

AN ORDINANCE OF THE CITY OF BRIGHTON, COLORADO AUTHORIZING AND APPROVING THE LEASE-PURCHASE OF HEAVY EQUIPMENT FOR THE CITY AND PROVIDING DETAILS IN CONNECTION WITH THE LEASE FINANCING

ORDINANCE NO.: 2269

INTRODUCED BY: Humbert

WHEREAS, the City of Brighton, Colorado (the “City”), is a home rule municipality 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, using the State’s competitive bidding results, the City duly awarded a contract for the purchase of Freightliner 114 SD Tandem Axle Dump Trucks with complete snow plow packages installed (the “Heavy Equipment”) at a cost of approximately \$1,608,264, subject to the securing of financing; and

WHEREAS, pursuant to Section 11.1 of the Charter, the City may, subject to any applicable limitations in the State Constitution, borrow money or enter into other obligations to evidence such borrowing in any form and in any manner determined by the City Council of the City (the “Council”) to be in the best interest of the City; and

WHEREAS, pursuant to RFP #17-052 the City sought proposals for the lease purchase financing of the Heavy Equipment and, based upon the recommendation of City staff with the assistance of Ehlers, the City’s financial advisor, the Council desires to award and authorize the lease purchase of the Heavy Equipment to Signature Public Funding Corp., a wholly-owned subsidiary of Signature Bank (“Signature”) in accordance with the optional terms and legal documentation submitted by Signature, which documentation included the forms of a Master Lease Agreement (the “Lease Agreement”), related transaction certificates and forms, and an Escrow Deposit Agreement (collectively, the “Transaction Documents”) which provide for the lease-purchase of the Heavy Equipment by the City, as lessor, from Signature, as lessor; and

WHEREAS, no provision of the Transaction Documents shall be construed or interpreted (a) to directly or indirectly obligate the City to make any payment in any fiscal year in excess of amounts appropriated for such fiscal year; (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or Charter limitation or provision; (c) as a delegation of governmental powers by the City; (d) as a loan or pledge of the credit or faith of the City or as creating any responsibility by the City for any debt or liability of any person, company or corporation within the meaning of Article XI, Section 1 of the Colorado Constitution; or (e) as a donation or grant by the City to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution; and

WHEREAS, the form of the Transaction Documents have been made available to the Council and the Council is desirous of authorizing and directing the transaction described above.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Lease-Purchase Authorization. The Transaction Documents, in substantially the form and with substantially the content presented to this meeting of the Council, are in all respects approved, authorized and confirmed. The Council hereby approves the leasing of the Heavy Equipment (as identified in the Transaction Documents) by the City from Signature or its assignees for the dollar amounts determined by the City Manager, in accordance with and subject to the provisions of Section 2 hereof.

Section 2. Delegation and Parameters. The Council hereby delegates to the City Manager the authority to determine:

- (i) the term of the Lease Agreement, which is subject to annual termination in the event of non-appropriation by the City, shall not extend beyond December 31, 2024;
- (ii) the financed amount shall not exceed \$1,650,000;
- (iii) the amount of the rental payments under the Lease Agreement shall not exceed \$350,000 in any fiscal year or a total of \$1,800,000 over all renewal terms; and
- (iv) the net effective rate for the lease-purchase financing shall not be in excess of 2.25% per annum.

Section 3. Execution and Delivery of Documents. The Mayor or, in the absence thereof, the Mayor Pro Tem is authorized and directed to execute the Lease Agreement in substantially the form and with substantially the same content as the form thereof presented to this meeting of the Council, for and on behalf of the City but with such changes therein as said official may deem necessary or appropriate, as evidenced by the execution thereof, including incorporation of the terms to be determined in accordance with the provisions hereof. Additionally, the Mayor, other officials and employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City all other Transaction Documents and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transaction authorized and contemplated by this Ordinance, including but not limited to an Internal Revenue Service Form 8038-G. Richard N. McLean, as Mayor, Ken Kreutzer, as Mayor Pro Tem and Philip Rodriguez, as City Manager, and such other persons as they may delegate, are hereby identified as “designated officials” and authorized to execute an incumbency certificate. The City hereby designates the rental payments relating to the Heavy Equipment under the Lease Agreement as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

Section 4. Limited Obligation of the City. No provision of this Ordinance or the Lease Agreement shall be construed as creating or constituting a general obligation or a 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 Agreement shall be in effect.

Section 5. Declarations and Findings. The Council hereby determines and declares that the execution and delivery of the Transaction Documents is in the best interests of the City, that the rental payments under the Lease Agreement represent the fair value of the use of the Heavy Equipment, and that the rental payments under the Lease Agreement will 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 Agreement. In making such determinations, the Council has given consideration to the cost of acquiring, constructing or equipping property similar to the Heavy Equipment, the uses and purposes for which the Heavy Equipment is being and will be employed by the City, and the benefit to the citizens and residents of the City. The Council hereby determines and declares that the duration of the Lease Agreement will not exceed the weighted average useful life of the Heavy Equipment.

Section 6. 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 regarding the lease-purchase of the Heavy Equipment or directed toward satisfaction of the City's obligations under the Transaction Documents, when executed, are hereby ratified, approved and confirmed.

Section 7 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 8. 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 9. Repealer. All ordinances, or parts thereof, inconsistent or in conflict herewith are hereby repealed to the extent only of such inconsistency or conflict.

Section 10. Recording and Authentication; Publication. Immediately after its passage this Ordinance shall be recorded in the ordinance book of the City kept for that purpose, authenticated by the signatures of the Mayor and City Clerk, and affidavits of publication by title shall be retained with this Ordinance in the City records. As required by Section 5.7(B) of the Charter, notice is hereby provided that copies of this Ordinance shall be available at the office of the City Clerk following final adoption.

[Remainder of page left blank intentionally]

INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED THIS 17th DAY OF October, 2017.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*
First Publication: October 25, 2017

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 9th DAY OF November, 2017.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Standard Blade*
Final Publication: November 15, 2017