

**CITY OF RIFLE, COLORADO**

**ORDINANCE NO. 4**

**SERIES OF 2015**

FOR AN ORDINANCE AUTHORIZING THE FINANCING OF REPAIRS AND IMPROVEMENTS TO THE CITY'S WATER SYSTEM THROUGH THE EXECUTION AND DELIVERY OF A SITE LEASE BETWEEN THE CITY AS LESSOR AND A LESSEE TO BE IDENTIFIED AND, IN CONNECTION THEREWITH, A LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AS LESSEE, AND A LESSOR TO BE IDENTIFIED, WITH RESPECT TO CERTAIN REAL AND PERSONAL PROPERTY USED BY THE CITY AS A POLICE AND COURT FACILITY; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; PROVIDING FOR RELATED MATTERS AND DECLARING AN EMERGENCY

WHEREAS, the City of Rifle, Colorado (the "City") is authorized, pursuant to Section 31-15-801, Colorado Revised Statutes, as amended and the City's home rule powers to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property, and may have a term, at the discretion of the City, in excess of 30 years; and

WHEREAS, in order to provide for the capital asset needs of the City, specifically including repairs and improvements to the City's municipal water system, the City Council of the City (the "Council") has determined and hereby declares that it is necessary and in the best interests of the City and its citizens that the City undertake lease purchase financing of property in the manner authorized herein, for use by the City for governmental and proprietary purposes; and

WHEREAS, for such purposes, the Council has determined to authorize the City to enter into a Site Lease (the "Site Lease") for a term not to exceed 30 years with a lessee to be identified (the "Site Lessee") with respect to certain real property currently owned by the City and used as a police and court facility (the "Leased Property"); and

WHEREAS, for the purpose of providing for the capital asset needs of the City, the Council has determined to authorize the City to enter into a Lease Purchase Agreement (the "Lease") with the Site Lessee, as lessor (the "Lessor"), pursuant to which the City will lease the Leased Property back from the Lessor; and

WHEREAS, the proceeds received by the City in consideration of the execution and delivery of the Site Lease and the Lease are proposed to be used by the City for repairs and improvements to the City's main water storage facility and other parts of its municipal water system (the "Project");

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

**Section 1. Ratification of Actions.** All action heretofore taken, not inconsistent with the provisions of this ordinance (the “Ordinance”), by the Council or the officers of the City, directed toward the implementation of the Project, including without limitation the preparation of the forms of Lease and the Site Lease and related documents, are hereby ratified, approved and confirmed.

**Section 2. Findings; Authorizations.** The Council hereby finds and determines, pursuant to the City’s home rule powers and the laws of the State of Colorado, that the Project is necessary, convenient, and in furtherance of the governmental and proprietary powers of the City and in the best interests of the City and its inhabitants; and the Council hereby authorizes the Project. The City hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the “Supplemental Securities Act”), to the extent applicable and not inconsistent herewith, to the Lease.

**Section 3. Approval and Execution of Documents; Authorized Officers.** The Lease and the Site Lease, in substantially the forms filed in the office of the City Clerk prior to the final adoption of this Ordinance, are in all respects approved, authorized and confirmed, and the Mayor or the Mayor Pro Tem of the City are hereby authorized and directed to execute and deliver, and the City Clerk of the City or any Deputy or Assistant City Clerk are hereby authorized and directed to affix the seal of the City to, and attest, the Lease and the Site Lease in substantially the forms so filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by the City’s bond counsel or the City Attorney. The Council hereby designates the City Manager and the Director of Finance (and any persons authorized by law to act on their behalf in their absence) to act as “Authorized Officers” under the Lease. Prior to the execution of the Site Lease, the Lease or any other instrument contemplated by this Ordinance, the final Base Rentals due under the Lease shall be approved by a certificate signed by the City Manager and the Finance Director (a “Final Terms Certificate”).

**Section 4. Additional Documents.** 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. The Mayor, the Mayor Pro Tem and the Authorized Officers are hereby authorized 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 appropriate officers of the City are also 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.

**Section 5. Manner of Offering.** The Director of Finance is hereby authorized to determine whether the lease purchase financing authorized herein will be completed as a public offering through RBC Capital Markets as underwriter (the “Underwriter”) or as a direct private placement with an institutional investor. In the event that the financing is to be completed as a public offering, the Lease may include such reasonable and customary provisions as necessary to permit the assignment of the Lessor’s rights to receive Base Rentals to a trustee and the delivery

by the trustee of certificates of participation (the "Certificates") to investors purchasing them from the Underwriter. In the case of a public offering of Certificates, the Authorized Officers shall also cause the preparation and distribution of an Official Statement describing the Certificates, the Site Lease, the Lease, the City, the Leased Property and other matters material to the offering of the Certificates, and the execution of a certificate purchase agreement or similar document with the Underwriter. In the case of a private placement transaction, the institutional investor shall be provided with such information as it may reasonably request concerning the Site Lease, the Lease and the Leased Property and shall deliver an investment letter in form acceptable to the Finance Director, the City Attorney and the City's bond counsel. By Final Terms Certificate, the Director of Finance shall identify the entity which shall act as Site Lessee and Lessor, which entity may be either the investor in a private placement or a nonprofit corporation formed for purposes of the lease purchase transaction.

**Section 6. Lease Terms.** The Lease shall provide for the payment of Base Rentals consisting of an interest component and a principal component, and the schedule of Base Rentals incorporated in the Lease shall be approved by Final Terms Certificate, subject to the following limitations:

- (a) the aggregate amount of the principal component of Base Rentals shall not exceed \$5,500,000;
- (b) the interest component of Base Rentals shall accrue at a rate not to exceed 5.00%;
- (c) the Lease, including all renewal terms thereof, shall terminate not later than December 31, 2040, and may also be made subject to prepayment and termination in whole or in part with or without a prepayment premium not to exceed 2.0% of the principal amount thereof;
- (d) the City shall have the option to purchase the interest of the Lessor in the Leased Property and terminate the Site Lease by discharging the Lease in the manner provided in the Lease;
- (e) the annual Base Rentals due under the Lease shall not exceed \$440,000; and .
- (f) if the financing transaction is completed through a public offering and the sale of Certificates, such Certificates shall be sold to the Underwriter for a purchase price not less than 98% of the principal amount thereof.

**Section 7. No General Obligation or Other Indebtedness.** The obligation of the City to make rental payments under the Lease is subject to annual appropriation by the Council and such appropriation constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance, the Lease or the Site Lease shall be construed as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the City within the meaning of any home rule, constitutional or statutory debt limitation, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the current fiscal year. The City shall have no obligation to make any payment except in

connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments shall be subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

**Section 8. Expression of Need; Reasonable Rentals.** The Council hereby determines and declares that, under all of the circumstances of the transaction authorized hereby, the value of the leasehold interest acquired by the Lessor pursuant to the Site Lease does not exceed the amount to be received by the City upon execution of the Site Lease and the Lease.

The City hereby declares its current need for the Leased Property. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until the Lessor's entire interest in the Leased Property is acquired by the City pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the City.

The Council hereby determines and declares that the Base Rentals due under the Lease, so long as they are within the limits provided in this Ordinance, will represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the City may exercise its option to purchase such Leased Property, the fair purchase price of such Leased Property. The Council further hereby determines and declares that the Base Rentals due under the Lease will not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew 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 cost of acquiring and installing the Leased Property, the uses and purposes for which the Leased Property will be employed by the City, the benefit to the citizens of the City by reason of the acquisition and installation of the Leased Property and the use of the Leased Property pursuant to the terms and provisions of the Site Lease and the Lease, the City's option to purchase the Lessor's interest in the Leased Property, the City's right to cause the termination of the Lease by declining to appropriate funds, and the expected eventual vesting of title to and possession of the Leased Property, free and clear of the Site Lease, 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, after execution and delivery of the Lease, the maximum duration of the Lease, or the portion thereof allocable to any item of Leased Property separately identified in the Lease, will not exceed the weighted average useful life of such item or items of Leased Property.

**Section 9. Severability.** If any section, paragraph, clause or provision of this Ordinance, the Lease or the Site Lease (other than provisions as to the payment of Base Rentals by the City during the term of the Lease, provisions for the quiet enjoyment of the Leased Property by the City during the term of the Lease, and provisions for the conveyance of the Leased Property to the City under the conditions provided in the Lease) 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.

**Section 10. Repealer of Measures.** All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

**Section 11. Qualified Tax-Exempt Obligation.** The City Council hereby designates the Lease as a “qualified tax-exempt obligation” for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

**Section 12. Declaration of Emergency.** The Council hereby finds and determines that, due to the risk of higher interest rates resulting in higher Base Rental payments if the Lease cannot be executed and delivered promptly, there exists an emergency with respect to the consummation of the transaction authorized hereby. Therefore, this Ordinance, being necessary to the public peace, health and safety, shall take effect immediately upon its passage and shall be published as soon as reasonably possible thereafter.

**Section 12. Disposition of Ordinance; Expiration.** This Ordinance, immediately on its final passage, shall be numbered and recorded in the Book of Ordinances kept for that purpose, authenticated by the signatures of the Mayor and City Clerk and shall be published as required by law. This Ordinance shall expire to the extent that the Site Lease and Lease authorized herein are not executed and delivered by June 30, 2015.

INTRODUCED, FINALLY ADOPTED AS AN EMERGENCY ORDINANCE AND ORDERED PUBLISHED AS SOON AS REASONABLY POSSIBLE, this \_\_\_\_ day of March, 2015.

[SEAL]

CITY OF RIFLE, COLORADO

By \_\_\_\_\_  
Randy Winkler, Mayor

Attest:

By \_\_\_\_\_  
Lisa Hamilton, City Clerk