

ORDINANCE NO. 021, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE LEASING OF CERTAIN CITY
PROPERTY AND THE EXECUTION AND DELIVERY BY
THE CITY OF A SITE LEASE, A LEASE AGREEMENT, AND
OTHER DOCUMENTS AND MATTERS IN CONNECTION WITH
THE FINANCING OF CERTAIN PROJECTS FOR THE CITY

WHEREAS, the City of Fort Collins, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter"); and

WHEREAS, the City is authorized by Article XX, Section 6 of the Colorado Constitution, and part 8 of Article 15 of title 31, Colorado Revised Statutes ("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, the City Council of the City (the "City Council") is authorized by Chapter 23, Article IV, Division 2 of the Fort Collins Municipal Code, to lease any and all interests in real property owned in the name of the City if the City Council first finds that the lease is in the best interest of the City; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its inhabitants to finance a portion of the cost of (a) the improvements to the highway interchange at Interstate Highway I-25 and Prospect Road in the City, and (b) the construction of a joint police training facility with the City of Loveland, Colorado (jointly, the "Project"); and

WHEREAS, the City Council has determined and hereby determines that it is in the best interest of the City to finance the acquisition, construction and installation of the Project by entering into a lease financing, as hereinafter provided; and

WHEREAS, the proceeds of the lease financing, together with other available moneys of the City, will be used to finance the acquisition, construction and installation of the Project; and

WHEREAS, the City Council has determined and hereby determines that the leased property under the Site Lease (hereinafter defined) and the Lease (hereinafter defined) will consist of certain parcels owned by the City (collectively the "Site") and the buildings and improvements located thereon, which presently serve as the Civic Center and the Civic Center Parking Garage (as more particularly described in Exhibit A to the Site Lease and the Lease, the "Leased Property"); and

WHEREAS, the City Council now hereby determines that in order to finance the acquisition, construction and installation of the Project, it is in the best interest of the City and its inhabitants that (a) the City enter into a Site and Improvement Lease (the "Site Lease") with U.S. Bank National Association, as trustee (the "Trustee") under the Indenture (hereinafter defined) pursuant to which the City will lease the Leased Property to the Trustee, and that (b) the City enter

into a Lease Purchase Agreement (the "Lease") with the Trustee pursuant to which the Trustee will lease the Leased Property back to the City; and

WHEREAS, pursuant to the Lease, and subject to the right of the City to terminate the Lease and other limitations as therein provided, the City will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the City to use the Leased Property; and

WHEREAS, the City's obligation under the Lease to pay Base Rentals and Additional Rentals shall be from year to year only; shall constitute currently budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any constitutional, charter, statutory limitation or other 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 Trustee will enter into an Indenture of Trust (the "Indenture") pursuant to which there will be executed and delivered certain 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), which Certificates 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, at a public sale to be held in connection with the sale of the Certificates, the City anticipates receiving a proposal from a purchaser for the purchase of the Certificates; and

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

WHEREAS, the net proceeds from the sale of the Certificates, together with other available moneys of the City, will finance the acquisition, construction and installation of the Project and pay the costs of issuance in connection therewith; and

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S., 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 the Continuing Disclosure Certificate to be provided by the City in connection with the execution and delivery of the Certificates (the "Disclosure Certificate"); (iv) the proposed form of the Notice of Sale to be used in connection with the competitive sale of the Certificates (the "Notice of Sale"); and (v) the Preliminary Official Statement (the "Preliminary Official Statement") relating to the Certificates; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO as follows:

Section 1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officials, officers, agents or employees of the City relating to the execution and delivery of the Site Lease and the Lease, the acquisition, construction and installation of the Project, and the sale, execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 3. Finding of Best Interests. The City Council hereby finds and determines, pursuant to the Colorado Constitution, the laws of the State of Colorado and the Charter, that the acquisition, construction and installation of the Project, and the financing of the costs thereof, including the costs of issuance incurred in connection therewith, pursuant to the terms set forth in the Site Lease, the Lease, the Indenture and the Sale Certificate (hereinafter defined) are necessary, convenient, and in furtherance of the City's public purposes and are in the best interests of the City and the City Council hereby authorizes and approves the same.

Section 4. Supplemental Act; Parameters. The City Council hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the City Manager or the Financial Officer of the City (the "Financial Officer") the independent authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) C.R.S., as amended, in relation to the Site Lease and the 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 term of the Site Lease shall not extend beyond December 31, 2048;
- b. the consideration to be paid by the Trustee to the City pursuant to the Site Lease shall not be less than \$25,000,000;
- c. the Lease Term shall not extend beyond December 31, 2038;
- d. the maximum annual repayment amount of the Base Rentals payable by the City under the Lease shall not exceed \$2,038,500;
- e. the maximum total repayment amount of the Base Rentals payable by the City pursuant to the Lease shall not exceed \$40,770,000; and
- f. the purchase price of the Certificates shall not be less than 98% of the principal amount of the Certificates.

Pursuant to Section 11-57-205 of the Supplemental Act, the City Council hereby delegates to each of the City Manager or the Financial Officer the independent authority to receive bids for the purchase of the Certificates and to determine the best bid therefor in accordance with the provisions of this Ordinance, and subject to the parameters set forth herein and the other terms and provisions set forth in this Ordinance and the Notice of Sale. Each of the City Manager and the Financial Officer are hereby independently authorized to accept a binding bid for the Certificates. The purchaser of the Certificates and the terms of the winning bid shall be set forth in the Sale Certificate.

The delegation set forth in this Section 4 shall be effective for one year following the effective date of this Ordinance.

The City Council hereby agrees and acknowledges that the net proceeds of the Certificates will be used, together with other available moneys of the City, to finance the costs of acquiring, constructing and installing the Project and to pay costs of issuance.

Section 5. Approval of Documents. The Site Lease, the Lease and the Disclosure Certificate, in substantially the forms presented to the City Council and on file with the City, 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 the Site Lease, the Lease and the Disclosure Certificate, in substantially the forms and with substantially the same contents as presented to the City Council, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance. The execution of the Site Lease, the Lease and the Disclosure Certificate by the Mayor shall be conclusive evidence of the approval by the City Council of such documents in accordance with the terms hereof and thereof.

Section 6. Competitive Sale of Certificates; Notice of Sale. The Certificates shall be sold by competitive sale in accordance with the Notice of Sale. The City Council hereby approves the Notice of Sale in substantially the form presented to the City Council and on file with the City, provided that such Notice of Sale may be completed, corrected or revised as deemed necessary by the City Manager or the Financial Officer in order to carry out the purposes of this Ordinance. The Financial Officer is hereby authorized and directed to cause the Notice of Sale to be distributed to prospective bidders on the Certificates.

Section 7. Official Statement. The designation of the Preliminary Official Statement by the Mayor or the City Manager as a "nearly final Official Statement" for purposes of Rule 15c2-12 of the Securities and Exchange Commission is hereby authorized and confirmed. A final Official Statement, in substantially the form of the Preliminary Official Statement presented to the City Council and on file with the City, is in all respects approved and authorized. The Mayor is hereby authorized and directed to execute and deliver the final Official Statement, for and on behalf of the City, in substantially the form and with substantially the same content as the Preliminary Official Statement presented to the City Council and on file with the City, provided that such document may be completed, corrected, or revised as deemed necessary by the City Manager or the Financial Officer. The distribution of the Notice of Sale, the Preliminary Official Statement and the final Official Statement to prospective purchasers of the Certificates is hereby ratified, approved, and authorized.

Section 8 Direction to Act. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Ordinance and to place the seal of the City on any document authorized and approved by this Ordinance. The Mayor, the City Clerk, the City Manager, the Financial Officer, the City Attorney and other employees and officials of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional 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 by this Ordinance. The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by the City Manager or the Financial Officer prior to the execution of the documents. The execution of any instrument by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof.

Section 9. No General Obligation Debt. No provision of this Ordinance, the Site Lease, the Lease, the Indenture, the Disclosure Certificate, the Notice of Sale, the Preliminary Official Statement, the final Official Statement or the Certificates 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, statutory or Charter provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall have no 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, statutory or Charter debt limitation and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation whatsoever. No provision of the Site Lease, 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 Colorado 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 10. Reasonableness of Rentals; Fair Market Value. The City Council hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 4 hereof, constitute the fair rental value of the Leased Property and 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 Trustee's leasehold interest in 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 Trustee's leasehold interest in the Leased Property (i.e., the entire maximum term of the Lease) does not exceed the 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, in accordance with the provisions

set forth in Section 4 hereof, is fair market consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

Section 11. 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 12. Repealer. All ordinances, resolutions, bylaws, orders, and other instruments, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw, order, or other instrument, or part thereof, heretofore repealed.

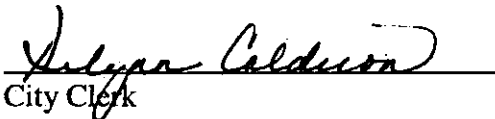
Section 13. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance for any reason is held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

Section 14. Charter Controls. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and the Sale Certificate authorized hereby and such statutes. Any such inconsistency or conflict is intended by the City Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Introduced, considered favorably on first reading, and ordered published this 5th day of February, A.D. 2019, and to be presented for final passage on the 19th day of February, A.D. 2019.

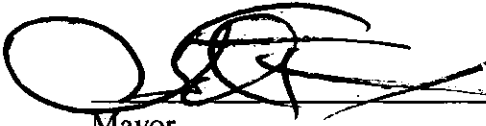

Mayor

ATTEST:


City Clerk



Passed and adopted on final reading on the 19th day of February, A.D. 2019.



Mayor

ATTEST:



City Clerk

