

ORDINANCE NO. 5, 2023

AN ORDINANCE OF THE CITY OF DELTA AUTHORIZING AND APPROVING A LEASE-PURCHASE TRANSACTION WITH A LENDER BANK FOR THE FINANCING OF THE DELTA COMMUNITY SAFETY CENTER; AUTHORIZING AND APPROVING A SITE LEASE, A LEASE-PURCHASE AGREEMENT AND OTHER DOCUMENTATION AND PROVIDING DETAILS IN CONNECTION WITH THE TRANSACTION.

WHEREAS, the City of Delta (the “City”), is a home-rule city and political subdivision of the State of Colorado (the “State”), duly organized and operating under the home-rule charter of the City (the “City Charter”) and the Constitution and laws of the State; and

WHEREAS, the City Council of the City (the “City Council”) has the power, pursuant to the City Charter and Section 31-15-713(1)(c), Colorado Revised Statutes, to lease any real estate owned by the City when deemed by the City Council to be in the best interests of the City; and

WHEREAS, pursuant to the City Charter and Section 31-15-101(1)(d), Colorado Revised Statutes, the City has the power to acquire, hold, lease and dispose of property, both real and personal; and

WHEREAS, the City Council has determined that it is in the best interests of the City to undertake the remodel and refurbishment of real property acquired by the City in 2022 (the “Site”) for use as the City of Delta Community Safety Center (collectively, the “Capital Project”); and

WHEREAS, to formulate cost estimates the City has been working with a local architect and contractor for services and construction of the Capital Project, certain of which costs are being paid for with legally available moneys of the City; and

WHEREAS, in order to generate moneys to finance Capital Project costs, pursuant to a competitive process the City received proposals from six lenders for a direct bank loan to be secured in the form of a lease lease-back financing (the Site and Capital Project collectively, the “Leased Property”); and

WHEREAS, following the review of proposals received by City staff and with the assistance of Stifel Nicolaus and Company, Incorporated, the City’s placement agent, the City Council finds the proposal of JPMorgan Chase Bank, N.A. (the “Lender”) to be in the best interests of the City and desires to authorize the lease-purchase transaction with the Lender; and

WHEREAS, in connection with the lease-purchase transaction the City Council has determined that (i) the City shall convey a long-term leasehold interest in the Site pursuant to the Community Safety Center Site Lease between the City, as lessor, and the Lender, lessee (the “Site Lease”), for a the deposit not to exceed \$6,155,000 into a segregated account for the funding of the Capital Project and, contemporaneously with the execution and delivery of the Community Safety Center Site Lease, sublease the Leased Property back from the Lender pursuant to that certain Community Safety Center Lease Purchase Agreement (the “Lease Purchase Agreement”) between the Lender, as sublessor, and the City, as sublessee; and

WHEREAS, the City Council has determined that the lease-purchase financing on the terms and at the present rates proposed by the Lender is in the best interests of the City and its residents; and

WHEREAS, the Base Rentals (defined in the Lease Purchase Agreement) payable by the City shall constitute yearly based and appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (defined in the Lease Purchase Agreement) beyond the Fiscal Year for which such payments have been appropriated; and

WHEREAS, no provision of the Lease Purchase Agreement or the Site Lease shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any Fiscal Year in excess of amounts appropriated for such Fiscal Year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or City Charter limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution; and

WHEREAS, there have been presented to the administrative staff of the City and its advisors, and to the City Council, copies of the Site Lease and the Lease Purchase Agreement; and

WHEREAS, the City Council desires to authorize and otherwise proceed with the lease-purchase financing;

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

Section 1. Authorization of Site Lease. The City Council hereby approves the long-term lease of the Leased Property to the Lender in accordance with the Site Lease, for a lump sum rental payment (the “Lender Rental Payment”) not to exceed \$6,155,000 for a term that shall not exceed December 1, 2042. The Site Lease, in substantially the form and with substantially the content presented to the City Council and available from the City Clerk, are in all respects approved, authorized and confirmed, and the Mayor, or in the Mayor’s absence the Mayor Pro-Tem, is authorized and directed to execute the Site Lease in substantially the form and with substantially the same content as the form thereof presented to the City Council, for and on behalf of the City, but with such changes therein as the Mayor, or in the Mayor’s absence the Mayor Pro-Tem, may deem necessary or appropriate upon the advice of the City Attorney, as evidenced by the execution thereof. The City Council hereby finds and determines that the Lender Rental Payment represents a fair market value of the leasehold interest in the Leased Property and such amount will represent fair and adequate consideration to the City for the conveyance of the leasehold interest in the Leased Property.

Section 2. Authorization of Lease Purchase Agreement. The Lease Purchase Agreement, in substantially the form and with substantially the content presented to the City Council and available from the City Clerk, are in all respects approved, authorized and confirmed, and the Mayor, or in the Mayor's absence the Mayor Pro-Tem, is authorized and directed to execute the Lease Purchase Agreement in substantially the form and with substantially the same content as the form thereof presented to the City Council, for and on behalf of the City, but with such changes therein as the Mayor, or in the Mayor's absence the Mayor Pro-Tem, may deem necessary or appropriate upon the advice of the City Attorney, as evidenced by the execution thereof.

Section 3. Base Rentals and Related Terms and Parameters. The City Council hereby approves the lease-back of the Leased Property by the City in accordance with the following terms:

- (a) the full term of the Lease Purchase Agreement, which is subject to annual termination in the event of non-appropriation by the City, shall not extend beyond December 31, 2032;
- (b) the financed amount shall not exceed \$6,155,000;
- (c) the amount of the rental payments under the Lease Agreement shall not exceed \$800,000 in any fiscal year or a total of \$7,500,000 over all renewal terms; and
- (d) the net effective interest rate used in the computation of Base Rentals shall not exceed 4.25%.

Section 4. Execution of Miscellaneous Documents. The City Clerk or, in the absence thereof, the Deputy City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Site Lease and the Lease Purchase Agreement and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Mayor, the Mayor Pro-Tem and other officials, employees and agents of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized or contemplated by this Ordinance, including without limitation acts necessary to facilitate the issuance of an ALTA Loan Policy or Lease Policy for the benefit of the Lender, necessary in connection with a segregated account or escrow relating to moneys for the financing of the Capital Project and otherwise relating to the lease-purchase transaction authorized by the Ordinance.

Section 5. Bank-Qualified Determination. The City hereby designates its obligation to pay Base Rentals under the Lease Purchase Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 6. Obligations of the City. No provision of this Ordinance, the Site Lease or the Lease Purchase Agreement shall be construed as creating or constituting a general obligation or multiple-fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the

City nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease Purchase Agreement shall be in effect. The term of the Lease Purchase Agreement shall not extend beyond one year, subject to annual renewal, and the City shall have no obligation to make any payment except in connection with the payment of Base Rentals and those costs associated with the net lease of the Leased Property in accordance with the provisions of the Lease Purchase Agreement.

Section 7. Declarations and Findings. The City Council hereby determines and declares that the annual Base Rentals represent the fair value for the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease Purchase Agreement) represents the fair purchase price of the Leased Property. The City Council hereby determines and declares that the Base Rentals do not exceed reasonable amounts so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease Purchase Agreement or to exercise its option to purchase the Leased Property pursuant to the Lease Purchase Agreement. In making such determinations, the City Council has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing or equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Leased Property pursuant to the terms and provisions of the Lease Purchase Agreement, the option of the City to purchase the Leased Property, and the expected eventual vesting of full equitable and legal title to the Leased Property in the City. The City Council hereby determines and declares that the leasing of the Leased Property pursuant to the Lease Purchase Agreement will result in facilities of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Leased Property were performed by the City other than pursuant to the Lease Purchase Agreement. The City Council hereby determines and declares that the duration of the Lease Purchase Agreement, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property.

Section 8. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the lease-purchase financing for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 9. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 10. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 11. Repealer. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 12. Effective Date. This Ordinance shall take effect thirty days after its final passage and publication.

INTRODUCED AND APPROVED on first reading and ordered published this 21st day of March, 2023.

/s/ Kevin Carlson
Mayor

ATTEST:

/s/ Jolene E. Nelson
City Clerk