

**ORDINANCE NO. 4
SERIES 2005**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AUTHORIZING THE NEGOTIATION, EXECUTION, AND DELIVERY OF A LEASE-PURCHASE AGREEMENT IN THE PRINCIPAL AMOUNT OF \$505,652 FOR AN HVAC SYSTEM AND FIRE SUPPRESSION SYSTEM AT THE GUNNISON COMMUNITY CENTER AND A SECOND LEASE-PURCHASE AGREEMENT IN THE PRINCIPAL AMOUNT OF \$254,707 FOR A JET-VAC TRUCK FOR THE WATER & SEWER DEPARTMENTS AND A FRONT-END LOADER FOR THE FLEET DEPARTMENT, BETWEEN BANK OF THE WEST, AS LESSOR, AND THE CITY OF GUNNISON, AS LESSEE, UNDER WHICH THE LESSEE WILL LEASE CERTAIN EQUIPMENT; AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the City of Gunnison (the “City”) is duly organized and validly existing as a home rule city under the Constitution and laws of the State of Colorado, and its home rule charter (the “Charter”); and

WHEREAS, the City Council (the “City Council”) of the City is authorized pursuant to Section 8.9 of the Charter and Section 31-15-101(1)(c) and (d), 31-15-302(1)(a) and 31-15-801, Colorado Revised Statutes, to enter into contracts, to acquire, hold, lease and dispose of property, both real and personal, to control the finances and property of the City and to enter into rental or leasehold agreements, with or without an option to purchase the leased property, in order to provide land, buildings, equipment and other property for governmental or proprietary purposes; and

WHEREAS, the City Council hereby finds and determines that the execution of the Lease-Purchase Agreements (the “Equipment Leases”) for the purpose of leasing with the option to purchase the equipment designated and set forth in the Equipment Leases is appropriate and necessary to the function and operations of the City; and

WHEREAS, Bank of the West (the “Lessor”), duly organized, existing, and in good standing under the laws of the State of California, shall act as Lessor under the Equipment Lease; and

WHEREAS, the obligation of the City to pay Rental Payments (as defined in the Equipment Leases) 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 a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Equipment Leases shall be in effect; and

WHEREAS, the Equipment Leases shall not directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Equipment Leases shall be in effect and the Equipment Leases shall terminate (or not be renewed) in the event that the City does not appropriate Rental Payments under the Equipment Lease;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. The Mayor and the Finance Director acting on behalf of the City, are hereby authorized to negotiate, enter into, execute, and deliver the Equipment Leases in substantially the form set forth in the documents presently before the City Council which documents are available for public inspection at the office of the Finance Director. The Mayor and Finance Director acting on behalf of the City, are hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Equipment Leases, as the Mayor and Finance Director upon advice of counsel, deem necessary and appropriate. The Mayor and the Finance Director are authorized to execute the Certificate(s) of Acceptance in form as attached to the Equipment Leases.

Section 2. Equipment Lease No. 002-0001429-001 for the lease with the option to purchase the HVAC system and fire suppression for the Gunnison Community Center shall be in the principal amount of \$505,652.00 bearing interest as set forth in Exhibit A of the Equipment Lease; the Equipment Lease to contain an option to purchase by the City as therein set forth. Equipment Lease No. 002-0001429-002 for the lease with the option to purchase a jet-vac truck for the Water & Sewer Departments and a front-end loader for the Fleet Department shall be in the principal amount of \$254,707.00 bearing interest as set forth in Exhibit B of the Equipment Lease; the Equipment Leases to contain an option to purchase by the City as therein set forth.

Section 3. The obligation of the City to make Rental Payments under the Equipment Leases 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 or the Equipment Leases shall be construed or interpreted as a delegation of governmental powers or as constituting or giving rise to a general obligation or other indebtedness or a multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2, and 6, and Article X, Section 20, of the Colorado Constitution, 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 to the Lessor or its assigns except in connection with the payment of the Rental Payments under the Equipment Leases and certain other payments, for which funds have been specifically appropriated and encumbered by the City for such purpose, under the Equipment Leases, which payments may be terminated (and the Equipment Leases not renewed) by the City in accordance with the provisions of the Equipment Leases.

Section 4. The City Council hereby determines and declares that (a) the Rental Payments due under the Equipment Leases constitute the fair rental value of the Equipment and do not exceed a reasonable amount; and (b) the leasing of the Equipment pursuant to the Equipment Leases is in the best interests of the City and its inhabitants.

Section 5. All other related contracts and agreements, necessary and incidental to the Equipment Leases are hereby authorized.

Section 6. The City reasonably anticipates to issue not more than \$10,000,000 of tax exempt obligations (other than "private activity bonds" which are not "qualified 501(c)(3) bonds") during the period from January 1, 2005, to December 31, 2005, and hereby designates the Equipment Leases as qualified tax-exempt obligations for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 7. This ordinance shall take effect immediately upon its adoption and approval on second and final reading.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 12th day of April, 2005, on first reading, and introduced, read, and adopted on second and final reading this 26th day of April, 2005.

Mayor

(SEAL)

ATTEST

City Clerk