

ORDINANCE NO. 1243

AN ORDINANCE OF THE COUNCIL OF FORT MORGAN, COLORADO APPROVING A LEASE PURCHASE FINANCING TO PROVIDE FUNDS FOR THE CONSTRUCTION AND EQUIPPING OF A COMMUNITY CENTER AND FIELD HOUSE ON CITY-OWNED PROPERTY; AUTHORIZING AND APPROVING A SITE LEASE, A LEASE PURCHASE AGREEMENT AND OTHER DOCUMENTATION RELATING TO THE LEASE PURCHASE FINANCING; AND PROVIDING OTHER DETAILS, PARAMETERS AND AUTHORIZATION IN CONNECTION WITH THE LEASE PURCHASE FINANCING

WHEREAS, the City of Fort Morgan, Colorado (the "City") is a home rule municipality and political subdivision of the State of Colorado (the "State"), duly organized and operating under the home-rule charter of the City (the "Charter") and the Constitution and laws of the State; and

WHEREAS, the City is authorized pursuant to Section 31-15-801, Colorado Revised Statutes ("C.R.S.") to enter into long-term rental or leasehold agreements and pursuant to Article I, Section 2 of the Charter to purchase, receive, hold, enjoy, sell and dispose of real and personal property; and

WHEREAS, the City Council of the City (the "Council") has determined that it is in the best interests of the City and its residents to construct, install, improve and equip a new Community Center and Field House (collectively, the "Project") on land currently owned by the City within the CentrePointe Plaza city government complex (as more particularly described in the Site Lease defined below and including the Project to be constructed thereon, the "Leased Property"); and

WHEREAS, the lender identified in Appendix A (the "Lender") has submitted a proposal to the City, attached hereto as Appendix A (the "Lender Term Sheet"), providing for the terms of a proposed lease financing (as more particularly described below, the "Lease Financing") and the Council desires to accept the terms of the Lender Term Sheet; and

WHEREAS, under the Lease Financing, pursuant to a Site Lease (the "Site Lease") between the City, as lessor, and the Lender, as lessee, the City will convey a leasehold interest in the land owned by the City to the Lender and thereafter, pursuant to a Lease Purchase Agreement (the "Lease"), lease the Leased Property back from the Lender over a period not to exceed 15 years (which period will not exceed the useful life of the Project); and

WHEREAS, the Lease is to expire on December 31 of any City fiscal year (each a "Fiscal Year") if the Council has, by such date, failed, for any reason, to appropriate sufficient amounts authorized and directed to be used to pay all Base Rentals (as defined in the Lease) and Additional Rentals (as defined in the Lease) estimated to be payable in the next ensuing Fiscal Year, and

such Base Rentals and Additional Rentals payable by the City shall constitute currently 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 beyond the Fiscal Year for which such payments have been appropriated; and

WHEREAS, the City will construct the Project as provided in the Lease with Lease Financing proceeds to be controlled by the City in a segregated account; and

WHEREAS, there have been presented and made available to the Council at or prior to this meeting, among other things, financial information relating to the Lease Financing as well as copies of the proposed forms of the Site Lease and the Lease; and

WHEREAS, the Council is desirous of authorizing, approving and directing the execution of the agreements and instruments described above and the transactions evidenced thereby and otherwise proceed with the Lease Financing.

BE IT ORDAINED BY THE COUNCIL OF FORT MORGAN:

Section 1. Authorization of Lease Financing. The Council hereby approves the conveyance to the Lender of a leasehold interest in the land, pursuant to the terms of the Site Lease, and the lease of the Leased Property from the Lender, pursuant to the terms of the Lease. In consideration of the City's conveyance to the Lender of the leasehold interest in the land and the construction of the Project thereon, the City shall establish a segregated account funded with proceeds of the Lease Financing, in an aggregate principal amount not to exceed \$10,000,000, from which the City shall withdraw amounts, together with moneys legally available to the City, if any, needed to complete the Project. The City shall maintain accurate records of the expenditures paid from the segregated account through the completion of the Project. The Council hereby determines and declares that the above amount represents fair and adequate consideration to the City for the conveyance of the leasehold interest in the land and the completion of the Project, to be leased to the City pursuant to the terms of the Lease Financing.

Section 2. Document Authorization. The following documents, in substantially the form and with substantially the same content as the form thereof made available to the Council, are in all respects approved, authorized and confirmed, and the Mayor or other appropriate member of the Council (each an "Authorized Official"), is authorized and directed to execute the following documents in substantially the same form and with substantially the same content as presented to the Council, for and on behalf of the Council, but with such changes therein as the Authorized Official may deem necessary or appropriate, as evidenced by the execution thereof: (a) the Site Lease and (b) the Lease.

Section 3. Parameters Relating to Lease Financing. The maximum annual Base Rentals to be paid by the City in any particular year shall not exceed \$1,250,000 and shall not be payable beyond December 1, 2035. The net effective interest rate for the Lease Financing shall not be in excess of 2.00% per annum. The City hereby approves the terms of the Lender Term Sheet.

Section 4. Tax-Exempt Qualification. The City, including any entities acting on behalf of or subordinate to the City, does not anticipate issuing more than \$10,000,000 of tax-exempt obligations during the calendar year 2020, which is the calendar year in which the Site Lease and the Lease are to be executed. No proceeds from the Lender under the Site Lease will be used in a manner which would cause either of the Site Lease or the Lease to be a private activity bond. Accordingly, the City hereby designates each of the Site Lease and the Lease as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3)(b)(i) of the Internal Revenue Code of 1986, as amended.

Section 5. Execution of Miscellaneous Documents. The City Clerk or, in the absence thereof, his or her designee, are hereby authorized and directed to attest all signatures and acts of any official of the 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 and all other additional certificates, documents and other papers associated with the transactions and other matters authorized by this Ordinance. The Authorized Officials 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.

Section 6. Obligations of the City. No provision of this Ordinance, the Site Lease or the Lease 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 shall be in effect. The term of the Lease 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 the Base Rentals and Additional Rentals in accordance with the provisions of the Lease.

Section 7. Declarations and Findings. The Council hereby determines and declares that the Base Rentals represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) represents the fair purchase price of the Leased Property. The Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to appropriate moneys to make payments under the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the current market value of the Leased Property, the cost of acquiring, constructing, improving 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, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. The Council hereby determines and declares that the leasing of the Leased Property pursuant to the Lease 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. The Council hereby determines and declares that the duration of the Lease,

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 Council or by the officers and employees of the City directed toward the Lease 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. 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 11. Publication; Effective Date. This Ordinance shall be published once in a newspaper of the City within five days of final passage and adoption by the Council on second reading and shall be in full force and effect five days after final publication.

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INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED
PUBLISHED this 17th day of March, 2020.



THE CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO

By

By: Ronald Shaver
Mayor

Attest:

By
John Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED this 7th day of April, 2020.



THE CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO

By

By: Ronald Shaver
Mayor

Attest:

By
John Brennan
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN) ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1243** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 17th day of March, 2020. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 21st day of March, 2020, published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed ordinance was again taken up and read a second time, duly and legally, passed, approved and adopted at a regular meeting of the City Council held on the 7th day of April, 2020. Within five (5) days after its final passage, said **Ordinance No. 1243** was published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.



John Brennan
City Clerk

APPENDIX A

LENDER TERM SHEET FINANCIAL SUMMARY

March 12, 2020

To: City of Fort Morgan, CO

Truist Bank ("Lender") is pleased to offer this proposal for the financing requested by the City of Fort Morgan, CO.

PROJECT: Lease Purchase Financing

AMOUNT: \$10,000,000

MATURITY DATE: December 1, 2035

INTEREST RATE: 1.71%

TAX STATUS: Tax Exempt-BQ

BASE RENTAL PAYMENTS: Interest: Monthly, Principal: Monthly

INTEREST RATE CALCULATION: 30/360

SECURITY: Pledge of rental payments pursuant to an annually appropriated lease purchase agreement. The Community Center and Field House will serve as the Leased Property.

PREPAYMENT TERMS: Prepayable in whole on any payment date without penalty

RATE EXPIRATION: April 28, 2020

The complete term sheet is on file with the City Clerk.