



Memorandum

TO: Town Council
FROM: Finance Department
DATE: February 2, 2021
SUBJECT: Public Works Shops Financing

I. SUMMARY

On January 5, Town Council approved moving forward with selection of Truist Bank for the financing of the Public Works Shops project. Attached is Ordinance No. 2, Series 2021, which authorizes the execution of a site lease and lease purchase agreement with the bank.

Highlights of the financing include:

- 15-year term, maturing December 2035
- Loan amount: \$15,200,000
- True interest rate of **1.76%**, with estimated interest cost of \$2.2 million over the life of the loan
- Issuance costs and lender fees of approximately \$200,000
- Maximum annual debt service payment: \$1.2M
- Prepayment options: Callable anytime on or after 12/1/2025. The town may make partial payment or pay in full once per year.
- Closing date: February 17, 2021

REPEATED INFORMATION

II. BACKGROUND

The Public Works Shops project has been identified as a need in the town's long-term capital plan for over 6 years. The Public Works Shops Building was built in 1979. Expansion of service levels over the past 40 years have surpassed the capacity of the current space. Efficiency, functionality, and safety are a growing concern. Improvements were approved by Town Council to move forward with construction in 2020 and the project has now successfully gone through PEC and DRB approvals. However, due to the economic impacts of COVID-19, construction was put on hold in 2020. Due to the size of the project (current budget totals \$19.6 million), it is challenging for the town to cash-fund along with other priority capital projects each year. During the 2021 Budget process, Town Council directed staff to move forward with financing options.

A favorable interest rate environment has afforded the town an opportunity to complete this large project in a fiscally responsible manner. During the 2021 Budget discussions, it was determined that financing would be less costly than waiting until the town is able to cash-fund the project. Financing the project will cost the town approximately \$2.2M in total interest expense over the life of the loan. If financing was not pursued, the project would need to be delayed by at least five years in order to cash fund based on forecasted reserve levels. The delay would incur approximately 3% per year in escalation of construction costs, or \$5.1M. Design and architectural updates would cost an additional \$500K. ***In comparing the options, the town will save \$3.4M by financing the project rather than waiting to cash-fund.***

In addition, the annual debt service payments of approximately \$1.2 million per year preserves capital project fund balance for other town initiatives within the 15-year capital plan such as bus replacements, public safety and technology improvements, snowmelt system replacement, and unforeseen future projects.

History of Debt

Below is a history of capital improvements financed by the town. Other than re-financing activities and Vail Reinvestment Authority debt, the town has not financed a project since 1991. This is the largest capital project the town has undertaken in a number of years outside of grant-funded projects such as the Sandstone Underpass, or the multi-year streetscape improvements during the Billion Dollar Renewal.

Year	Amount	Purpose
1970	\$ 250,000	Fire House construction
1971	\$ 800,000	Municipal building construction
1974	\$5,500,000	Vail Village Parking structure
1975	\$ 850,000	Vail Village Transportation Center
1977	\$2,350,000	Dobson
1982	\$3,700,000	Lionshead Parking Structure
1982	\$2,900,000	Library
1984	\$1,600,000	Improvements to LH Mall area
1991	\$2,555,000	Police building

Financing Activities

On November 3rd, Hilltop Securities made a presentation to Town Council outlining the options of financing the PW Shops project. One option included issuing a Certificate of Participation (COP), which does not need a vote of citizens because they are a series of one-year finance-lease agreements. A second option is a direct loan or placement with a bank, which is a similar lease-purchase agreement except that the lease-purchase is direct with the bank rather than a public issuance done by a COP. Council was supportive of learning more about both options and directed staff to move forward with issuing a Request for Proposals (RFP).

In November, a team was assembled to facilitate the financing process consisting of Dee Wisor of Butler Snow LLP (bond counsel), Mattie Prodanovic (financial advisor) of Hilltop Securities, Scott Robson, Town Manager, Matt Mire, Town Attorney and Kathleen Halloran, Finance Director.

On November 30, a Request for Proposal (RFP) was sent out to 16 banks. The RFP asked for both types of financing responses: Certificates of Participation (COP's) or a direct loan/placement with a bank. Five proposals were returned on December 22nd and reviewed by the finance team. Upon review, Piper Sandler's placement with Truist Bank was approved by Town Council as the winning bid. While a few local banks replied to the RFP, there was a significant difference in the 1.76% interest rate offered by Truist. The next lowest bidders were BOK Financial with 1.86% (rate not locked) and Vectra Bank at 2.07%. The town did seek local bids; First Bank responded with 2.74% (rate not locked).

In January, the town's bond counsel drafted site lease and lease purchase / sale agreements in coordination with the bank's attorney.

III. ACTION REQUESTED OF COUNCIL

Staff recommends approving **Ordinance No. 2, Series 2021**. This ordinance is being brought as an emergency ordinance in order to lock interest rates at the rate proposed in the lender's bid. Once approved, the site lease and lease documents will be ready for a **closing date of February 17, 2021**.

**ORDINANCE NO. 2
SERIES 2021**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF VAIL,
COLORADO, CONCERNING FINANCING IMPROVEMENTS TO THE
PUBLIC WORKS FACILITY AND AUTHORIZING THE EXECUTION AND
DELIVERY OF A SITE LEASE, A LEASE PURCHASE AGREEMENT, AND
RELATED DOCUMENTS; AND DECLARING AN EMERGENCY.**

WHEREAS, the Town of Vail, Eagle County, Colorado (the “Town”) 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 Town (the “Charter”); and

WHEREAS, the members of the Town Council of the Town (the “Council”) have been duly elected and qualified; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution and Section 13.3 of the Charter, the Town is authorized to lease, for such term as Council shall determine, any real or personal property to or from any person, firm or corporation, public or private, governmental or otherwise; and

WHEREAS, the Town is the owner of certain land (the “Site”), and the premises, buildings and improvements situated on the Site as further described in the Lease (hereinafter defined), which property consists of the Public Works Facility (collectively, the Site and the building and improvements constructed or to be constructed thereon are referred to as the “Leased Property”); and

WHEREAS, the Council has determined and now hereby determines that it is in the best interests of the Town and its inhabitants to finance the construction of an addition and renovations to the Leased Property for Town purposes (the “Project”); and

WHEREAS, in order to finance the Project, the Council has determined and hereby determines that it is in the best interests of the Town to lease the Leased Property to Truist Bank (the “Bank”) pursuant to a Site and Improvement Lease (the “Site Lease”), and to lease such property back from the Bank pursuant to the terms of a Lease Purchase Agreement (the “Lease”); and

WHEREAS, the Bank will prepay all rental payments due under the Site Lease and the net proceeds from such rental payment received by the Town will be used by the Town to finance the Project; and

WHEREAS, pursuant to the Lease, and subject to the right of the Town to annually terminate the Lease and other limitations as therein provided, the Town will pay certain Rent (as defined in the Lease) in consideration for the right of the Town to use the Leased Property; and

WHEREAS, the Town’s obligation under the Lease to pay Rent and Additional Rentals (as defined in the Lease) shall be from year to year only; shall constitute a currently

budgeted expenditure of the Town; 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 direct or indirect Town debt or other financial obligation of the Town within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness or multiple fiscal year financial obligation, 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; and

WHEREAS, the Supplemental Public Securities Act, part 2 of article 57 of title 11, Colorado Revised Statutes (the “Supplemental Act”), provides that a public entity, including the Town, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act to an issue of securities, including any financial contract; and

WHEREAS, there have been filed with the Town Clerk proposed forms of: (i) the Site Lease; and (ii) the Lease; and

WHEREAS, no member of the Council has any conflict of interest or is interested in any pecuniary manner in the transactions contemplated by this ordinance; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

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

Section 1. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Council or the officers, employees and agents of the Town related to the Site Lease, the Lease, the selection of the Bank, or directed toward the financing of the Project and the leasing of the Leased Property is hereby ratified, approved and confirmed.

Section 2. Findings and Authorization. The Council hereby finds and determines, pursuant to the Constitution and the laws of the State of Colorado, that acquiring the Project, and financing the costs thereof pursuant to the terms set forth in the Site Lease and the Lease, including the payment of the costs of execution and delivery of such documents, are necessary, convenient, and in furtherance of the Town’s purposes and are in the best interests of the Town and the inhabitants of the Town and the Council hereby authorizes and approves the same. The Council hereby finds and determines that the Project is advantageous to and in the best interest of the Town and its citizens and inhabitants.

Section 3. Application of Supplemental Act. The Council hereby elects to apply all of the provisions of the Supplemental Act to the Site Lease and the Lease, except that it shall not apply Section 11-57-211 thereof. In connection therewith, the Council hereby delegates to the Mayor, the Town Manager or the Finance Director of the Town the authority to make any determination delegable pursuant to Section 11-57-205(1)(a-i) of the Supplemental Act in relation to the Site Lease and the Lease, and to execute a sale certificate (the “Sale Certificate”) setting forth such determinations, subject to the following parameters and restrictions:

- (a) the minimum amount of rental payments to be received by the Town from the Bank pursuant to the Site Lease shall not be less than \$15,000,000;
- (b) the term of the Site Lease shall not extend beyond December 31, 2045;
- (c) the maximum total principal amount of the Rent payable by the Town under the Lease shall not exceed \$15,200,000;
- (d) the maximum annual and maximum total repayment of Rent under the Lease shall not exceed \$1,200,000 and \$17,400,000 respectively;
- (e) the maximum Applicable Rate on the interest component of the Rent under the Lease shall not exceed 1.76%, provided that this limitation shall not apply to any increase in the Applicable Rate resulting from the occurrence and continuation of an Event of Taxability under the Lease; and
- (f) the Lease Term shall end no later than December 31, 2035.

The delegation set forth in this Section 3 shall be effective for one year following the date hereof.

Section 4. Approval and Execution of Lease and Site Lease. The Site Lease and the Lease, in substantially the forms thereof presented at this meeting of the Council, are in all respects approved, authorized and confirmed, and the designated officers of the Town are hereby authorized and directed to execute the Lease and Site Lease in substantially the forms and with substantially the same contents as presented at this meeting of the Council, for and on behalf of the Town, with any such changes as the Mayor, the Town Manager or the Town's Finance Director may hereafter approve.

Section 5. Authorization to Execute Collateral Documents; Direction to Officers. The Mayor (or Mayor Pro Tem), the Town Clerk (or her deputy), the Town Manager, the Finance Director of the Town and other officers, employees and agents of the Town are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance, including, without limiting the generality of the foregoing, the execution, attestation and delivery of any document authorized and approved by this Ordinance for and on behalf of the Town; entering into any agreements necessary or appropriate in connection with the Project; the execution of such certificates as may be required by the Bank, including the tenure and identity of Town officials, the absence of litigation, pending or threatened, affecting the Lease and Site Lease, and performing 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.

The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be deemed necessary by the parties thereto in order to carry out the purposes of this Ordinance and to comply with the terms of the Sale Certificate. The

execution of any document or instrument by the aforementioned officials or employees of the Town shall be conclusive evidence of the approval by the Town of such document or instrument in accordance with the terms hereof and thereof.

Section 6. No General Obligation Debt. No provision of this Ordinance, the Site Lease or the Lease, shall be construed as creating or constituting a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any constitutional or statutory provision, nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the then current fiscal year. The Town shall have no obligation to make any Rent payment under the Lease and certain other payments under the Lease, which payments may be terminated by the Town in accordance with the provisions of the Lease. Neither the Site Lease nor the Lease shall constitute a mandatory charge or requirement of the Town 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 Town within the meaning of any Charter, constitutional or statutory debt limitation and shall not constitute a multiple fiscal year direct or indirect Town debt or other financial obligation whatsoever. No provision of the Site Lease or the Lease 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 Town within the meaning of Sections 1 or 2 of Article XI of the Colorado Constitution. Neither the Site Lease nor the Lease shall directly or indirectly obligate the Town to make any payments beyond those budgeted and appropriated for the Town's then current fiscal year.

Section 7. Reasonableness of Rent. The Council hereby determines and declares that the Rent due under the Lease, in the maximum amounts authorized pursuant to Section 3 hereof, constitute the fair rental value of the Leased Property and do not exceed a reasonable amount so as to place the Town under an economic compulsion to renew the Lease or to exercise its option to purchase the Bank's leasehold interest in the Leased Property pursuant to the Lease. The Council hereby determines and declares that the period during which the Town has an option to purchase the Bank'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 Town from the Bank pursuant to the Site Lease, in the minimum amount set forth in Section 3 hereof, is reasonable consideration for the leasing of the Leased Property to the Bank for the term of the Site Lease as provided therein.

Section 8. No Recourse Against Members of the Council, Officers or Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Council, or any officer or agent of the Town acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the Rent. Such recourse shall not be available either directly or indirectly through the Council or the Town, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise.

Section 9. Repealer. All acts, ordinances and resolutions, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby rescinded, annulled and repealed to the extent of such inconsistency. This repealer shall not be construed to

revive any act, ordinance or resolution 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 10. 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 Rent by the Town during the Lease Term, provisions for the quiet enjoyment of the Leased Property by the Town during the Lease Term and provisions for the conveyance of the Leased Property to the Town 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.

Section 11. Electronic Transactions. In the event the Mayor, Mayor Pro Tem, Town Clerk, Town Manager, Finance Director, or other employee or official of the Town that is authorized or directed to execute any agreement, document, certificate, instrument or other paper in accordance with this Ordinance (collectively, the “Authorized Documents”) is not able to be physically present to manually sign any such Authorized Document, such individual or individuals 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. It is hereby determined that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12. 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 13. Declaration of Emergency: In order to effect the Project in a timely manner, including the ability to fix interest rates at historically low rates it is hereby declared that an emergency exists and that this Ordinance is immediately necessary for the preservation of the public peace, health, safety, and financial well-being of the Town. This Ordinance is hereby declared, pursuant to Section 5.1(b) of the Charter, exempt from referendum.

Section 14. Effective Date, Recording and Authentication: In accordance with Section 4.11 of the Charter, this Ordinance shall be in full force and effect immediately upon enactment following final passage. A true copy of this Ordinance shall be numbered and recorded in the official records of the Town, authenticated by the signatures of the Mayor and the Town Clerk, and published in accordance with the Charter and the Town’s municipal code.

PASSED, APPROVED, AND ADOPTED AS AN EMERGENCY ORDINANCE,
AND ORDERED PUBLISHED IN FULL THIS 2ND DAY OF FEBRUARY, 2021, BY THE
TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO.

TOWN OF VAIL, COLORADO

Dave Chapin, Mayor

ATTEST:

Tammy Nagel, Town Clerk

STATE OF COLORADO)
)
 COUNTY OF EAGLE) SS.
)
 TOWN OF VAIL)

I, Tammy Nagel, the Town Clerk of the Town of Vail, Colorado (the “Town”), do hereby certify:

(i) The foregoing pages are a true, correct and complete copy of an emergency ordinance (the “Ordinance”) that was introduced, approved on first reading and ordered published in full in accordance with the Town Charter (the “Charter”) by the Town Council at a regular meeting thereof held on February 2, 2021, which Ordinance has not been revoked, rescinded or repealed and is in full force and effect on the date hereof.

(ii) The Ordinance was duly moved and seconded, and the Ordinance was approved on first reading as an emergency ordinance, at the meeting of February 2, 2021, by a unanimous vote of the membership of the Town Council present, or five (5) members, whichever is less, as follows:

Councilmember	Voting “Yes”	Voting “No”	Absent	Abstaining
Dave Chapin, Mayor				
Kim Langmaid, Mayor Pro-Tem				
Jenn Bruno				
Travis Coggin				
Kevin Foley				
Jen Mason				
Brian Stockmar				

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

(iv) The Ordinance was authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk, and recorded in the minutes of the Town Council.

(v) There are no bylaws, rules or regulations of the Town Council that might prohibit the adoption of the Ordinance.

(vi) Notice of the meeting of February 2, 2021, was given not less than 24 hours prior to the meeting as provided by law.

(vii) On February __, 2021, the Ordinance was published in full by posting on the Town’s website accordance with Section 1-3-2 of the Town’s Municipal Code, which date within ten (10) days after passage or as soon thereafter as possible as required by Section 4.11 of the Charter.

2021. WITNESS my hand and the seal of the Town affixed this ____ day of February,

Town Clerk

[SEAL]

EXHIBIT A

(Attach Notice of Meeting of February 2, 2021)

EXHIBIT B
(Evidence of Publication)

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