



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Finance	Aimee Tihonovich - Finance Director	October 3, 2023

ITEM

First reading of ordinance 2023-13 authorizing the financing of the fire station with Certificates of Participation.

BACKGROUND

At the regular meeting of September 5, 2023; Council approved a construction agreement for the fire station with the expectation of utilizing Certificates of Participation to finance the cost of the project. This ordinance outlines the parameters of this financing mechanism and provides the necessary authorizations to staff to carry out activities necessary to accomplish this transaction.

FISCAL NOTE

Section 3 of the ordinance constitutes maximum thresholds for the purposes of establishing parameters and delegating authority to award the sale. Staff will be authorized to award or reject the sale within these parameter but have no authority to award outside of those parameters. It is anticipated that the annual rent payable by the City will not exceed \$1,400,000 for a principal amount under the lease of \$17,500,000. The maximum interest component on the base rental charge shall not exceed 5.75% and the total repayment cost shall not exceed \$40,800,000.

Certificates will be sold in a competitive sale which will determine the final values for the maximum amounts indicated in the above paragraph. The amounts stated in the above paragraph are "high" estimates to allow for some flexibility in pricing, but these are amounts that cannot be exceeded unless the council approves.

STAFF RECOMMENDATION

Staff recommends that the City council approve Ordinance 2023-13 authorizing the issuance of Certificates of Participation for the fire station on first reading.

SUGGESTED MOTION

A City Councilmember should state "I move to approve Ordinance 2023-13 on first reading", followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
Ordinance 2023-13
(Series 2023)

**AN ORDINANCE AUTHORIZING THE FINANCING OF CERTAIN
PUBLIC IMPROVEMENTS OF THE CITY, AND IN CONNECTION
THEREWITH AUTHORIZING THE LEASING OF CERTAIN CITY
PROPERTY AND THE EXECUTION AND DELIVERY BY THE CITY OF
A SITE LEASE, A LEASE PURCHASE AGREEMENT, AN OFFICIAL
STATEMENT AND OTHER FINANCING DOCUMENTS; SETTING
FORTH PARAMETERS AND RESTRICTIONS WITH RESPECT TO
THE FINANCING; AUTHORIZING CITY OFFICIALS TO TAKE ALL
ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS
CONTEMPLATED HEREBY; RATIFYING ACTIONS PREVIOUSLY
TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO**

WHEREAS, the City of Salida (the “City”), in the County of Chaffee and State of Colorado, is a political subdivision of the State of Colorado (the “State”), duly organized and existing as a statutory city under the laws of the State; and

WHEREAS, the members of the City Council of the City (the “City Council”) have been duly elected and qualified; and

WHEREAS, the City is authorized by Section 31-15-101(1)(d), Colorado Revised Statutes (“C.R.S.”), to acquire, hold, lease, and dispose of property, both real and personal; and

WHEREAS, the City is authorized by Section 31-15-713(1)(c), C.R.S., to lease any real estate, together with any facilities thereon, owned by the City when deemed by the governing body to be in the best interest of the City; and

WHEREAS, the City is authorized by Section 31-15-801, C.R.S., to enter into rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, for the functions or operations of the City, it is necessary that the City finance the construction of a fire station facility for use in the City’s governmental operations, and other capital improvements authorized by law (the “Project”); and

WHEREAS, the City Council has determined that it is in the best interests of the City and its inhabitants to execute a lease purchase agreement (the “Lease”) to finance the Project; and

WHEREAS, the City owns, in fee title, certain sites and the premises, buildings and improvements located thereon, or any additional property of the City (as more particularly described in the Lease) (the “Leased Property”); and

WHEREAS, the City Council has determined, and now hereby determines, that it is in the best interest of the City and its inhabitants that the City lease the Leased Property to UMB Bank, n.a., as trustee under an Indenture of Trust (the “Trustee”) pursuant to a Site Lease between the City, as lessor, and the Trustee, as lessee (the “Site Lease”), and lease back the Trustee’s interest in the Leased Property pursuant to the terms of a Lease Purchase Agreement (the “Lease”) between the Trustee, as lessor, and the City, as lessee; and

WHEREAS, the Trustee will execute and deliver an Indenture of Trust (the “Indenture”) with the Trustee pursuant to which there is expected to be executed and delivered certain refunding certificates of participation (the “Certificates”) dated as of their date of delivery, that shall evidence proportionate interests in the right to receive certain Revenues (as defined in the Lease), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the council has determined and now hereby determines that a competitive sale of the Certificates is to the best advantage of the City; and

WHEREAS, in order to facilitate the competitive sale, there will be executed and distributed a Notice of Sale (“Notice of Sale”) for the Certificates, a form of which is on file with the City; and

WHEREAS, there will be executed and distributed in connection with the sale of the Certificates an Official Statement (the “Official Statement”) in substantially the form of the Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates as approved by the Finance Director of the City; and

WHEREAS, the City’s obligation under the Lease to pay Base Rentals and Additional Rentals (as each is defined in the Lease) shall be from year to year only; shall constitute a currently budgeted expenditure of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year direct or indirect City debt or other financial obligation of the City within the meaning of any constitutional, statutory limitation or requirement concerning the

creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, the net proceeds of the Certificates are expected to be used to finance the Project; and

WHEREAS, there has also been presented to this meeting of the City Council the form of Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”); and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes, as amended (the “Supplemental Act”), provides that a public entity, including the City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, there has been presented to the City Council and are on file at the City offices the following: (i) the proposed form of the Site Lease; (ii) the proposed form of the Lease; (iii) the proposed form of Notice of Sale; and (iv) the proposed form of the Continuing Disclosure Certificate to be provided by the City; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, ORDAINS:

Section 1. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the City Council or the officers, agents or employees of the City Council or the City relating to the Site Lease, the Lease, the implementation of the Project, and the execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State, that the implementation of the Project, including the payment of the costs of issuance in connection therewith, and financing the costs thereof pursuant to the terms set forth in the Site Lease, the Lease and the Indenture are necessary, convenient and in furtherance of the City’s purposes and are in the best interests of the inhabitants of the City and the City Council hereby authorizes and approves the same.

Section 3. Supplemental Act Election; Parameters. The City Council hereby elects to apply all of the provisions of the Supplemental Act to the Lease, the Site Lease and the Certificates, and in connection therewith delegates to the Mayor, any other member of the City Council, the City Administrator and the Finance Director the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), C.R.S., in relation to the Lease and the Site Lease, and to execute a sale certificate (the “Sale Certificate”) setting forth such determinations, including without limitation, the term of the Site Lease, the rental amount to be paid by the Trustee pursuant to the Site Lease, the term of the Lease and the rental amount to be paid by the City pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the Site Lease Term shall end no later than December 31, 2063;
- (b) the Lease Term shall end no later than December 31, 2053;
- (c) the maximum annual repayment cost of Base Rentals payable by the City shall not exceed \$1,400,000, and the total repayment cost shall not exceed \$40,800,000;
- (d) the total aggregate principal amount of the Base Rentals payable by the City under the Lease with respect to the Certificates shall not exceed \$17,500,000;
- (e) the purchase price of the Certificates shall not be less than 98% of the aggregate principal amount; and
- (f) the maximum net effective interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 5.75%.

Pursuant to Section 11-57-205 of the Supplemental Act, the City Council hereby delegates to each of the Mayor, the City Administrator or the Finance Director the authority to receive bids for the purchase of the Certificates and to determine the best bid therefore in accordance with the provisions of this Ordinance and subject to the parameters set forth herein and in the Notice of Sale, and to execute any agreement or agreements in connection therewith. In addition, each of the Mayor, the City Administrator or the Finance Director is hereby authorized to independently determine if obtaining an insurance policy for all or a portion of the Certificates is in the best interests of the City, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same and execute any related documents or agreements required by such commitment. Each of the Mayor, the City Administrator or the Finance Director is also

hereby authorized to determine if obtaining a reserve fund insurance policy for the Certificates is in the best interests of the City, and if so, to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

The City Council hereby acknowledges and agrees that the proceeds of the Certificates will be used to finance the costs of the Project.

Section 4. Approval of Documents. The Site Lease, the Lease, the Indenture, the Notice of Sale and the Continuing Disclosure Certificate are in all respects approved, authorized and confirmed, and the Mayor of the City is hereby authorized and directed for and on behalf of the City to execute and deliver such documents in substantially the forms and with substantially the same contents as the proposed forms of such documents on file with the City Clerk, with such changes as may hereafter be approved by the Mayor, the Finance Director or the City Administrator.

Section 5. Competitive Sale of the Certificates; Notice of Sale. The Certificates shall be sold by competitive sale as determined by the City Administrator to be in the best interest of the City, in accordance with this Ordinance and the Notice of Sale. The Council hereby approves the Notice of Sale in substantially the form presented to the City and on file with the City Clerk, provided that such Notice of Sale may be completed, corrected, or revised as deemed necessary by the City Administrator or Finance Director in order to carry out the purposes of this Ordinance and to reflect the terms of the Certificates. The Finance Director is hereby authorized and directed to cause the Notice of Sale to be distributed to prospective bidders on the Certificates.

Section 6. Authorization to Execute Collateral Documents. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City, if so required by any documents in connection with the matters authorized by this ordinance. The Mayor and other appropriate officials or employees of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this ordinance, including but not limited to the execution of such other certificates and affidavits as may be necessary. The appropriate officers of the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated

by this ordinance. The execution of any instrument by the aforementioned officers or members of the City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 7. No General Obligation Debt. No provision of this ordinance, the Lease, the Indenture, the Continuing Disclosure Certificate, the Certificates or the Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall not have any obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the City in any ensuing fiscal year beyond the then current fiscal year or constitute or give rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect City debt or other financial obligation whatsoever. No provision of the Lease or the Certificates shall be construed or interpreted as creating an unlawful delegation of governmental powers nor as a donation by or a lending of the credit of the City within the meaning of Sections 1 or 2 of Article XI of the State Constitution. Neither the Lease nor the Certificates shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 8. Reasonableness of Rentals. The City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. The City Council hereby determines and declares that the period during which the City has an option to purchase the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the remaining useful life of the Leased Property. The City Council hereby further determines that the amount of rental payments to be received by the City from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

Section 9. City Representatives. The City Council hereby authorizes each of the Mayor, the City Administrator and the Finance Director to act as City Representatives under the Lease, or such other person or persons who may be so designated in writing from time to time by the Mayor, as further provided in the Lease.

Section 10. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Certificates. Such recourse shall not be available either directly or indirectly through the City Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Certificates and as a part of the consideration of their sale or purchase, any person purchasing or selling such certificate specifically waives any such recourse.

Section 11. 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 12. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 13. Electronic Signatures. The Mayor, City Administrator, Finance Director, and any other employee or official of the City that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the “Authorized Documents”) is hereby authorized to execute Authorized Documents electronically via facsimile, electronic or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act.

Section 14. Effective Date. This Ordinance shall be in full force and effect 30 days following publication after adoption on second and final reading.

INTRODUCED FIRST READING, on this 3rd day of October, 2023. ADOPTED AND ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council and set for a second reading and public hearing on this 17th day of October, 2023. PASSED ON FIRST READING, AND APPROVED THIS 17th DAY OF OCTOBER, 2023.

INTRODUCED ON SECOND READING and FINALLY ADOPTED on this 17th day of October, 2023.

CITY OF SALIDA, COLORADO

Mayor

ATTEST:

City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the 6th day of October, 2023, and, _____, after final adoption of the 20th day of October, 2023.

City Clerk/Deputy City Clerk

STATE OF COLORADO)
)
COUNTY OF CHAFFEE) SS.
)
CITY OF SALIDA)

I, Erin Kelley, the duly appointed, qualified and acting City Clerk of the City of Salida, Colorado (the “City”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council of the City constituting the governing body of the City (the “City Council”), by vote had and taken at open, regular meetings of the City Council held at the Council Chambers, in Salida, Colorado, on October 3, 2023 and October 17, 2023, each convening at the hour of 6:00 p.m., as recorded in the regular book of official records of the proceedings of said City kept in my office.

2. The adoption of the Ordinance on first reading was duly moved and seconded and the Ordinance was adopted by an affirmative vote of a majority of the members of the City Council at the regular meeting of the City Council on October 3, 2023, as follows:

Name	“Yes”	“No”	Absent	Abstain
Dan Shore, Mayor				
Dominique Naccarato				
Jane Templeton				
Justin Critelli				
Mike Pollock				
Harald Kasper				
Alisa Pappenfort				

3. The adoption of the Ordinance on second and final reading was duly moved and seconded and the Ordinance was adopted by an affirmative vote of a majority of the members of the City Council at the regular meeting of the City Council on October 17, 2023, as follows:

Name	“Yes”	“No”	Absent	Abstain
Dan Shore, Mayor				
Dominique Naccarato				
Jane Templeton				
Justin Critelli				
Mike Pollock				
Harald Kasper				
Alisa Pappenfort				

4. The members of the City Council were present at the meeting and voted on the passage of such Ordinance as set forth above.

5. There are no bylaws, rules, or regulations of the City Council which might prohibit the adoption of said Ordinance.

6. That notices of the regular meetings on October 3, 2023 and October 17, 2023, in the forms attached hereto as **Exhibit A**, were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meeting as required by law.

7. The Ordinance was published in the The Mountain Mail, a newspaper of general circulation in the City, after its first and second readings, in accordance with the laws of the State. The affidavits of publication are attached hereto as **Exhibit B**.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said City this _____ day of _____, 2023.

City Clerk

(SEAL)

EXHIBIT A
(Attach Meeting Notices)

EXHIBIT B
(Attach Affidavit of Publication)

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