



WESTMINSTER

COLORADO

CITY COUNCIL MEETING

AUGUST 28, 2023 at 7:00 PM

- B. Second Reading Councillor's Bill No. 38 Authorizing Certificates of Participation for Financing the Construction of a Replacement Municipal Court Facility and Issuance Costs



Agenda Memorandum

Agenda Item – 11.B.

City Council Meeting
August 28, 2023



Strategic Priority 2: Proactive Public Safety

Enhance public safety to emphasize both prevention and enforcement, engage the community through education and outreach and provide the resources necessary to ensure safety and well-being throughout Westminster.



Strategic Priority 5: Robust Infrastructure

Provide safe and equitable access to core services and amenities by safeguarding, maintaining and improving the city's water, wastewater, stormwater, mobility and roadway systems.

Subject: Second Reading Councillor's Bill No. 38 Authorizing Certificates of Participation for Financing the Construction of a Replacement Municipal Court Facility and Issuance Costs

Prepared By: Larry Dorr, Deputy City Manager/CFO
Robert Byerhof, Treasury Manager

Recommended City Council Action:

Pass Councillor's Bill No. 38, on second reading, authorizing the issuance of tax-exempt Certificates of Participation, Series 2023 in a par amount not to exceed \$37.1 million for the construction of a Replacement Municipal Court Facility, and related COP issuance costs.

Summary Statement:

- On May 1, 2023, City Council gave Staff direction to issue Certificates of Participation (COPs) for the construction of a Replacement Municipal Court Facility. The City's Replacement Municipal Court Facility will be pledged as collateral for the COPS. This Ordinance will authorize the issuance of the COPS within certain parameters, not to exceed certain terms and interest rates. Staff and the City's financial advisors, and underwriters anticipate that the COPS will be issued with terms equal to, or more favorable than, those set forth in the Ordinance. This Ordinance sets forth the authority to issue these COPS in a similar manner, within parameters, as previous City COP issues.

- The construction of the City's new facility is estimated to cost \$42.7 million. Related to the COPS, Staff estimates that construction proceeds will be \$36.6 million and issuance costs will be \$500,000, for a total COP par amount of \$37.1 million. In addition to the \$36.6 million in construction proceeds, the City will utilize \$6.1 million in pay-as-you-go funds accumulated in recent years, for a total construction cost of \$42.7 million.
- The City is negotiating with Community Reach Center to potentially build a shared facility at the site of the Replacement Municipal Court Facility. Such an agreement to build a co-location would allow for the City to continue its long-standing co-location with Community Reach Center and replace the building currently occupied by Community Reach Center that is separate but adjacent to the current Westminster Municipal Court. Such an agreement would not impact the City's ability to replace the Municipal Court Facility or impact the City's current cost estimate. Potentially, the City and Community Reach Center may be able to build one facility under a condominium concept, whereby a portion of the facility will be funded completely by Community Reach Center, and one portion funded by the City and these COPS. This would allow for one location to serve multiple needs within the Westminster community.
- City Council passed Councillor's Bill No. 38 on first reading by a vote of (6 to 1) on August 14, 2023.

Fiscal Impact:

Not to exceed \$37.1 million par value in COPS

Source of Funds:

Certificate of Participation proceeds

Respectfully Submitted,

Mark A Freitag

Mark A. Freitag
City Manager

Attachments:

Councillor's Bill No. 38 – Authorizing Certificates of Participation for Financing the Construction of a Replacement Municipal Court Facility and Issuance Costs

SERIES OF 2023

INTRODUCED BY COUNCILLORS
DeMott, Emmons

A BILL

AUTHORIZING THE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS AND LEGALLY PERMITTED COSTS AND EXPENDITURES, AND IN CONNECTION THEREWITH AUTHORIZING THE LEASING OF CERTAIN CITY PROPERTY AND THE EXECUTION AND DELIVERY BY THE CITY OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND OTHER FINANCING DOCUMENTS; SETTING FORTH PARAMETERS AND RESTRICTIONS WITH RESPECT TO THE FINANCING; AUTHORIZING CITY OFFICIALS TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; RATIFYING ACTIONS PREVIOUSLY TAKEN; AND PROVIDING OTHER MATTERS RELATED THERETO

THE CITY OF WESTMINSTER, COLORADO, ORDAINS:

Section 1. Recitals:

- (A) The City of Westminster, Adams and Jefferson Counties, Colorado (the "City"), 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 City (the "Charter").
- (B) Pursuant to Chapter XI of the Charter, the City 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.
- (C) For the functions or operations of the City, it is necessary that the City finance the construction of a municipal court facility, and other capital improvements authorized by law (the "Project").
- (D) The City owns, in fee title, certain sites and the premises, buildings and improvements located thereon (the "Leased Property"), as further described in the Site Lease and the Lease (hereinafter defined).
- (E) In order to finance the costs of the Project, the City Council of the City (the "Council") has determined, and now hereby determines, that it is in the best interests of the City and its inhabitants that the City lease the Leased Property to U.S. Bank Trust Company, National Association, as trustee (the "Trustee") under an Indenture of Trust (as hereinafter defined) pursuant to a Site Lease between the City, 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 Agreement (the "Lease") between the Trustee, as lessor, and the City, as lessee.
- (F) Pursuant to the Lease, and subject to the right of the City to terminate the Lease and other limitations as therein provided, the City will pay certain Base Rentals and Additional Rentals (as such terms are defined in the Lease) in consideration for the right of the City to use the Leased Property.
- (G) The City'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 City; 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 City 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 City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect.
- (H) The Trustee will execute and deliver an Indenture of Trust (the "Indenture") pursuant to which there is expected to be issued certain certificates of participation (the "2023 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 City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect.

(I) The net proceeds of the 2023 Certificates are expected to be used to finance the Project.

(J) There has been presented to the Council and are on file at the City 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 to be provided by the City (the "Disclosure Certificate"); and (iv) the proposed form of the Preliminary Official Statement (the "Preliminary Official Statement") relating to the 2023 Certificates.

(K) There will be executed and delivered in connection with the sale of the 2023 Certificates an Official Statement (the "Official Statement") in substantially the form of the Preliminary Official Statement as approved by the Chief Financial Officer of the City.

(L) Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

(M) 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 City, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act.

(N) No member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance.

Section 2. **Short Title:** This ordinance shall be known and may be cited by the short title "2023 COP Ordinance."

Section 3. **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 City relating to the Site Lease, the Lease, the implementation of the Project, and the execution and delivery of the 2023 Certificates is hereby ratified, approved and confirmed.

Section 4. **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, under the terms and provisions set forth in the Lease, the Site Lease and the Indenture is necessary, convenient and in furtherance of the City's purposes and is in the best interests of the inhabitants of the City and the Council hereby authorizes and approves the same.

Section 5. **Supplemental Act; Parameters:** The Council hereby elects to apply all of the Supplemental Act to the Site Lease and the Lease and in connection therewith delegates to each of the Mayor, any member of Council, the City Manager or the Chief Financial Officer of the City the independent 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 City pursuant to the Lease, subject to the following parameters and restrictions:

- (a) the Site Lease Term shall not extend beyond December 31, 2058;
- (b) the Lease Term shall not extend beyond December 31, 2048;
- (c) the aggregate principal amount of the Base Rentals payable by the City pursuant to the Lease shall not exceed \$37,100,000;
- (d) the maximum annual repayment amount of Base Rentals payable by the City pursuant to the Lease shall not exceed \$2,800,000;

- (e) the maximum total repayment amount of Base Rentals payable by the City pursuant to the Lease shall not exceed \$68,000,000;
- (f) the maximum net effective interest rate on the interest component of the Base Rentals relating to the 2023 Certificates shall not exceed 5.25%.

Pursuant to Section 11-57-205 of the Supplemental Act, the Council hereby delegates to each of the Mayor, any member of the Council, the City Manager or the Chief Financial Officer the independent authority to acknowledge a contract for the purchase of the 2023 Certificates between the Trustee and the Purchaser. In addition, each of the Mayor, any member of the Council, the City Manager or the Chief Financial Officer are hereby independently authorized to determine whether a reserve fund shall be funded for the 2023 Certificates, and if obtaining an insurance policy or a reserve fund insurance policy for all or a portion of the 2023 Certificates is in the best interests of the City, 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. Any of the Mayor, any member of the Council, the City Manager or the Chief Financial Officer are also hereby independently authorized to determine if obtaining a reserve fund insurance policy for the 2023 Certificates is in the best interests of the City, 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 agrees and acknowledges that the proceeds of the 2023 Certificates will be used to finance the costs of the Project and to pay other costs of issuance.

Section 5. 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 City, are in all respects approved, authorized and confirmed, and the Mayor of the City or the Mayor Pro-Tem is hereby authorized and directed for and on behalf of the City 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 6. Approval of Official Statement: A final Official Statement, in substantially the form of the Preliminary Official Statement presented to the City Council and on file with the City, is in all respects approved and authorized. The Mayor or the Mayor Pro-Tem is hereby authorized and directed, for and on behalf of the City, 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 City, with such changes as may be approved by the City Chief Financial Officer. 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 2023 Certificates is hereby ratified, approved and authorized.

Section 7. Authorization to Execute Collateral 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 and to place the seal of the City on any document authorized and approved by this ordinance. The Mayor, the Mayor Pro-Tem, and City Clerk and other appropriate officials or employees of the City are hereby authorized to execute and deliver for and on behalf of the City 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 City are 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, 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 City Council shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms hereof and thereof.

Section 8. No General Obligation Debt: No provision of this ordinance, the Site Lease, the Lease, the Indenture, the 2023 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 City within the meaning of any constitutional, statutory or home rule charter provision, nor a mandatory charge or requirement against the City in any ensuing fiscal year beyond the then current fiscal year. The City shall have no obligation to make any payment with respect to the 2023 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 City in accordance with the provisions of the Lease. Neither the Lease nor the 2023 Certificates shall constitute a mandatory charge or requirement of the City 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 City 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 2023 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 City within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Lease nor the 2023 Certificates shall directly or indirectly obligate the City to make any payments beyond those budgeted and appropriated for the City's then current fiscal year.

Section 9. **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 4 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the City 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 City 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 City 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 10. **No Recourse against Officers and Agents:** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the 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, interest or prior redemption premiums on the 2023 Certificates. Such recourse shall not be available either directly or indirectly through the Council or the City, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the 2023 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 11. **Repealer:** All bylaws, orders, resolutions and ordinances of the City, 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 City, or part thereof, heretofore repealed. All rules of the Council, if any, which might prevent the final passage and adoption of this ordinance as an emergency measure at this meeting of the Council be, and the same hereby are, suspended.

Section 12. **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 City during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the City during the Lease Term 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, 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 13. **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 14. **Effective Date, Recording and Authentication:** This ordinance shall take effect upon passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

Section 15. **Electronic Signatures.** The Mayor, the Mayor Pro-Tem, the Clerk, the Chief Financial Officer, and other employee or official of the City that are authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the “Authorized Documents”) 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.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ARE ORDERED PUBLISHED this 14th day of August, 2023.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 28th day of August, 2023.

CITY OF WESTMINSTER, COLORADO,

By: _____
Mayor/Mayor Pro-Tem

ATTEST:

APPROVED AS TO LEGAL FORM:

City Clerk

City Attorney

STATE OF COLORADO)
COUNTIES OF ADAMS) SS.
AND JEFFERSON)
CITY OF WESTMINSTER)

I, Abby Fitch, the duly elected, qualified and acting City Clerk of the City of Westminster, Colorado (the “City”) do hereby certify:

1. That the foregoing pages are a true, correct, and complete copy of an ordinance adopted by the City Council (the “Council”) of the City at a regular meeting of the Council held at the City Hall on August 14, 2023.

2. The passage of the Ordinance on first reading on August 14, 2023, was duly moved and seconded, and the Ordinance was adopted by a vote of ____ of ____ of the members of the City Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally, Mayor				
David Demott, Mayor Pro Tem				
Bruce Baker				
Lindsey Emmons				
Obi Ezeadi				
Sarah Nurmela				
Rich Seymour				

3. The passage of the Ordinance on second and final reading was moved and seconded at a regular meeting of the Council on August 28, 2023, and the Ordinance was approved on second and final reading by a vote of ____ of ____ of the members of the Council as follows:

Name	“Yes”	“No”	Absent	Abstain
Nancy McNally, Mayor				
David Demott, Mayor Pro Tem				
Bruce Baker				
Lindsey Emmons				
Obi Ezeadi				
Sarah Nurmela				
Rich Seymour				

4. The members of the Council were present at such meetings and voted on the passage of the Ordinance as set forth above.

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

6. There are no bylaws, rules or regulations of the Council which might prohibit the adoption of the Ordinance as an emergency.

7. Notices of the meetings of August 14, 2023, and August 28, 2023, in the forms attached hereto as Exhibit A, were duly given to the Council members and were posted in a designated public place within the boundaries of the City no less than twenty-four hours prior to the meetings as required by law.

8. The Ordinance was published by title after first reading and published in full after adoption on second reading in the Westminster Window, a newspaper of general circulation within the City on _____, 2023. The affidavits of publication are attached hereto as Exhibit B.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this ____
day of _____, 2023.

(SEAL)

City Clerk

EXHIBIT A
(Attach Notices of Meetings)

EXHIBIT B
(Attach Affidavits of Publication)

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