning and Finance Officer of the Utilities are each hereby authorized and directed to singly execute and deliver the Reimbursement Agreement, the Bank Note and the Fee Agreement.

Section 3. Future Extensions. The Chief Executive Officer of the Utilities and the Chief Planning and Finance Officer of the Utilities are each hereby authorized to enter into and

execute and deliver such documents as may be necessary in connection with amendments to the Letter of Credit, the Reimbursement Agreement, the Bank Note and the Fee Agreement from time-to-time to facilitate the extension 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 Fee Agreement for the prior term, (ii) the other terms and conditions of any such extension (including any amendment to the Letter of Credit, the Reimbursement Agreement, the Bank Note and the Fee Agreement required to implement such extension) are substantially similar to the terms and conditions of the Letter of Credit, the Reimbursement Agreement, the Bank Note and the Fee Agreement, 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 letter of credit from a replacement bank with comparable credit ratings, including attorney fees).

Section 4. 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 5. 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 6. 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.

Section 7. Pledge of Net Pledged Revenues. The Council hereby specifically confirms the pledge contained in the Reimbursement Agreement of the Net Pledged Revenues (as defined in the Reimbursement Agreement) to secure the payment of the Bank Note and all other amounts due under the Reimbursement Agreement and Fee Agreement, on the terms and conditions set forth in the Reimbursement Agreement and Fee Agreement. The pledge and charge of the Net Pledged Revenues to secure the payment of the Bank Note and all other amounts due under the Reimbursement Agreement and Fee Agreement is subordinate and junior to the pledge of the Net Pledged Revenues for, and the lien thereon of, the Outstanding Parity Bonds (as defined in the Reimbursement Agreement) and of any other Parity Bonds (as defined in the Reimbursement Agreement) hereafter issued.

Section 8. Other Actions. The officers of the City and the officers of the Utilities (including, without limitation, the Chief Executive Officer of the Utilities and the Chief Planning and Finance Officer of the Utilities) 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 Letter of Credit, the Reimbursement Agreement, the Bank Note and the Fee Agreement.

INTRODUCED, READ, PASSED ON FIRST READING, APPROVED AND ORDERED PUBLISHED BY TITLE AND SUMMARY THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2024.

**FINALLY PASSED:** DECEMBER 10, 2024

ATTEST:

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Randy Helms, Council President

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Sarah B. Johnson, City Clerk

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Blessing A. Mobolade, Mayor

(Attach Affidavit of Publication, by Title and Summary,  
of Ordinance No. 24-\_\_ upon First Reading)

(Attach Affidavit of Publication, by Title and Summary,  
of Ordinance No. 24-\_\_ upon Second Reading)