

**Date:** October 4, 2012

**Subject:** An ordinance of the City of Littleton, Colorado, approving the refinancing of a lease-purchase agreement for the City of Littleton Museum to produce an aggregate savings to the City, and authorizing and approving the documentation relating to the refinancing.

**Passed/Failed:** Passed on second and final reading

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## CITY OF LITTLETON, COLORADO

### ORDINANCE NO. 24

Series of 2012

**INTRODUCED BY COUNCILMEMBERS: STAHLMAN & TAYLOR**

**AN ORDINANCE OF THE CITY OF LITTLETON, COLORADO,  
APPROVING THE REFINANCING OF A LEASE-PURCHASE  
AGREEMENT FOR THE LITTLETON MUSEUM TO PRODUCE AN  
AGGREGATE SAVINGS TO THE CITY, AND AUTHORIZING AND  
APPROVING THE DOCUMENTATION RELATING TO THE  
REFINANCING**

**WHEREAS**, the City of Littleton, Colorado (the “City”), is a municipal corporation duly organized and operating as a home-rule municipality under Article XX of the Constitution of the State of Colorado (the “State”) and the Charter of the City (the “Charter”); and

**WHEREAS**, pursuant to Section 3 of the Charter and Section 6 of Article XX of the State Constitution, 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; and

**WHEREAS**, the Littleton Building Corporation (the “Building Corporation”), as lessor, and the City, as lessee, have previously entered into a Master Lease Purchase Agreement, dated as of December 1, 2003 (the “2003 Lease”), pursuant to which the Building Corporation leased to the City certain property comprising the Littleton Museum and generally located at 6028 South Gallup Street in Littleton (the “Museum Property”) and thereafter assigned to the 2003 Trustee (defined below) Base Rentals (annually ranging from \$1,186,046 to \$1,179,750 through calendar year 2023) and Additional Rentals as defined in, and to be paid by the City pursuant to, the terms of the 2003 Lease; and

**WHEREAS**, in order to finance, among other things, the main exhibition and administration building at the Littleton Museum, Certificates of Participation, Series 2003, evidencing undivided interests in the right to receive revenues payable by the City under the 2003 Lease (the “2003 Certificates”) were executed and delivered in the aggregate principal amount of \$15,365,000 under a Master Mortgage and Indenture of Trust, dated as of

December 1, 2003 (the “2003 Indenture”), by and between the Building Corporation and UMB Bank, n.a., as successor trustee thereunder (the “2003 Trustee”), which 2003 Certificates are presently outstanding in the aggregate principal amount of \$10,550,000 and bear interest at rates ranging from 3.800% to 5.125% per annum; and

**WHEREAS**, the 2003 Certificates are subject to optional redemption on December 1, 2013, to the extent that the 2003 Trustee receives sufficient moneys from the exercise by the City of its option to purchase the Museum Property; and

**WHEREAS**, based upon discussions with George K. Baum & Company, as the City’s financial advisor, the City has determined that a material savings can be realized by the City through the advance refunding of the outstanding 2003 Certificates and termination of the 2003 Lease, by payment of the purchase option price for the Museum Property in accordance with the 2003 Lease, and causing the same to be deposited into an escrow account pursuant to an Escrow Agreement, by and between the 2003 Trustee and the City (the “Escrow Agreement”), and applied to the defeasance of the outstanding 2003 Certificates in accordance with Section 10.1 of the 2003 Indenture; and

**WHEREAS**, in conjunction with the advance refunding of the 2003 Certificates and the termination of the 2003 Lease, fee title to the Museum Property will be conveyed to the City and, for a lump-sum amount sufficient to fund the advance refunding of the 2003 Certificates, leased to UMB Bank, n.a., in its capacity as trustee (the “2012 Trustee”) under the 2012 Indenture (defined below), pursuant to a Site Lease (the “Site Lease”) between the City, as lessor, and the 2012 Trustee, as lessee; and

**WHEREAS**, the City will lease back the Museum Property from the 2012 Trustee pursuant to a Lease Purchase Agreement, by and between the 2012 Trustee, as sublessor, and the City, as sublessee (the “2012 Lease”) and the 2012 Trustee will execute an Indenture of Trust (the “2012 Indenture”), pursuant to which there will be issued the “Refunding Certificates of Participation, Series 2012” evidencing undivided interests in the right to receive certain revenues payable by the City under the 2012 Lease (the “2012 Certificates”), which 2012 Certificates will be executed and delivered pursuant to the 2012 Indenture; and

**WHEREAS**, the 2012 Certificates are to be sold pursuant to a Certificate Purchase Agreement among Piper Jaffray & Co., as underwriter, the 2012 Trustee and the City; and

**WHEREAS**, the Base Rentals and Additional Rentals (both as defined in the 2012 Lease) payable by the City shall constitute currently appropriated expenditures of the City and shall not constitute a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City or a mandatory charge or requirement against the City in any Fiscal Year (defined in the 2012 Lease) beyond the Fiscal Year for which such payments have been appropriated; and

**WHEREAS**, the 2012 Certificates shall evidence undivided interests in the right to receive Lease Revenues (defined in the 2012 Indenture), shall be payable solely from the Trust Estate (defined in the 2012 Indenture) and no provision of the 2012 Certificates, the 2012 Indenture, or the 2012 Lease 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**, there have been presented to the City forms of the Site Lease, the 2012 Lease, the Escrow Agreement, the 2012 Indenture, the Certificate Purchase Agreement, as well as a Preliminary Official Statement (the “Preliminary Official Statement”) to be used in connection with the offer and sale of the 2012 Certificates and a Continuing Disclosure Undertaking, between the Underwriter and the City (“Continuing Disclosure Undertaking”); and

**WHEREAS**, the City Council desires to authorize and otherwise proceed with the refinancing of its lease-purchase of the History Museum;

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

**Section 1.** 2003 Lease Purchase Option Authorization. Subject to the execution and delivery of the 2012 Certificates to accomplish the defeasance and discharge of the 2003 Indenture, the City Council hereby directs that, pursuant to the provisions in Article IX of the 2003 Lease, the City shall exercise its option to purchase the Museum Property.

**Section 2.** Refinancing Parameters. The approval of the City Council of this lease-purchase refinancing shall be subject to the following parameters:

(a) The annual Base Rentals (as set forth in the 2012 Lease) to be paid by the City in any year, pursuant to the 2012 Lease, shall not exceed \$1,420,000 and the aggregate Base Rentals (as defined in the 2012 Lease) to be paid by the City, subject to the terms of the 2012 Lease, shall not exceed the aggregate remaining Base Rentals (as defined in the 2003 Lease) scheduled to be paid under the 2003 Lease through 2023.

(b) All of the moneys in the trust estate established under the 2003 Indenture, with the exception of any amounts held for payment of the fees of the 2003 Trustee, shall be applied to the Purchase Option Price (as defined in the 2003 Lease).

(c) The final maturity date for the 2012 Certificates shall not exceed 2023, the principal amount of the 2012 Certificates shall not exceed \$10,000,000 and the maximum net effective interest rate of the 2012 Certificates shall not exceed 3.50%.

(d) The term of the Site Lease shall not extend beyond 2040.

**Section 3.** Consent to Assignment or Sale. The City Council hereby acknowledges and approves (i) the execution of the 2012 Indenture by the 2012 Trustee and (ii) the assignment or sale under the 2012 Indenture of undivided interests in the right to receive certain payments under the 2012 Lease. The City Council also delegates to the President of the City Council the ability to approve designation of the 2012 Certificates as qualified tax exempt obligations within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

**Section 4.** Approval of Refunding Documents. For a period of six months from the effective date of this Ordinance, the President of the City Council, or in the President's absence, the President Pro Tem, are hereby delegated the authority to determine the final terms and provisions for the financing documents within the parameters established in Section 2 of this Ordinance. The President, President Pro Tem, City Clerk, Deputy City Clerk and all other appropriate officers and employees of the City are hereby authorized and directed to execute and deliver, and to affix the seal of the City to, such documents to which the City is a party in the forms made available to the City, with such changes therein, not inconsistent herewith, as are approved by the City Attorney (the execution of such documents by the District shall constitute conclusive evidence of such approval). The documents identified below are in all respects acknowledged, authorized and approved by the City Council in substantially the form and with substantially the content presented to the City: (a) the Site Lease; (b) the 2012 Lease; (c) the Certificate Purchase Agreement; (d) the Escrow Agreement; and (e) the Continuing Disclosure Undertaking.

**Section 5.** Approval of Official Statement and Execution of Miscellaneous Documents. The distribution of the Preliminary Official Statement to prospective purchasers of the 2012 Certificates in substantially the form and with substantially the content presented to the City is in all respects approved, authorized and confirmed. A final Official Statement (the "Official Statement"), in substantially the form of the Preliminary Official Statement with such changes as the City's officers and agents deem necessary, is in all respects authorized and approved. The President is hereby authorized and directed to sign the Official Statement, for and on behalf of the City. The City Clerk or, in the absence thereof, the Deputy City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the certificates, documents and forms associated with the transactions and other matters authorized by this Ordinance and lease of the Museum Property. The City Manager and other officials, employees and agents of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional agreements, certificates, documents and forms 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 or contemplated by this Ordinance and relating to the sale or assignment of undivided interests in the right to receive certain payments under the 2012 Lease.

**Section 6.** Obligations of the City. No provision of this Ordinance, the Site Lease, the 2012 Lease, the 2012 Certificates, the Certificate Purchase Agreement, the Escrow Agreement, the Continuing Disclosure Undertaking or the Official Statement shall be construed

as creating or constituting a general obligation or 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 2012 Lease shall be in effect. The City shall have no obligation to make any payment except in connection with the payment of the Base Rentals and Additional Rentals as define in, and in accordance with, the provisions of the 2012 Lease.

**Section 7. Declarations and Findings.** The City Council hereby determines and declares that the Base Rentals currently payable by the City on an annual basis do not to exceed the fair value of the use of the Museum Property, and that the Purchase Option Price under the 2012 Lease represents the fair purchase price of the Museum Property. The City Council hereby determines and declares that the Base Rentals do 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 2012 Lease or to exercise its option to purchase the Museum Property pursuant to the Lease. In making such determinations, the City Council has given consideration to the current market value of the Museum Property, the cost of acquiring, constructing or equipping property similar to the Museum Property, the uses and purposes for which the Museum Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Museum Property pursuant to the terms and provisions of the 2012 Lease and the option of the City to purchase the leasehold interest in the Museum Property. The City Council hereby determines and declares that the duration of the 2012 Lease, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Museum Property.

**Section 8. 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 lease purchase financing for the purposes herein set forth are hereby ratified, approved and confirmed.

**Section 9. 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 10. 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 11. Repealer.** All orders, bylaws, ordinances, and resolutions 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 12.** Effective Date. This Ordinance shall be effective seven days after publication following final passage.

INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council of the City of Littleton on the 18<sup>th</sup> day of September, 2012, passed on first reading by a vote of 6 FOR and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

PUBLIC HEARING on the Ordinance to take place on the 2nd day of October, 2012, in the Council Chambers, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado, at the hour of 7:00 p.m., or as soon thereafter as it may be heard.

PASSED on second and final reading, following public hearing, by a vote of 4 FOR and 2 AGAINST on the 2nd day of October, 2012 and ordered published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

ATTEST:

/s/ Wendy Heffner  
CITY CLERK

/s/ Debbie Brinkman  
PRESIDENT OF CITY COUNCIL

APPROVED AS TO FORM:

/s/ Kirsten Crawford  
CITY ATTORNEY