

Agenda Item: General Business - A.

Meeting Date: July 26, 2021

Subject: Consideration of Ordinance 910, authorizing a Site Lease and Lease Purchase Agreement between the City, and UMB Bank, N.A. (solely in its capacity as Trustee) for the purpose of financing the acquisition of certain real property and related improvements; approving not to exceed \$5,500,000 principal amount of Certificates of Participation, Series 2021 in connection therewith; authorizing officials of the City to take all action necessary to carry out the transactions contemplated hereby; and related matters, on First Reading.

Presenter: A.J. Euckert, City Manager

Background: The attached ordinance authorizes a lease purchase financing and the related issuance of Certificates of Participation, Series 2021 in order to finance the acquisition of certain real property and related improvements in an amount not to exceed \$5,500,000 including costs associated with the transaction.

Under the proposed transaction, the City, as lessor, will enter into a site lease with the trustee, UMB Bank, n.a., (the "Trustee"), as lessee, for the property in exchange for a lump sum rental payment, which the City will use to pay the costs of acquisition and related improvements, including the costs of the financing. The City will simultaneously lease back the site and the improvements thereon from the Trustee in exchange for annual rentals paid by the City to the Trustee pursuant to a lease purchase agreement. Pursuant to an indenture of trust executed and delivered by the Trustee contemporaneously with the lease documents, the Trustee will issue and sell the Certificates of Participation, Series 2021 evidencing proportionate interests in the right to receive rents annually under the lease purchase agreement.

The amounts due to the Certificate holders will be payable from annually appropriated base rentals and additional rentals in accordance with the lease purchase agreement, which the City intends to pay from the City's general fund. However, no fund or stream of revenue is pledged to such payment. The lease purchase agreement and all rental payments in years subsequent to the current budget year (2021) will be subject to annual appropriation. The transaction will not legally constitute debt under the Taxpayer's Bill of Rights.

The ordinance authorizes this financing within certain parameters and delegates the authority to make the final determination of specific terms within those parameters to the Mayor or Mayor Pro Tem.

Recommended Action: Consideration and approval of Ordinance 910, authorizing a Site Lease and Lease Purchase Agreement between the City, and UMB Bank, N.A. (solely in its capacity as Trustee) for the purpose of financing the acquisition of certain real property and related improvements; approving not to exceed \$5,500,000 principal amount of Certificates of Participation, Series 2021 in connection therewith; authorizing officials of the City to take all action necessary to carry out the transactions contemplated hereby; and related matters, on First Reading.

ORDINANCE NO. 910

AN ORDINANCE AUTHORIZING A SITE LEASE AND LEASE PURCHASE AGREEMENT BETWEEN THE CITY, AND UMB BANK, N.A. (SOLELY IN ITS CAPACITY AS TRUSTEE) FOR THE PURPOSE OF FINANCING THE ACQUISITION OF CERTAIN REAL PROPERTY AND RELATED IMPROVEMENTS; APPROVING NOT TO EXCEED \$5,500,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION, SERIES 2021 IN CONNECTION THEREWITH; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS

WHEREAS, the City of Dacono, Colorado (the “City”) is authorized, pursuant to Section 31-15-801, Colorado Revised Statutes, as amended, 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

WHEREAS, in order to provide for the capital asset needs of the City, the City Council of the City (the “City Council”) hereby determines that it is necessary and in the best interests of the City and its citizens that the City undertake lease-purchase financing for the acquisition, improvement and equipping of certain land and facilities to be used by the City as administrative space or for other governmental or proprietary purposes (the “Project”); and

WHEREAS, the City Council wishes to fund the Project from the proceeds of a lease-purchase financing (the “Financing”) to be completed within 12 months of the date hereof; and

WHEREAS, to provide financing for the acquisition and construction of the Project, Certificates of Participation, Series 2021 (the “Series 2021 Certificates”) in an aggregate amount not to exceed \$5,500,000 will be executed, sold and delivered pursuant to an Indenture of Trust (the “Indenture”) entered into by UMB Bank, n.a. (the “Trustee”); and

WHEREAS, in connection with the Series 2021 Certificates, it will be necessary to execute and deliver a Site Lease (the “Site Lease”) and a Lease Purchase Agreement (the “Lease”) between the City and the Trustee; and

WHEREAS, the Series 2021 Certificates are to be sold by public offering pursuant to a Certificate Purchase Agreement to be dated as of its dated date (the “CPA”) between the City and Piper Sandler (the “Underwriter”); and

WHEREAS, the City shall prepare and assist with the distribution by the Underwriter of an official statement (the “Official Statement”) providing details with respect to the City and the Series 2021 Certificates to prospective investors; and

WHEREAS, there have been filed for public inspection with the City Clerk in connection herewith the proposed forms of the Site Lease, the Lease, and the Indenture (collectively, the “Financing Documents”).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. Ratification of Actions. All action heretofore taken, not inconsistent with the provisions of this ordinance (the “Ordinance”), by the City Council or the officers of the City, directed toward the implementation of the Project, including the preparation of the forms of the Site Lease, the Lease and the Indenture as well as other related documents, are hereby ratified, approved and confirmed.

Section 2. Findings; Authorizations. The City Council hereby finds and determines, pursuant to the laws of the State of Colorado, that the Project is necessary, convenient, and in furtherance of the governmental purposes of the City and in the best interests of the City and its citizens; and the City Council hereby authorizes the Project.

Section 3. Approval and Execution of Documents; City Representatives. The Site Lease, the Lease and the Indenture, 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 or the Clerk pro tem of the City are hereby authorized and directed to affix the seal of the City to, and attest, the Site Lease and the Lease, in substantially the forms filed with the City Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel or the City Attorney. The City Council hereby designates the City Manager and the City Finance Director (and any persons authorized by law to act on their behalf in their absence) to act as “City Representatives” under the Lease and any related documents. In the event that bond insurance or other credit enhancement is deemed advantageous to the City in connection with the Series 2021 Certificates by the City Representatives, they may insert provisions, not inconsistent herewith, required by the provider of such credit enhancement. Prior to the execution of the Site Lease, the Lease, or any other instrument contemplated by this Ordinance, or the issuance of the Series 2021 Certificates, the final Base Rentals due under the Site Lease and Lease, and the principal amount, interest rates and other terms of the Series 2021 Certificates, not inconsistent herewith, shall be approved by a certificate executed by the City Manager (the “Final Terms Certificate”) not later than the date that is one year from the effective date of this Ordinance.

Section 4. The Series 2021 Certificates. The City Council hereby acknowledges and consents to the sale, execution and delivery of the Series 2021 Certificates pursuant to the Indenture. The City Council hereby acknowledges and approves the forms, terms and provisions of the Series 2021 Certificates contained in the Indenture, in substantially the form filed with the City Clerk prior to the final adoption of this Ordinance.

The Series 2021 Certificates shall be issued in a principal amount not to exceed \$5,500,000, shall mature not later than December 1, 2050, shall bear interest at a net effective interest rate not exceeding 3.75%, and may be made subject to redemption at redemption prices which may include redemption premiums not exceeding 3% of their principal amount, all as may be approved by Final Terms Certificate. The proceeds of the Series 2021 Certificates shall be used to accomplish the Project in the manner required under the Site Lease, the Lease and the Indenture.

Section 5. 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 City Representatives 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 Mayor, the Mayor Pro Tem and the City Representatives are hereby authorized to cause the preparation and distribution of an Official Statement describing the Series 2021 Certificates, the Site Lease, the Lease, the City, the Leased Property and other matters material to the offering of the Series 2021 Certificates. 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 6. 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 City Council and constitutes an undertaking of the City to make current expenditures. No provision of this Ordinance, the Lease, the Indenture, the CPA or the Series 2021 Certificates 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 with respect to the Series 2021 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 are subject to termination and nonrenewal by the City in accordance with the provisions of the Lease.

Section 7. Expression of Need; Reasonable Rentals. The City hereby declares its current need for the Leased Property, which is considered to be essential to the governmental operations of the City. It is hereby declared to be the present intention and expectation of the City Council that the Lease will be renewed annually until all of 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 maximum Base Rentals payable under the Lease shall be an amount which would provide Revenues, as defined in the Lease, sufficient to pay the maximum principal and interest authorized herein for the Series 2021 Certificates. The City Council hereby determines and declares that the Base Rentals due under the Lease will represent the fair value of the use of the Leased Property and 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 City 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 City 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 Lease, the City's option to purchase the Leased Property, and the expected eventual vesting of title to the Leased Property in

the City. The City Council hereby determines and declares that the acquisition and installation of the Leased Property and 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 and installation of the Leased Property were performed by the City other than pursuant to the Lease. The City Council hereby determines and declares that the maximum duration of the portion of the Lease allocable to any item of Leased Property separately identified in the Lease will not exceed the weighted average useful life of such item of Leased Property.

Section 8. Severability. If any section, paragraph, clause or provision of this Ordinance or the 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 transfer 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 9. 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 10. Effective Date. This Ordinance shall take effect on the fifth day following its final publication.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AND POSTED BY TITLE THIS 26TH DAY OF JULY, 2021.

PUBLIC HEARING AND SECOND READING WILL BE THE 9TH DAY OF AUGUST, 2021 AT 6:00 P.M. AT DACONO CITY HALL, 512 CHERRY AVENUE, DACONO, COLORADO.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED AND ORDERED PUBLISHED BY TITLE THIS ____ DAY OF _____, 2021.

Joe Baker, Mayor

Attest:

By _____
Valerie Taylor, City Clerk