

**CITY OF RIFLE, COLORADO
ORDINANCE NO. 20
SERIES OF 2018**

AN ORDINANCE OF THE CITY OF RIFLE, COLORADO, APPROVING THE ISSUANCE OF DEBT AUTHORIZED BY CITY VOTERS AT THE ELECTION HELD ON SEPTEMBER 12, 2017, TO FINANCE A PORTION OF THE COSTS OF A NEW PUBLIC SWIMMING POOL COMPLEX; SUCH DEBT CONSISTING OF A DIRECT LOAN AS PROVIDED IN A LOAN AGREEMENT WITH ANB BANK AND EVIDENCED BY A NOTE DELIVERED TO THE BANK; PROVIDING FOR PAYMENT OF THE DEBT FROM A PLEDGE OF THE REVENUES FROM THE DEDICATED SALES AND USE TAX DEPOSITED INTO THE CITY'S PARKS AND RECREATION FUND; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Rifle, Colorado is a municipal corporation duly organized and operating as a home rule City under the Rifle Home Rule Charter and the Constitution and laws of the State (certain capitalized terms used in the preamble of this Ordinance are defined in Section 1 hereof); and

WHEREAS, pursuant to paragraph (b) of City Code Section 4-2-40 "the proceeds of the one-percent increase in sales and use tax imposed by Ordinance No. 13, Series of 2005, shall be used solely for recreation programs and facilities, parks, trails and open space purposes;" and

WHEREAS, at the election on September 12, 2017, the following Ballot Issue I was approved by a majority of the eligible electors of the City voting on the ballot issue:

SHALL CITY OF RIFLE DEBT BE INCREASED BY NOT MORE THAN \$6,000,000 PRINCIPAL AMOUNT WITH A REPAYMENT COST OF NOT MORE THAN \$9,000,000 TOTAL PRINCIPAL AND INTEREST, WITHOUT ANY INCREASE OF ANY EXISTING TAXES OR IMPOSING ANY NEW TAXES, BY THE ISSUANCE OF SALES AND USE TAX REVENUE BONDS OR OTHER OBLIGATIONS, PAYABLE FROM EXISTING SALES AND USE TAXES NOT OTHERWISE DEDICATED, WITHOUT ANY INCREASE IN TAX RATES, FOR THE PURPOSE OF FINANCING THE COST OF CONSTRUCTING A NEW PUBLIC SWIMMING POOL COMPLEX; SUCH BONDS OR OTHER OBLIGATIONS TO MATURE, BEAR INTEREST AND BE CALLABLE FOR REDEMPTION PRIOR TO MATURITY, WITH OR WITHOUT A PREMIUM, AS MAY LATER BE DETERMINED BY THE CITY?

WHEREAS, the returns of the Election were duly canvassed and the results thereof duly declared; and

WHEREAS, following a recent request for proposals delivered by the City to a number of financial institutions, ANB Bank presented a proposal to the City for a loan from ANB Bank, evidenced by the issuance and delivery of a note, for the funding of the Improvement Project; and

WHEREAS, no member of the City Council has a potential conflict of interest in connection with the authorization or use of proceeds of the Loan or the issuance and delivery of the Note evidencing the Loan; and

WHEREAS, as provided in the Enabling Law and by this Ordinance, the City authorizes the execution of the Loan Agreement and the Note, and delegates to the Mayor or the Mayor Pro Tem of the City, for a period not to exceed one month, the authority to approve certain financial terms relating to the Note; therefore

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

Section 1. Definitions. As used herein, the following capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise (capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement).

“*Advances*” means an advance made on the Loan in accordance with the terms of the Loan Agreement.

“*Ballot Issue Authorization*” means Ballot Issue I approved at the Election, the text of which is set forth in the preambles to this Ordinance.

“*Business Day*” means any day, other than a Saturday or Sunday, on the Lender is conducting banking operations in Denver, Colorado.

“*City Charter*” means the home-rule charter of the City, first adopted at a special election held on July 16, 1963, as thereafter modified and amended.

“*City*” means the City of Rifle, Colorado.

“*City Code*” means The Rifle Municipal Code

“*City Council*” means the City Council of the City.

“*Closing Date*” means a date within thirty days from the date of execution of this Ordinance, which date is expected to be December 13, 2018.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Debt Service Reserve Account*” means the account established in the Section hereof entitled “Security for the Loan – Debt Service Reserve Account.” The Debt Service Reserve Account shall be held by the Lender, and accounted for by the City as a subsidiary account of the Parks and Recreation Fund, until such time as the Loan is repaid in full.

“*Draw Period*” means the period commencing on the Closing Date and ending on November 30, 2020.

“*Election*” means the City election held on September 12, 2017.

“Enabling Law” means City Charter and the Constitution and laws of the State, including but not limited to Title 11, Article 57, Part 2, C.R.S.

“Financing Documents” means the Loan Agreement, the Note and all documents and certificates necessary or desirable to effectuate the issuance of the Note and the financing contemplated by this Ordinance.

“Improvement Project” means the payment of the costs of constructing a new public swimming pool complex and such other costs as determined by the City Council consistent with the Ballot Issue Authorization.

“Interest Rate” means an annual rate of interest of 3.30% for the Note. The Interest Rate does not include the Default Rate or the Taxable Rate (as said terms are defined in the Loan Agreement).

“Lender” means ANB Bank.

“Loan” means the loan to be made by the Lender to the City pursuant to the Loan Agreement.

“Loan Agreement” means that certain Loan Agreement, expected to be dated December 1, 2018, by and between the City and the Lender and pursuant to which the Loan is to be made to the City.

“Loan Amount” means an aggregate principal amount not to exceed \$6,000,000.

“Maturity Date” means December 1, 2040.

“Note” means the Note, the form of which is set forth as an Exhibit to the Loan Agreement, which is to be executed and delivered by the City to the Lender to evidence the Loan.

“Ordinance” means this Ordinance of the City Council, which authorizes the Loan and approves the execution and delivery of the Financing Documents.

“Parks and Recreation Fund” means the special fund, known as the Parks and Recreation Fund, established and codified in City Code Section 4-1-150.

“Paying Agent” means the Finance Director of the City, who shall perform the function of paying agent with respect to the Note, or any successor appointed in accordance with this Ordinance.

“Pledged Revenues” means the revenues, net of the costs of collection, generated from the one percent (1.0%) sales and use tax imposed by City Ordinance No. 13, Series of 2005 (which tax is codified in paragraph (b) of City Code Section 4-2-40) and deposited into the Parks and Recreation Fund, moneys deposited in the Debt Service Reserve Account, and all interest earnings thereon. The term “Pledged Revenues” does not include any of the City’s sales and use tax other than the sales and use tax referenced in the preceding sentence.

“Required Reserve Amount” means an amount equal to \$198,000 during the Draw Period and \$247,835 thereafter. In the event that the City does not draw the full amount available under the Loan Agreement during the Draw Period, the Required Reserve Amount may be reduced in accordance with the terms of the Loan Agreement.

“State” means the State of Colorado.

“Tax Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Tax Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Note or the use of proceeds thereof, unless the context clearly requires otherwise.

Section 2. *Approval of Loan Agreement and Authorization of the Note.* Pursuant to and in accordance with the Enabling Law, the Note shall be executed and delivered by the City for the purpose of financing a portion of the costs of the Improvement Project. The form of the Loan Agreement setting forth the terms, conditions and details of the Note and the procedures relating thereto, is in its entirety incorporated herein by reference and is hereby approved; all City officials, agents and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the City under the Financing Documents. The City shall enter into the Loan Agreement and deliver the Note in substantially the form presented to the City at or prior to this meeting of the City Council with only such changes as are not inconsistent herewith; 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.

Section 3. *Receipt of Loan and Payment of Costs.*

(a) ***Closing Date and Disbursement of Loan Proceeds.*** On the Closing Date, all Financing Documents shall be executed and the Note shall be delivered to, or as directed by, the Lender. The Note shall be a draw-down instrument pursuant to which Advances not exceeding in the aggregate the Loan Amount shall be made over the Draw Period.

(b) ***Payment of Costs.*** Subject to the issuance and delivery of the Note, the Loan proceeds shall be used for the payment of the costs of issuance of the Note, the funding of the Debt Service Reserve Account and payment of the costs of the Improvement Project as provided in requisitions made by the City to the Lender.

Section 4. *Note Details.*

(a) ***Financial Terms.*** The Note shall be issued in an aggregate principal amount not to exceed the Loan Amount, shall bear interest at the Interest Rate (but subject to the application of a Default Rate or Taxable Rate as provided in the Loan Agreement) on the unpaid principal amount, and shall mature on the Maturity Date. Interest shall accrue on the outstanding principal balance of the Note from the date of delivery of the Note and shall be calculated on the basis of an actual/360 day count convention.

(b) **Payments.** The Paying Agent shall take such actions as are necessary and convenient for the payment, when due, of the principal of and interest accruing on the Note. In accordance with the Loan Agreement the City shall make quarterly payments of interest on the Loan on the first Business Day of each quarterly month, commencing January 2, 2019, and continuing through December 1, 2020, inclusive. Commencing on June 1, 2021, the City shall begin making bi-annual payments of principal and accrued interest on the Loan on June 1 and December 1 of each year based upon scheduled principal redemption calculated as set forth in the Loan Agreement to result in substantially equal bi-annual payments of principal and accrued interest until the Maturity Date. Notwithstanding any other provision of the Loan Agreement or this Ordinance to the contrary, the outstanding principal balance, if any, of the Note will be paid on the Maturity Date.

(c) **Optional Redemption.** The City may prepay the outstanding principal balance of the Note, in whole or in part, on any date by three Business Days prior notice to the Lender, in an amount equal to the sum of (A) the principal amount so prepaid plus (B) accrued and unpaid interest on the principal amount so prepaid to the date of prepayment; provided, however, if the Note is prepaid from any refinancing sources other than the Lender or one of its affiliates, then such prepayment must be accompanied by a prepayment premium equal to one percent (1.0%) of the principal amount being prepaid.

Section 5. Security for the Loan.

(a) **Pledge of Revenues.** The City hereby pledges for the payment of the principal of and interest on the Note, and grants a first lien (but not necessarily an exclusive such lien) for such purpose on the Pledged Revenues. The creation, perfection, enforcement, and priority of the pledge of Pledged Revenues shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The Pledged Revenues shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described herein. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

(b) **Obligations Payable from Pledged Revenues.** The City shall not pledge or create any other lien on the revenues and moneys pledged pursuant to paragraph (a) of this Section (i) that is superior to the pledge thereof or lien thereon pursuant to such paragraph and (ii) that is on a parity with the pledge thereof or lien thereon without the prior written consent of the Lender, in its sole discretion. The City may pledge or create a subordinate lien on the Pledged Revenues solely in accordance with the terms and conditions set forth in the Loan Agreement.

(c) **Note is a Special, Limited Obligation of the City.** The Note is a special, limited obligation of the City payable solely from the Parks and Recreation Fund and secured solely by the sources provided in this Ordinance. The Note shall not constitute a general obligation debt of the City within the meaning of any statutory or constitutional limitation.

(d) ***Debt Service Reserve Account.*** In connection with the issuance of the Note, there is hereby established the “Debt Service Reserve Account” which shall be maintained in the amount of the Reserve Account Requirement. Moneys in the Debt Service Reserve Account shall be used, if and when necessary, only to prevent a default in the payment of the principal of and interest on the Note when due in accordance with the terms of the Loan Agreement. The Reserve Account Requirement shall be valued not less than annually and any amounts in excess of the Reserve Account Requirement on any date in which a payment is due shall be applied to such payment. In the event that the balance of moneys in the Debt Service Reserve Account is less than the Reserve Account Requirement the City shall immediately deposit, from available Pledged Revenues, an amount sufficient to restore the balance of moneys in the Debt Service Reserve Account to the Reserve Account Requirement.

Section 6. *Various Findings, Determinations, Declarations and Covenants.* The City Council, having been fully informed of and having considered all the pertinent facts and circumstances, hereby finds, determines, declares and covenants that:

(a) ***Compliance with Laws.*** The issuance of the Note and all procedures undertaken incident thereto, including without limitation past actions in connection with the Election and Ballot Issue Authorization, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Enabling Law.

(b) ***Federal Tax Covenant.*** The City will not use or permit the use of any proceeds of the Note or any other funds of the City from whatever source derived, directly or indirectly, to acquire any securities or obligations and shall not take or permit to be taken any other action or actions, which would cause the Note to be an “arbitrage Note” within the meaning of Section 148 of the Tax Code, or would otherwise cause the interest on the Note to be includible in gross income for federal income tax purposes. The City will at all times do and perform all acts permitted by law that are necessary in order to assure that interest paid by the City on the Note shall not be includible in gross income for federal income tax purposes under the Tax Code or any other valid provision of law. In particular, but without limitation, the City represents, warrants and covenants to comply with the following rules unless it receives an opinion of nationally recognized bond counsel stating that such compliance is not necessary: (i) gross proceeds of the Note will not be used in a manner that will cause the Note to be considered a “private activity bond” within the meaning of the Tax Code; (ii) the Note is not and will not become directly or indirectly “federally guaranteed”; and (iii) the City will timely file Internal Revenue Form 8038G which shall contain the information required to be filed pursuant to Section 149(e) of the Tax Code.

(c) ***Bank Qualification.*** The City hereby designates the Note as a qualified tax exempt obligation within the meaning of Section 265(b)(3) of the Tax Code. The City covenants that the aggregate face amount of all tax exempt obligations issued by the City, together with governmental entities which derive their issuing authority from the City or are subject to substantial control by the City, are not reasonably expected to be more than \$10,000,000 during calendar year 2018.

Section 7. *Approval of Miscellaneous Documents.* The appropriate officers of the City are hereby authorized and directed to execute the Financing Documents. The execution of any documents, instruments, or certificates by said officials shall be conclusive evidence of the approval by the City of such documents, instruments, or certificates in accordance with the terms thereof and this Ordinance.

Section 8. *Supplemental Public Securities Act.*

(a) ***Application of Act.*** Pursuant to § 11-57-204, C.R.S., the City hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the issuance of the Note.

(b) ***Limitation of Actions.*** In accordance with § 11-57-212, C.R.S., no legal or equitable action can be brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Note more than thirty days after the date of adoption of this Ordinance.

(c) ***Recourse Against Officers and Agents.*** Pursuant to § 11-57-209, C.R.S., 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 of or interest on the Note.

Section 9. *Amendment of Ordinance.* This Ordinance may not be amended without the prior written consent of the Lender.

Section 10. *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 issuance of the Note for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 11. *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 12. *Ordinance Irrepealable.* After the Note has been issued and delivered, this Ordinance shall constitute a contract between the Lender and the City, and shall be and remain irrepealable until the Note and the interest accruing thereon shall have been fully paid, satisfied, and discharged, as provided in the Loan Agreement and herein provided.

Section 13. *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 14. Repealer. All orders, bylaws and Ordinances 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 15. Emergency Declaration; Effective Date. The City Council has been advised that in order for the City to secure the interest rate locked in by the Lender for a limited period, and to avoid possible increase in interest rates dues to market volatility, it is necessary to close on the Loan as soon as possible. Therefore, for said reason, the City Council declares that this Ordinance is necessary for the immediate preservation of public property, health, peace, or safety and an emergency exists. This Ordinance shall be effective immediately upon final passage and be published following final passage in accordance with applicable Enabling Laws.


INTRODUCED, READ, ADOPTED, AND ORDERED PUBLISHED AS AN EMERGENCY ORDINANCE BY THE MEMBERS OF THE CITY COUNCIL OF THE CITY OF RIFLE BY A VOTE OF ___ IN FAVOR AND ___ AGAINST THIS 5TH DAY OF DECEMBER, 2018.

CITY OF RIFLE, COLORADO

By 

Mayor

ATTEST:

By 

City Clerk

