

ORDINANCE

AN ORDINANCE APPROVING A LEASE-PURCHASE WITH CLAYTON HOLDINGS LLC

**WHEREAS**, the City is a home rule municipality with all powers granted by Article XX of the Colorado Constitution and its Home Rule Charter;

**WHEREAS**, Article XX, § 6 of the Colorado Constitution states: "The statutes of the state of Colorado, **so far as applicable**, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters." Colo. Const. art. XX, § 6 (emphasis added);

**WHEREAS**, Section 5.8 of the City's Home Rule Charter provides that ordinances adopted by the City Council become effective five days after publication after final passage;

**WHEREAS**, C.R.S. § 31-15-801 purports to require that municipalities approve long term lease agreements and lease-purchase agreements by ordinance that is not effective for at least thirty (30) days after passage;

**WHEREAS**, C.R.S. § 31-15-801 conflicts with Section 5.8 of the City's Home Rule Charter, which provides that ordinances are effective five days after publication after final passage;

**WHEREAS**, C.R.S. § 31-15-801 contains no declaration of statewide concern and specifically applies to a "city" or a "town", which terms have been construed to mean a statutory city and statutory town by the Colorado Court of Appeals in the case of *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005);

**WHEREAS**, the City Council hereby finds and determines that the procedures for approval of lease-purchase agreements are a matter of purely local concern;

**WHEREAS**, as a home rule municipality, in the matter of deciding the procedures applicable to the approval of lease-purchase agreements, which is a matter of purely local concern, the City is not subject to those portions of C.R.S. §§ 31-15-801 and -802 which conflict with Section 5.8 of the City's Home Rule Charter;

**WHEREAS**, the City is entering a State and Municipal Lease/Purchase Agreement ("Lease") dated the 4th day of April, 2018, with Clayton Holdings LLC; and

**WHEREAS**, the City has carefully reviewed its financing requirements for the current calendar year and reasonably expects that it will not issue more than ten million dollars (\$10,000,000) of tax-exempt obligations during the calendar year.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:**

**Section 1:** The City be, and hereby is, authorized to enter into the Lease with Clayton Holdings, LLC (attached hereto with related documents, including without limitation the escrow agreement, as **Exhibit A**, collectively referred to as the "Lease") for a period of 108 months.

**Section 2:** The following officials of the City be, and hereby are, authorized, empowered and directed to sign on its behalf the Lease and any addenda, schedules, notes, UCC financing statements or other instruments issued under the provision of the Lease and any other instrument or document which may be necessary or expedient in connection with agreement upon or fulfillment of the provisions of the Lease.

<b>Printed Name</b>	<b>Title</b>	<b>Signature</b>
<u>Ken Jaray</u>	<u>Mayor</u>	_____
<u>Rebecca Davis</u>	<u>Finance Director</u>	_____
<u>Nicole Ortega</u>	<u>Deputy Finance Director</u>	_____

**Section 3:** Pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, this Lease be and hereby is designated a "qualified tax-exempt obligation" includable within the ten million dollars (\$10,000,000) of the aggregate issues designated as "qualified tax-exempt obligations" for the calendar year within which this Lease is entered into.

**Section 4:** The City shall not designate more than ten million dollars (\$10,000,000) of tax-exempt obligations during the current calendar year as qualified tax-exempt obligations and the City, together with its subordinate entities, does not reasonably expect to issue more than ten million dollars (\$10,000,000) of tax exempt obligations during the current calendar year.

**Section 5:** If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 6:** The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have

been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

**Section 7:** This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

**Section 8:** This ordinance shall take effect five (5) days after publication following final passage.

Passed on first reading and ordered published this 20<sup>th</sup> day of March, 2018.

/s/ Donna Kast  
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the March 27, 2018, City Council meeting. The Council Meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: March 20, 2018 (in full)  
*City's Official Website and City Hall*

Passed on second reading and approved by Council this 27<sup>th</sup> day of March, 2018.

/s/ Ken Jaray  
Mayor, Ken Jaray

Attest: /s/ Donna Kast  
City Clerk, Donna Kast

Ordinance Published: March 29, 2018 (in full)  
*City's Official Website and City Hall*