



Background Paper for Proposed Ordinance

COUNCIL MEETING DATE: January 10, 2022

TO: President Lawrence W. Atencio and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Daniel C. Kogovsek, City Attorney

SUBJECT: AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION WITH THE RELEASE OF CERTAIN REAL PROPERTY FROM THE EXISTING LEASED PROPERTY UNDER THE LEASE PURCHASE AGREEMENT DATED AS OF NOVEMBER 12, 2014, AS AMENDED, BETWEEN THE CITY AND THE CITY OF PUEBLO, COLORADO MUNICIPAL BUILDING CORPORATION AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO TAKE ALL NECESSARY AND APPROPRIATE ACTIONS RELATING TO SAME

SUMMARY:

The attached Ordinance authorizes and approves the execution and delivery of documents in connection with the release of Lot 67 located in the Pueblo Memorial Airport Industrial Park from the Lease Purchase Agreement dated November 12, 2014, as amended, and authorizes the Mayor and the City Clerk to take all necessary and appropriate actions relating to the same.

PREVIOUS COUNCIL ACTION:

The City has previously entered into a Lease Purchase Agreement dated as of November 12, 2014 (the "2014 Lease"), between the City, as lessee, and the City of Pueblo, Colorado Municipal Building Corporation (the "Corporation"), as lessor, for the purpose of providing funding to finance the replacement of approximately 8,725 high pressure sodium streetlight fixtures with approximately 8,725 light emitting diode streetlight fixtures throughout the City (the "2014 Project"). Pursuant to a Trust Indenture dated as of November 12, 2014 (the "2014 Indenture"), between the Corporation and Wells Fargo Bank, National Association, in its capacity as trustee thereunder (the "2014 Trustee"), and a Continuing Covenant Agreement dated as of November 12, 2014 (the "2014 Agreement"), by and among the City, the Corporation and the 2014 Trustee, the City caused the execution and delivery of the Certificate of Participation, Series 2014, in the original aggregate principal amount of \$4,200,000 (the "Series 2014 Certificates"), evidencing interests in the right to receive revenues under the 2014 Lease.

During the Summer of 2021, due to a national reduction in interest rates, Mayor Gradisar proposed to Wells Fargo Bank, National Association (the "Bank") as the initial purchaser and the sole owner of the Series 2014 Certificates, that the Bank reduce the interest rate on the Series 2014 Certificates. The Bank acquiesced to the Mayor's request and on July 12, 2021, by

Ordinance No. 9967, City Council approved the necessary amendments to the financing documents which resulted in the reduction of the interest rate on the Series 2014 Certificates from 2.54% to 1.25% through the reissuance of the Series 2014 Certificates under the Internal Revenue Code of 1986, as amended.

BACKGROUND:

During the Fall of 2021, at the suggestion of the Pueblo Economic Development Corporation (“PEDCO”) Mayor Gradisar requested the Bank to release that portion of the Leased Property identified in the 2014 Lease as Parcel B and known as Lot 67 located in the Pueblo Memorial Airport Industrial Park, from the Bank’s Trust Indenture, in order to maximize the usefulness of Lot 67 and facilitate the development of said lot by a new employer recruited by PEDCO. The Bank has agreed to the Mayor’s request and the attached Ordinance implements the release of Lot 67.

FINANCIAL IMPLICATIONS:

None. Approval of this ordinance will not affect the amount of the lease payments made by the City to the City of Pueblo, Colorado Municipal Building Corporation.

BOARD/COMMISSION RECOMMENDATION:

Not applicable to this Ordinance.

STAKEHOLDER PROCESS:

Not applicable to this Ordinance.

ALTERNATIVES:

City Council could decide not to approve the release of “Lot 67” from the Lease Purchase Agreement.

RECOMMENDATION:

The Board of Directors of PEDCO recommends approval of this Ordinance.

Attachments:

Proposed Ordinance
First Amendment to Site Lease
Second Supplemental Indenture
Second Amendment to Lease Purchase Agreement
Resolution of The Board of Directors of City of Pueblo, Colorado Municipal Building Corporation

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION WITH THE RELEASE OF CERTAIN REAL PROPERTY FROM THE EXISTING LEASED PROPERTY UNDER THE LEASE PURCHASE AGREEMENT DATED AS OF NOVEMBER 12, 2014, AS AMENDED, BETWEEN THE CITY AND THE CITY OF PUEBLO, COLORADO MUNICIPAL BUILDING CORPORATION AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO TAKE ALL NECESSARY AND APPROPRIATE ACTIONS RELATING TO SAME

WHEREAS, the City of Pueblo, Colorado (the "City"), is authorized, pursuant to the Home Rule Charter of the City (the "Charter") to enter into lease purchase agreements in order to provide lands and facilities for governmental purposes; and

WHEREAS, the City has previously entered into a Site Lease dated as of November 12, 2014 (the "2014 Site Lease"), between the City, as lessor, and the City of Pueblo, Colorado Municipal Building Corporation (the "Corporation"), as lessee and a Lease Purchase Agreement dated as of November 12, 2014 (the "2014 Lease"), between the City, as lessee, and the Corporation, as lessor, for the purpose of providing funding to finance the replacement of approximately 8,725 high pressure sodium streetlight fixtures with approximately 8,725 light emitting diode streetlight fixtures throughout the City (the "2014 Project"); and

WHEREAS, pursuant to a Trust Indenture dated as of November 12, 2014 (the "2014 Indenture"), between the Corporation and Wells Fargo Bank, National Association, in its capacity as trustee thereunder (the "Trustee"), and a Continuing Covenant Agreement dated as of November 12, 2014 (the "2014 Agreement"), by and among the City, the Corporation and the Trustee, the City caused the execution and delivery of the Certificate of Participation, Series 2014, in the original aggregate principal amount of \$4,200,000 (the "Series 2014 Certificate"), evidencing interests in the right to receive revenues under the 2014 Lease, which Series 2014 Certificate is currently outstanding in the aggregate principal amount of \$1,362,802.78; and

WHEREAS, the City Council of the City of Pueblo, Colorado (the "City Council") has determined that it is in the best interests of the City and its residents to effect a release of that portion of the Leased Property identified in the 2014 Lease as Parcel B and known as Lot 67 ("Lot 67") in order to maximize the usefulness of Lot 67 and facilitate the development of the surrounding land by (a) executing and delivering the First Amendment to the 2014 Site Lease (the "First Site Lease Amendment"), (b) executing and delivering the Second Amendment to the 2014 Lease (the "Second Lease Amendment"), and (c) approving the execution and delivery of the Second Supplemental Indenture (the "Second Supplemental Indenture"), each in substantially the form presented to the City and made available to the City Council prior to this meeting; and

WHEREAS, Wells Fargo Bank, National Association is the Initial Purchaser and current Owner (as defined in the Indenture) of 100% of the Series 2014 Certificate; and

WHEREAS, the Trustee has notified the Owner of the First Site Lease Amendment, the Second Lease Amendment and the Second Supplemental Indenture in accordance with the provisions of Section 9.05 of the Indenture, and the Owner has acknowledged, consented to, and approved the execution of the same; and

WHEREAS, the City Council has been presented with or had made available to it substantially final forms of the First Site Lease Amendment, the Second Lease Amendment and the Second Supplemental Indenture; and

WHEREAS, the City Council expects and intends that the 2014 Lease will continue to be renewed and appropriated for in the foreseeable future; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO:

Ratification of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officers or employees of the City, directed toward the release of Lot 67 from the Leased Property described in the 2014 Site Lease, the 2014 Lease and the 2014 Indenture, are hereby ratified, approved and confirmed.

Authorization of Release; Approval Lease Amendments. The City Council hereby authorizes and consents to the release of Lot 67 from the Leased Property in accordance with the provisions of the 2014 Lease. In accordance with the foregoing, the First Site Lease Amendment and the Second Lease Amendment, in substantially the forms presented to the City and made available to the City Council prior to this meeting and with substantially the same content, are in all respects approved, authorized and confirmed, and the Mayor is authorized to affix his signature to the First Site Lease Amendment and the Second Lease Amendment in substantially the forms and with substantially the same content as presented to this meeting of the City Council, for and on behalf of the City, but with such changes, modifications, additions or deletions therein as the Mayor and the City Attorney shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the forms and content of the Lease Amendments presented to the City and made available to the City Council prior to this meeting.

Consent and Approval of Supplemental Indenture. The City Council hereby approves and acknowledges the Second Supplemental Indenture in substantially the form presented to the City and made available to the City Council prior to this meeting of the City Council and with substantially the same content.

Other Actions in Furtherance of this Ordinance. The City Clerk is hereby authorized 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 First Site Lease Amendment and the Second Lease Amendment and any other necessary documents authorized and approved by this Ordinance. The Mayor and any officials of the City Council or 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 and contemplated by this Ordinance.

Home Rule Powers Invoked. In authorizing and approving the actions herein set forth, it is the intent of the City Council of the City to exercise the home rule powers of the City granted pursuant to the Colorado Constitution and the Charter, and the City Council of the City hereby finds, determines and declares that the matters herein referred to are matters of local or municipal concern and are appropriate for the exercise of the home rule powers of the City.

Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such

section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Repealer. All bylaws, orders and ordinances, or parts thereof, inconsistent with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order or ordinance, or part thereof.

Effective Date. This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

Approved on _____.

Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

Council did not act to override the Mayor's veto.

Ordinance re-adopted on a vote of _____, on _____

Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk