

ORDINANCE NO. 2020-012

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN CERTIFICATES OF PARTICIPATION PURSUANT TO A LEASE TRANSACTION; AUTHORIZING THE EXECUTION AND DELIVERY BY THE TOWN OF A SITE LEASE AGREEMENT, A LEASE PURCHASE AGREEMENT, AND OTHER DOCUMENTS RELATED THERETO; AND PROVIDING OTHER MATTERS RELATED THERETO

WHEREAS, the Town of Castle Rock, Colorado (the “Town”), 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 Town (the “Charter”); and

WHEREAS, the members of the Town Council of the Town (the “Council”) have been duly elected or appointed and qualified; and

WHEREAS, pursuant to the Charter and Article XX of the Colorado Constitution, the Town is authorized to enter into one or more leases or lease-purchase agreements for land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, for the functions or operation of the Town, it is necessary that the Town finance the acquisition, construction, installation, equipping and improvement of certain public facilities, which may include but is not limited to, the construction of a parking facility for Town purposes, as authorized by law (the “Project”); and

WHEREAS, the Council has determined that it is in the best interests of the Town and its inhabitants to execute a lease purchase agreement to finance the Project; and

WHEREAS, the Town owns, in fee title, a certain Site and the premises, buildings and improvements located thereon (the “Leased Property”), as further described in the Site Lease and the Lease (hereinafter defined); and

WHEREAS, the Council has determined, and now hereby determines, that it is in the best interest of the Town and its inhabitants that the Town lease the Leased Property to UMB Bank, n.a., as trustee under the Indenture (the “Trustee”) pursuant to a Site Lease Agreement between the Town, as lessor, and the Trustee, as lessee (the “Site Lease”), and lease back the Trustee’s interest in the Leased Property pursuant to the terms of a Lease Purchase Agreement (the “Lease”) between the Trustee, as lessor, and the Town, as lessee; and

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

WHEREAS, the Town’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 Town; shall not constitute a mandatory charge or requirement in any ensuing

budget year; and shall not constitute a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or Charter limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, there has also been presented to this meeting of the Council a form of Indenture of Trust (the “Indenture”) pursuant to which there is expected to be issued 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), shall be payable solely from the sources therein provided and shall not directly or indirectly obligate the Town to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the Certificates will be executed and delivered pursuant to the Indenture and the Lease and pursuant to a certain Certificate Purchase Agreement between the Trustee and Stifel, Nicolaus & Company, Incorporated, as purchaser of the Certificates (the “Purchase Agreement”), which Purchase Agreement is acknowledged by the Town; and

WHEREAS, the net proceeds of the Certificates are expected to be used to provide funds in an amount sufficient to finance the construction of the Project and pay the costs of issuance of the Certificates; and

WHEREAS, there has also been presented to the Council at this meeting the form of Continuing Disclosure Certificate (the “Continuing Disclosure Certificate”) to be executed by the Town which constitutes an undertaking pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission; and

WHEREAS, there has been presented to the Council and are on file at the Town 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; (iv) the form of Preliminary Official Statement (the “Preliminary Official Statement”) relating to the Certificates; (v) the form of Purchase Agreement; and (vi) the form of Indenture; and

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

WHEREAS, Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act; and

WHEREAS, no member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance.

NOW THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK:

Section 1. Ratification and Approval of Prior Actions. All action heretofore taken (not inconsistent with the provisions of this ordinance) by the Council or the officers, agents or employees of the Council or the Town relating to the Site Lease, the Lease, the implementation of the Project, and the execution and delivery of the Certificates is hereby ratified, approved and confirmed.

Section 2. Finding of Best Interests. The Council hereby finds and determines, pursuant to the Constitution, the laws of the State of Colorado and the Charter, that the acquisition, construction and implementation of the Project and financing the costs thereof pursuant to the terms set forth in the Site Lease and the Lease are necessary, convenient, and in furtherance of the Town's purposes and are in the best interests of the inhabitants of the Town and the Council hereby authorizes and approves the same.

Section 3. Supplemental Act Election; Parameters. The 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 Mayor, the Town Manager or the Finance Director of the Town the authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i), Colorado Revised Statutes, 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 Town pursuant to the Lease, subject to the following parameters and restrictions:

(a) the Lease Term shall not extend beyond December 31, 2050, and the Site Lease Term shall not extend beyond December 31, 2060;

(b) the aggregate principal amount of the Base Rentals payable by the Town pursuant to the Lease shall not exceed \$12,125,000;

(c) the maximum annual repayment amount of Base Rentals payable by the Town pursuant to the Lease shall not exceed \$1,300,000;

(d) the maximum total repayment amount of Base Rentals payable by the Town pursuant to the Lease shall not exceed \$21,000,000;

(e) the Lease shall be subject to prepayment at the option of the Town, without penalty, no later than December 1, 2030; and

(f) the maximum net effective interest rate on the interest component of the Base Rentals relating to the Certificates shall not exceed 4.5%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to each of the Mayor, the Town Manager or the Finance Director the authority to acknowledge the Purchase Agreement or to accept a binding bid for the Certificates and to execute any agreement or agreements in connection therewith. In addition, each of the Mayor, the Town Manager or the Finance Director are hereby authorized to determine if obtaining an insurance policy for all or a portion of the Certificates is in the best interests of the Town, and if so, to select an insurer to issue an insurance policy, execute a commitment relating to the same

and execute any related documents or agreements required by such commitment. Each of the Mayor, the Town Manager or the Finance Director are also hereby authorized to determine if obtaining a reserve fund insurance policy for the Certificates is in the best interests of the Town, and if so, to select a surety provider to issue a reserve fund insurance policy and execute any related documents or agreements required by such commitment.

The Council hereby acknowledges and agrees that the proceeds of the Certificates will be used to finance the costs of constructing, acquiring, installing and equipping the Project.

Section 4. Approval of Documents. The Site Lease, the Lease, and the Disclosure Certificate, in substantially the forms presented to the Council and on file with the Town, are in all respects approved, authorized and confirmed, and the Mayor of the Town is hereby authorized and directed for and on behalf of the Town 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 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.

Section 5. Approval of Official Statement. The designation of the Preliminary Official Statement by the Mayor or the Town Finance Director as a “deemed 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 and on file with the Town, is in all respects approved and authorized. The Mayor is hereby authorized and directed, for and on behalf of the Town, to execute and deliver the final Official Statement in substantially the form and with substantially the same content as the Preliminary Official Statement on file with the Town, with such changes as may be approved by the Town Finance Director. The distribution by the purchaser of the Preliminary Official Statement and the final Official Statement to all interested persons in connection with the sale of the Certificates is hereby ratified, approved and authorized.

Section 6. Authorization to Execute Collateral Documents. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this ordinance and to place the seal of the Town on any document authorized and approved by this ordinance. The Mayor, the Town Manager, the Finance Director, the Town Clerk and other appropriate officials or employees of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they 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 Town are authorized to execute on behalf of the Town agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this ordinance, and are specifically authorized and directed hereby to invest such funds in Permitted Investments as are defined and provided in the Indenture. The execution of any instrument by the aforementioned officers or members of the Council shall be conclusive evidence of the approval by the Town of such instrument in accordance with the terms hereof and thereof.

Section 7. No General Obligation Debt. No provision of this ordinance, the Site Lease, the Lease, the Indenture, the Certificates, the Preliminary Official Statement, or the final Official Statement shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional, statutory or home rule charter provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any payment with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Lease nor the Certificates shall constitute a mandatory charge or requirement of the Town 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 Town 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 Town 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 Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 8. Reasonableness of Rentals. The Council hereby determines and declares that the Base Rentals due under the Lease, in the maximum amounts authorized pursuant to Section 3 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town 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 Council hereby determines and declares that the period during which the Town 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 Council hereby further determines that the amount of rental payments to be received by the Town from the Trustee pursuant to the Site Lease is reasonable consideration for the leasing of the Leased Property to the Trustee for the term of the Site Lease as provided therein.

Section 9. Town Representatives. The Council hereby authorizes each of the Mayor, the Town Manager and the Finance Director to act as Town Representatives under the Lease, or such other person or persons who may be so designated in writing from time to time by the Mayor, as further provided in the Lease.

Section 10. Electronic Signatures. In the event the Mayor, Town Clerk, Town Manager, Finance Director or other employee or official of the Town that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the "Authorized Documents") is not able to be physically present to manually sign any such Authorized Document, such individual or individuals are hereby authorized to execute Authorized Documents electronically via facsimile or email signature. Any electronic signature so affixed to any Authorized Document shall carry the full legal force and effect of any original, handwritten signature. This provision is made

pursuant to Article 71.3 of Title 24, C.R.S., also known as the Uniform Electronic Transactions Act.

Section 11. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Town Council, or any officer or agent of the Town 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 Town Council or the Town, 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 bylaws, orders, resolutions and ordinances of the Town, or parts thereof, inconsistent with this ordinance or with any of the documents hereby approved are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, resolution or ordinance of the Town, or part thereof, heretofore repealed. All rules of the Town Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the Town Council be, and the same hereby are, suspended.

Section 13. Severability. If any section, subsection, paragraph, clause or provision of this ordinance or the documents hereby authorized and approved (other than provisions as to the payment of Base Rentals by the Town during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the Town during the Lease Term and provisions for the conveyance of the Leased Property to the Town 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, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance or such documents, 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 Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 15. Effective Date. Pursuant to Section 7-3 of the Charter and 2.02.100 of the Municipal Code of the Town, this ordinance is effective thirty (30) days following its adoption on second reading.

Section 16. Safety Clause. The Town Council finds and declares that this Ordinance is promulgated and adopted for the public peace, health or safety and this Ordinance bears a rational relation to the legislative object sought to be obtained.

Section 17. Disposition of Ordinance. This Ordinance, as adopted by the Council, shall be numbered and recorded by the Town Clerk in the official records of the Town.

The adoption and publication shall be authenticated by the signatures of the Mayor or Mayor Pro Tem, and Town Clerk, and by the certificate of publication.

APPROVED ON FIRST READING this 18th day of August, 2020 by a vote of **6** for and **1** against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND READING this 1st day of September, 2020, by a vote of the Town Council of the Town of Castle Rock, Colorado of ____ for and ____ against as required by Section 2.02.100 of the Castle Rock Municipal Code.

TOWN OF CASTLE ROCK

Jason Gray, Mayor

ATTEST:

Lisa Anderson, Town Clerk

Approved as to form:

Michael J. Hyman, Town Attorney

STATE OF COLORADO)
)
COUNTY OF DOUGLAS) SS.
)
TOWN OF CASTLE ROCK)

I, Lisa Anderson, the duly appointed, qualified and acting Town Clerk of the Town of Castle Rock, Colorado (the “Town”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the Town Council (the “Council”) of the Town (i) on first reading at a regular meeting of the Council held at the Town Hall on August 18, 2020, and (ii) on second and final reading at a regular meeting of the Council held at the Town Hall on September 1, 2020.

2. The ordinance has been signed by the Mayor, sealed with the corporate seal of the Town, attested by me as Town Clerk, and duly recorded in the books of the Town; and that the same remains of record in the book of records of the Town.

3. The passage of the ordinance on first reading was duly moved and seconded and the ordinance was passed on first reading by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Jason Gray, Mayor				
Jason Bower, Mayor Pro Tem				
Kevin Bracken				
Caryn Johnson				
George Teal				
James Townsend				
Jess Loban				

4. The passage of the ordinance on second and final reading was duly moved and seconded and the ordinance was passed on second and final reading by an affirmative vote of a majority of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Jason Gray, Mayor				
Jason Bower, Mayor Pro Tem				
Kevin Bracken				
Caryn Johnson				
George Teal				
James Townsend				

5. That notice of the regular meetings of August 18, 2020 and September 1, 2020, in the form attached hereto as **Exhibit A**, were posted and published prior to first reading pursuant to Section 2.02.100.C of the Municipal Code.

6. That prior to adoption on first reading, the Ordinance was posted on the Town’s website (www.CRgov.com) on _____, 2020, at [TIME], which is not later than 12:00 p.m., five (5) calendar days prior to the meeting of August 18, 2020, along with a notice containing the title of the ordinance; a brief summary of the subject matter of the ordinance; where the ordinance can be inspected; The full text of the proposed ordinance; and the date, time and place of the meeting at which the ordinance will be considered and public comment taken.

7. Following adoption after first reading and second reading and final adoption, the Ordinance was posted on the Town’s website on _____, 2020, along with a notice containing a summary of the subject matter of the ordinance and identifying the location where the ordinance is available for public inspection. Such post-adoption notice shall be posted no later than five (5) business days after adoption and remain posted for thirty (30) days post-adoption which date is not later than five (5) business days after adoption, and such ordinance shall remain posted for thirty (30) days post adoption.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Town this 1st day of September 2020.

Town Clerk

(SEAL)

EXHIBIT A

(Attach Notice of Meetings – August 18, 2020 and September 1, 2020)

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