

ORDINANCE NO. 1658

**OF THE
CITY OF COLBY, KANSAS**

**AUTHORIZING THE ISSUANCE OF
NOT TO EXCEED \$115,000,000
HOSPITAL LOAN ANTICIPATION REVENUE BONDS
SERIES 2023
(CITIZENS MEDICAL CENTER, INC.)**

(Summary published in *The Colby Free Press*, October 25, 2023)

ORDINANCE NO. 1658

AN ORDINANCE AUTHORIZING THE CITY OF COLBY, KANSAS TO ISSUE ITS HOSPITAL LOAN ANTICIPATION REVENUE BONDS, SERIES 2023 (CITIZENS MEDICAL CENTER, INC.) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF A HEALTHCARE FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS HAS FOUND AND DETERMINED:

A. The City of Colby, Kansas (the “Issuer” or “City”) is authorized by K.S.A. 12-1740 *et seq.*, as amended (the “Act”), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, to enter into leases and lease-purchase agreements with any person, firm or corporation for such facilities, to issue revenue bonds for the purpose of paying the costs of such facilities and to issue revenue bonds for the purpose of refunding such bonds.

B. Citizens Medical Center, Inc., a Kansas not-for-profit corporation (the “Hospital”) currently operates a hospital located in the City and has need for the acquisition, construction, furnishing and equipping of a new healthcare facility (the “Project”).

C. Pursuant to a Letter of Conditions dated September 28, 2022, the United States Department of Agriculture – Rural Development (“RD/USDA”) has authorized (a) the application of the Hospital for a Community Facilities Direct loan not to exceed \$86,599,000 to fund a portion of the costs of the Project, and (b) a loan guarantee by RD/USDA for an amount not to exceed \$21,650,000. Pursuant to a Supplemental Letter of Conditions dated September 26, 2023, RD/USDA has authorized an additional loan of \$10,884,000 for cost overruns to be advanced at the end of construction of the Project.

D. In order to provide interim funds to temporarily finance a portion of the costs of the Project, it is necessary to pass this ordinance authorizing the Issuer to (a) issue its Hospital Loan Anticipation Revenue Bonds, Series 2023 (Citizens Medical Center, Inc.) (the “Series 2023 Bonds”), in the principal amount not to exceed \$115,000,000; and (b) authorizing the Issuer to lease the Project to the Hospital, as Tenant (the “Tenant”).

E. The Issuer's governing body finds that it is necessary and desirable in connection with the issuance of the Series 2023 Bonds to execute and deliver the following documents (collectively, the “Bond Documents”):

- (i) a Trust Indenture dated as of the Issue Date of the Series 2023 Bonds (the “Trust Indenture”), with the trustee named therein (the “Trustee”), prescribing the terms and conditions of issuing and securing the Series 2023 Bonds;
- (ii) a Site Lease dated as of the Issue Date of the Series 2023 Bonds (the “Site Lease”) with the Tenant, under which the Tenant will lease to the Issuer the real property on which the Project will be located;

(iii) a Project Lease dated as of the Issue Date of the Bonds (the "Project Lease"), with the Tenant, under which the Issuer will acquire, construct, furnish and equip the healthcare facility and lease the same to the Tenant in consideration of Basic Rent and other payments; and

(iv) a Bond Purchase Contract (the "Bond Purchase Contract") with Colliers Securities LLC (the "Underwriter") providing for the sale of the Series 2023 Bonds by the Underwriter;

(v) a Tax Compliance Agreement among the Issuer, the Tenant and the Trustee.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS:

Section 1. **Definition of Terms.** All terms and phrases not otherwise defined in this Ordinance will have the meanings set forth in the Trust Indenture and the Project Lease.

Section 2. **Authority to Cause the Project to Be Purchased and Constructed.** The Issuer is authorized to cause the Project to be acquired, constructed, furnished and equipped in the manner described in the Trust Indenture and the Project Lease.

Section 3. **Authorization of and Security for the Bonds.** Subject to the conditions set forth herein, the Issuer is authorized and directed to issue the Series 2023 Bonds, to be designated "City of Colby, Kansas Hospital Loan Anticipation Revenue Bonds, Series 2023 (Citizens Medical Center, Inc.)" in the aggregate principal amount not to exceed \$115,000,000 for the purpose of providing funds to pay a portion of the costs of the Project. The Series 2023 Bonds will be dated and bear interest, will mature and be payable at such times, will be in such forms, will be subject to redemption and payment prior to maturity, and will be issued according to the provisions, covenants and agreements in the Trust Indenture. The Series 2023 Bonds will be special limited obligations of the Issuer payable solely from the Trust Estate under the Trust Indenture, including revenues derived from the Project Lease. The Series 2023 Bonds will not be general obligations of the Issuer, nor constitute a pledge of the faith and credit of the Issuer and will not be payable in any manner by taxation.

Section 4. **Authorization of Indenture.** The Issuer is authorized to enter into the Trust Indenture with the Trustee in the form approved in this Ordinance. The Issuer will pledge the Trust Estate described in the Trust Indenture to the Trustee for the benefit of the owners of the Series 2023 Bonds on the terms and conditions in the Trust Indenture.

Section 5. **Approval of the Guaranty and Security Agreement.** The form of the Guaranty and Security Agreement between the Tenant, as guarantor, and the Trustee, for the benefit of the owners of the Series 2023 Bonds, is approved.

Section 6. **Authorization of Site Lease Agreement.** The Issuer will enter into the Site Lease Agreement with the Tenant providing for the conveyance of a leasehold interest in the Project to the Issuer upon the terms and subject to the conditions set forth in such agreement, in the form approved in this Ordinance.

Section 7. **Lease of the Project.** The Issuer will acquire, construct, furnish and equip the Project and lease it and the Project to the Tenant according to the provisions of the Lease in the form approved in this Ordinance.

Section 8. **Authorization of Bond Purchase Contract.** The Issuer is authorized to sell the Series 2023 Bonds to the Underwriter, according to the terms and provisions of the Bond Purchase Contract, in the form approved in this ordinance.

Section 9. **Execution of Bonds and Bond Documents.** The Mayor of the Issuer is authorized and directed to execute the Series 2023 Bonds and deliver them to the Trustee for authentication on behalf of the Issuer in the manner provided by the Act and in the Trust Indenture. The Mayor or member of the Issuer's governing body authorized by law to exercise the powers and duties of the Mayor in the Mayor's absence is further authorized and directed to execute and deliver the Bond Documents on behalf of the Issuer in substantially the forms presented for review prior to passage of this Ordinance, with such corrections or amendments as the Mayor or other person lawfully acting in the absence of the Mayor may approve, which approval shall be evidenced by his or her signature. The authorized signatory may sign and deliver all other documents, certificates or instruments as may be necessary or desirable to carry out the purposes and intent of this Ordinance and the Bond Documents. The City Clerk or the Deputy City Clerk of the Issuer is hereby authorized and directed to attest the execution of the Series 2023 Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out the intent of this Ordinance under the Issuer's corporate seal.

Section 10. **Pledge of the Project and Net Lease Rentals.** The Issuer hereby pledges the Project and the net rentals generated under the Lease to the payment of the Series 2023 Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Series 2023 Bonds are paid or deemed to have been paid under the Trust Indenture.

Section 11. **Approval of Preliminary Official Statement and Official Statement.** The Preliminary Official Statement, as submitted for review, and the Official Statement, in substantially the form of the Preliminary Official Statement, are approved. Public distribution of the Preliminary Official Statement and Official Statement by the Underwriter is approved. The Issuer has not participated in the preparation of the Preliminary Official Statement or the Official Statement and has not verified the accuracy of the information in them (except for the information respecting the Issuer under the captions "THE CITY" and "ABSENCE OF MATERIAL LITIGATION – The City"). Accordingly, approval does not constitute a representation by the Issuer as to the completeness or accuracy of the information contained in them. In order to enable the Underwriter to comply with the requirements of Rule 15c2-12(b)(1) of the Securities and Exchange Commission, the Mayor has deemed the information regarding the Issuer contained in the Preliminary Official Statement under the captions "THE CITY" and "ABSENCE OF MATERIAL LITIGATION – The City" to be "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1), and the action of the Mayor in that regard is ratified and approved. The Mayor is authorized, if requested, to sign other documents or certificates as necessary to enable the Underwriter to comply with the requirements of the Rule; provided, however, that except for information relating to the Issuer, such certification by the Issuer shall be made in reliance on certifications by the Corporation and other participants to the issuance of the Series 2023 Bonds, as applicable.

Section 12. **Authority To Correct Errors.** The Mayor or member of the Issuer's governing body authorized to exercise the powers and duties of the Mayor in the Mayor's absence, the City Clerk and any Deputy City Clerk are hereby authorized and directed to make any alterations, changes or additions in the instruments herein approved, authorized and confirmed which may be necessary to correct errors or omissions therein or to conform the same to the other provisions of said instruments or to the provisions of this Ordinance.

Section 13. **Further Authority.** The officials, officers, agents and employees of the Issuer are authorized and directed to take whatever action and execute whatever other documents or certificates as may

be necessary or desirable to carry out the provisions of this Ordinance and to carry out and perform the duties of the Issuer with respect to the Series 2023 Bonds and the Bond Documents.

Section 14. **Effective Date.** This Ordinance shall take effect after its passage by the governing body of the Issuer, signature by the Mayor and publication of the Ordinance or a summary thereof once in the Issuer's official newspaper.

PASSED by the governing body of the Issuer on October 17, 2023 and **SIGNED** by the Mayor.

(SEAL)

Mayor

ATTEST:

City Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE

I hereby certify that the attached copy is a true and correct copy of Ordinance No. 1658 of the City of Colby, Kansas duly passed by the governing body, signed by the Mayor and published in the official City newspaper on the respective dates stated in this ordinance, and that the signed original of such Ordinance is on file in my office.

[SEAL]

City Clerk

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF COLBY, KANSAS
HELD ON OCTOBER 17, 2023**

The governing body of the City of Colby, Kansas met in special session at the usual meeting place in the City on October 17, 2023 at 5:30 p.m., the following members being present:

The following members of the City Council were absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

Thereupon, there was presented an Ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF COLBY, KANSAS TO ISSUE ITS HOSPITAL LOAN ANTICIPATION REVENUE BONDS, SERIES 2023 (CITIZENS MEDICAL CENTER, INC.) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF A HEALTHCARE FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

Thereupon, Councilmember _____ moved that said Ordinance be passed. The motion was seconded by Councilmember _____. Said Ordinance was duly read and considered, and upon being put, the motion for the passage of said Ordinance was carried by the vote of the governing body, the vote being as follows:

Aye:

Nay:

Thereupon, the Mayor declared said Ordinance duly passed and the Ordinance was then duly numbered Ordinance No 1658 and was signed by the Mayor and the signature attested by the City Clerk.

* * * * *

(Other Proceedings)

* * * * *

CERTIFICATE

I certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Colby, Kansas held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

[SEAL]

City Clerk

(Published in *The Colby Free Press* on October 25, 2023)

SUMMARY OF ORDINANCE NO. 1658

On October 17, 2023, the governing body of the City of Colby, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF COLBY, KANSAS TO ISSUE ITS HOSPITAL LOAN ANTICIPATION REVENUE BONDS, SERIES 2023 (CITIZENS MEDICAL CENTER, INC.) FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION, CONSTRUCTION, FURNISHING AND EQUIPPING OF A HEALTHCARE FACILITY; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

The Ordinance authorizes the Issuer to issue its Hospital Loan Anticipation Revenue Bonds, Series 2023 (Citizens Medical Center, Inc.) in the aggregate principal amount not to exceed \$115,000,000 (the "Series 2023 Bonds") for the purpose of paying the costs of the acquisition, construction, furnishing and equipping a new healthcare facility (the "Project"), as more fully described in the Trust Indenture and in the Project Lease authorized by the Ordinance. The Project will be leased by the Issuer to Citizens Medical Center, Inc., a Kansas not for profit corporation.

A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 585 N. Franklin, Colby, Kansas. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.cityofcolby.com.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: October 17, 2023.

John D. Gatz, City Attorney