

ORDINANCE NO. 678

AN ORDINANCE AUTHORIZING A LEASE-PURCHASE FINANCING TO REFUND CERTAIN OUTSTANDING OBLIGATIONS OF THE TOWN AND, IN CONNECTION THEREWITH, AUTHORIZING AND APPROVING THE COMPLETION AND EXECUTION OF A LEASE PURCHASE AGREEMENT, A SITE LEASE AND RELATED DOCUMENTS; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY; AND RELATED MATTERS.

WHEREAS, the Town of Hayden, Colorado (the "Town") is a home rule town and political subdivision of the State of Colorado (the "State") duly organized and validly existing under the laws of the State; and

WHEREAS, the Town is authorized by Section 31-15-101(d), Colorado Revised Statutes, as amended ("C.R.S."), to acquire, hold, lease and dispose of real and personal property; and

WHEREAS, the Town is authorized by Section 31-15-713(c), C.R.S., to lease any real estate owned by the Town, provided such action is deemed by the Town Council of the Town (the "Council") to be in the best interest of the Town; and

WHEREAS, the Town is authorized by Section 31-15-801, C.R.S., to enter into long-term rental or leasehold agreements in order to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, the Town has previously entered into a Lease Purchase Agreement dated as of September 1, 2008 (the "2008 Lease"), between the Town, as lessee, and Alpine Bank ("Alpine Bank"), as lessor, for the purpose of providing funding for the construction and equipping of a police station (the "2008 Project") located on certain land of the Town (together with the 2008 Project, the "2008 Leased Property"); and

WHEREAS, as a result of discussions with Town officials and the Town's financial advisor, Alpine Bank has presented a proposal to the Council to refinance the 2008 Lease at a lower interest rate in order to effect a present value savings to the Town; and

WHEREAS, the Council desires to refinance the 2008 Lease by exercising the Town's option thereunder to purchase Alpine Bank's interest in the Leased Property and terminate the 2008 Lease (the "Refunding Project"); and

WHEREAS, in order to provide funding for the Refunding Project, the Town intends to lease the Leased Property to Alpine Bank pursuant to a Site Lease (the "Site Lease") and then enter into a Lease Purchase Agreement (the "Lease Purchase Agreement" or the "Lease") with Alpine Bank to effectuate the lease—lease back financing of the Leased Property, both for terms not to exceed the limitations set forth herein; and

WHEREAS, the Lease is to expire on December 31 of any Town fiscal year (a "Fiscal Year") if the Town has, on such date, failed, for any reason, to appropriate sufficient amounts

authorized and directed to be used to pay all Base Rentals (as defined in the Lease) scheduled to be paid and all Additional Rentals (as defined in the Lease) estimated to be payable in the next ensuing Fiscal Year, and in certain other circumstances set forth in the Lease, and shall not constitute a mandatory charge or requirement against the Town in any ensuing budget year unless the Town decides to renew the Lease by appropriating the necessary such amounts; and

WHEREAS, no provision of the Site Lease or the Lease shall be construed or interpreted (a) to directly or indirectly obligate the Town 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 Town within the meaning of Article XI, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; (c) as a delegation of governmental powers by the Town; (d) as a loan or pledge of the credit or faith of the Town or as creating any responsibility by the Town 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 Town 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 Council has determined that entering into the Site Lease and Lease is in the best interests of the Town and its residents; and

WHEREAS, there has been presented to the Town and its advisors, and made available to the Council, preliminary forms of the Site Lease and the Lease, both of which are defined below; and

WHEREAS, at this meeting, the Council designates, authorizes and directs the Mayor of the Town, or if the Mayor is unavailable, the Mayor Pro-Tem of the Town or in the Mayor Pro-Tem's absence any member of the Council (the "Designated Official") to be the appropriate representative of the Town to determine the final terms and provisions of the agreements and documents relating to the lease purchase financing; and

WHEREAS, in order to implement the lease purchase financing generally described above, the Council desires (a) to authorize and approve the execution and delivery by the Town of, and the performance by the Town of its obligations under, the Site Lease, the Lease and certain other documents described herein and, (b) to authorize, approve, ratify, make findings and take other actions with respect to the foregoing and related matters.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Section 1 of the Lease (as defined below).

Section 2. Authorization of Site Lease and Lease. The Council hereby approves the following documents, authorizes the Mayor, the Mayor Pro-Tem, the Town Clerk and all other appropriate officers and employees of the Town to execute and deliver, and to affix the seal of the Town to, such documents in the form made available to the Council, , with such changes as are not inconsistent with the intent of this Ordinance and are approved by bond counsel and the

Town Attorney (the execution of such documents by the Town shall constitute conclusive evidence of such approval) and authorizes and directs the performance by the Town of its obligations under such documents in the form in which they are executed and delivered:

(a) the Site Lease between the Town, as lessor, and Alpine Bank, as lessee; provided that the term of such Site Lease shall not extend beyond ten years after the term of the Lease or such earlier date set forth in the Site Lease; and

(b) the Lease Purchase Agreement between Alpine Bank, as lessor, and the Town, as lessee; provided that the principal amount to be financed shall not exceed \$1,050,000, the Base Rentals payable by the Town pursuant to the Lease shall not exceed \$120,000 per year and the Scheduled Lease Term (as defined in the Lease) shall not extend beyond December 31, 2028.

Section 3. Obligations of the Town. No provision of this Ordinance, the Site Lease or the Lease 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 Town 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. The term of the Lease shall not extend beyond one year, subject to annual renewal, and the Town shall have no obligation to make any payment except in connection with the payment of the Base Rentals and Additional Rentals in accordance with the provisions of the Lease.

Section 4. Declarations and Findings. The Council hereby determines and declares that, after execution and delivery of the Lease, the Base Rentals due thereunder will represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) will represent the fair purchase price of Alpine Bank's leasehold interest in the Leased Property. The Council hereby determines and declares that, after the execution and delivery of the Lease, the Base Rentals will not exceed a reasonable amount so as to place the Town under an economic or practical compulsion to appropriate moneys to make payments under the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the current market value of the Leased Property, the cost of constructing and equipping the police station comprising a portion of the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the Town, the benefit to the citizens and residents of the Town by reason of the use of the Leased Property pursuant to the terms and provisions of the Lease, the option of the Town to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the Town. The Council hereby determines and declares that 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 of the Leased Property were performed by the Town other than pursuant to the Lease. The Council hereby determines and declares that, after the execution and delivery of the Lease, the duration of the Lease, including all optional renewal terms, authorized under this Ordinance, will not exceed the weighted average useful life of the Leased Property.

Section 5. Adoption of Representations. The Council hereby adopts, as if set forth in full herein, all the representations, covenants, agreements, findings, determinations and statements of or by the Town set forth in the documents described in Section 1 hereof.

Section 6. Execution and Delivery of 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. The officers, employees and agents of the Town are hereby authorized to execute and deliver for and on behalf of the Town any and all additional agreements, 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 appropriate officers of the Town are also 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. In the event that this Ordinance authorizes and directs the Mayor, the Mayor Pro-Tem, or other member of the Council to execute, authenticate and delivery any document set forth in this Ordinance and said official is not otherwise able to take such action, any other appropriate designee of such person is hereby authorized and directed to take such action.

Section 7. Ratification of Prior Actions. All actions previously taken, not inconsistent with this Ordinance, by the Council and the officers, employees and agents of the Town directed toward the transactions described herein or in the documents referred to herein are hereby ratified, approved and confirmed.

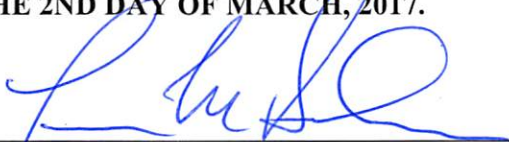
Section 8. Repealer. All bylaws, orders, ordinances, resolutions, and other instruments, or parts thereof that are in conflict with this Ordinance are hereby repealed only to the extent of such conflict. This repealer shall not be construed to revive any bylaw, order, ordinance, resolution, or other instrument, or part thereof, heretofore repealed.

Section 9. Severability. If any section, paragraph, clause or provision of this Ordinance or any of the documents referred to herein (other than provisions as to the payment of Base Rentals and Additional Rentals by the Town during the Lease Term (as defined in the Lease), including the requirement that the obligations of the Town to pay Base Rentals and Additional Rentals under the Lease are conditioned upon the prior appropriation by the Town of amounts for such purposes in accordance with the requirements of the laws of the State, provisions for the quiet enjoyment of the Leased Property by the Town during the Lease Term and provisions for the transfer of Alpine Bank's leasehold interest in the Leased Property to the Town or its designee) 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 10. Effective Date. This Ordinance shall be published and shall be effective, in accordance with Charter law, 15 days after second publication. This Ordinance shall be recorded in a book kept for that purpose, shall be authenticated by the signature of the Mayor and attested by the Town Clerk

Section 11. Public Hearing. A public hearing on this Ordinance will be held on the 17th day of March 2017, at or about 7:30 p.m. at the Hayden Town Hall, 178 West Jefferson Avenue, Hayden, Colorado.

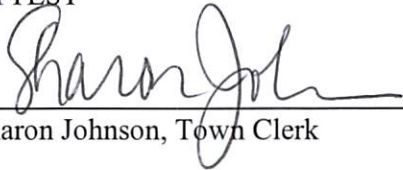
INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (d) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 2ND DAY OF MARCH, 2017.



James M. Haskins, Mayor

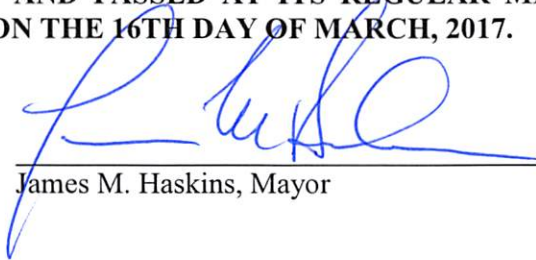


ATTEST



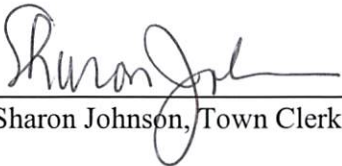
Sharon Johnson, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (h) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 16TH DAY OF MARCH, 2017.



James M. Haskins, Mayor

ATTEST



Sharon Johnson, Town Clerk

