

ORDINANCE NO. 2019-34

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, RELATING TO THE FINANCING OF CERTAIN PROJECTS, SPECIFICALLY APPROVING PUBLICATION OF NOTICE OF PROPOSED LEASE OF LAND AND BUILDINGS FROM, AND LEASE-PURCHASE BACK OF SUCH LAND AND BUILDINGS TO, THE CITY AND REQUEST FOR BIDS IN CONNECTION THEREWITH; AUTHORIZING THE ACCEPTANCE OF A BID WITH RESPECT THERETO; APPROVING THE SALE AND EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION IN A LEASE-PURCHASE AGREEMENT TO PROVIDE THE NECESSARY FINANCING THEREFOR; APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS RELATED TO THE SALE AND ISSUANCE OF THE CERTIFICATES; DELEGATING AUTHORITY TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE AND RATIFYING ALL ACTIONS TAKEN TO FURTHER THIS ORDINANCE; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the Mayor and Council of the City of Flagstaff, Arizona (the "City"), have determined that it will be beneficial to its citizens to finance a portion of the construction of a municipal court facility in the City (the "Projects"); and

WHEREAS, the Mayor and Council of the City, upon due investigation and consideration, have found and determined that in order to finance the costs of the construction of the Projects it is desirable and necessary to lease-purchase certain property comprising the municipal court facility of the City [to be] located 101 West Cherry Avenue, Flagstaff (the "Property") in Coconino County, Arizona, which is described in the hereinafter described Notice; and

WHEREAS, in connection with the construction of the Projects, it is necessary that the City enter into a ground lease (the "Ground Lease") with respect to the Property with a lessee that will lease the Property, together with all improvements now or hereafter constructed thereon, to the City pursuant to a separate lease-purchase agreement (the "Lease-Purchase Agreement") pursuant to the terms and conditions described in the notice and request for bids in substantially the form of the Exhibit hereto (the "Notice"), which, among other things, provides for the construction of the Projects, in each case as determined by the Mayor and Council of the City; and

WHEREAS, the Mayor and Council of the City are authorized, pursuant to the Charter of the City (the "Charter"), to lease any land, buildings or equipment now or hereafter owned by the City on such terms and conditions as the Council of the City may prescribe, provided that all leases shall be made to the highest responsible bidder after publication of notice thereof for at least one time per week for two weeks, stating explicitly the time and conditions of the proposed lease; and

WHEREAS, pursuant to the Charter, the Notice will be published one time per week for two weeks in the Arizona Daily Sun; and

WHEREAS, the City intends that the Property be leased and awarded to the responsible bidder which submits the highest bid as determined by the requirements and responsive to the Notice; and

WHEREAS, the Mayor and Council of the City have determined that it is in the best fiscal interest of the City that financing for the Projects be undertaken through the sale and delivery to an investment bank of a series of certificates of participation (the "Certificates"), evidencing and representing proportionate interests of the owners thereof in the Lease-Purchase Agreement, specifically the lease payments to be made by the City pursuant thereto, and that the Mayor and Council of the City also approve and execute all required legal documents in connection therewith; and

WHEREAS, it is presently anticipated that the highest responsible bidder will finance its bid through the execution and delivery of the Certificates; and

WHEREAS, (A) the Certificates will be executed, delivered and paid pursuant to the terms and provisions of a trust agreement (the "Trust Agreement") to be executed and delivered by the City; (B) the Certificates will be offered for sale pursuant to a preliminary official statement (the "Preliminary Official Statement") which, with conforming changes, will become the final official statement (the "Final Official Statement") therefor and sold pursuant to a certificate purchase agreement (the "Purchase Agreement") between the City and Piper Jaffray & Co., as underwriter (the "Underwriter"); and (C) in connection with the execution and delivery of the Certificates, Securities and Exchange Commission Rule 15c2-12 will require the City to make certain agreements for the benefit of the beneficial owners from time to time of the Certificates, as evidenced by a continuing disclosure undertaking of the City (the "Continuing Disclosure Undertaking"); and

WHEREAS, the City has the general power and authority to enter into and deliver the Ground Lease, the Lease-Purchase Agreement, the Trust Agreement, the Purchase Agreement and the Continuing Disclosure Undertaking (collectively, the "City Documents") and to cause the sale and the execution and delivery of the Certificates, in order to construct the Projects; and

WHEREAS, it has been determined that Stifel, Nicolaus & Company, Incorporated (the "Financial Advisor") should act as financial advisor with respect to the sale of the Certificates pursuant to letter agreements dated September 5, 2019, between the City and the Financial Advisor;

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1.

(A) The publication one time per week for two weeks in the Arizona Daily Sun of the Notice, in substantially the form of the Exhibit attached hereto, by the Clerk of the City is hereby approved in all respects. The Management Services Director of the City is hereby authorized to determine when bids shall be accepted pursuant to the Notice. (An affidavit of the publication thereof will be attached as the Attachment hereto after the publication is completed.)

(B) If a bid of a bank with a corporate office in Phoenix, Arizona, and having the power to exercise corporate trust powers in the State of Arizona (the "Bank"), is submitted in response to the request made pursuant to the Notice and is satisfactory to the Management Services Director of the City on behalf of the City, then the Bank shall be appointed as the "Trustee", "Lessor" and "Lessee", as applicable, for all purposes of the City Documents, subject to the terms and conditions of the Notice which are incorporated herein by this reference.

SECTION 2. The forms, terms and provisions of the City Documents in the forms of such documents (including the exhibits thereto) presented at the meeting at which this Ordinance was adopted are hereby approved with such insertions, omissions and changes as shall be approved by the Mayor or, in the absence thereof, Vice Mayor of the City, or the Management Services Director of the City, the execution of such documents being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor of the City, the Management Services Director and Clerk of the City are hereby authorized and directed, for and on behalf of the City, to sign and attest the City Documents as well as any and all other documents necessary in connection with the foregoing, including a financial guaranty or other agreement to provide for credit enhancement for the Certificates.

SECTION 3. From and after the execution and delivery of the City Documents in definitive form by the City and the other parties thereto, as required, the officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such agreements, documents, instruments and certificates as may be necessary to carry out and comply with the provisions thereof.

SECTION 4. The Management Services Director of the City is hereby authorized and directed to determine on behalf of the City: (1) the entity to serve as "Trustee", "Lessor" and "Lessee", as applicable, for all purposes of the City Documents in the event no satisfactory bid is submitted in response to the request made pursuant to the Notice; (2) the dated date and total principal amount of the Lease-Purchase Agreement (but not to exceed \$4,000,000 in principal amount); (3) the final principal and maturity date schedules of the Lease-Purchase Agreement; (4) the interest rate on each maturity of the principal components of the Lease-Purchase Agreement and the dates for payment of such interest; (5) the provisions for redemption in advance of maturity of the payment of the principal components of the Lease-Purchase Agreement; (6) the sales price and terms of the Certificates (including for original issue discount, original issue premium and underwriter's compensation); and (7) the provision for credit enhancement, if any, for the Certificates upon the advice of the Underwriter, provided, however, that such determinations must result in a yield for federal income tax purposes of not to exceed ten percent (10%) with respect to the Lease-Purchase Agreement. (The solicitation of proposals from corporate trust banks for purposes of the foregoing is hereby ratified and confirmed in all respects.)

Section 5. (1) The preparation and distribution of the Preliminary Official Statement is hereby ratified and approved; (2) the Preliminary Official Statement in substantially the form presented at the meeting at which this Ordinance was adopted is hereby approved; (3) the preparation of the Final Official Statement in substantially the form of the Preliminary Official Statement, with such changes or revisions therein from the form of the Preliminary Official Statement as may be approved by the Management Services Director of the City, is hereby approved; and (4) the Mayor or, in the absence thereof, Vice Mayor of the City, or the Management Services Director of the City is hereby authorized, empowered and directed, in the name and on behalf of the City, to execute and deliver the same to the Underwriter, and to execute and deliver instruments confirming that the Preliminary Official Statement is "deemed final" in accordance with Securities and Exchange Commission Rule 15c2-12.

SECTION 6. The Management Services Director of the City is hereby designated and appointed as a “Lessee Representative” as defined in the Lease-Purchase Agreement and is authorized to execute in the name of and on behalf of the City any closing documents, certificates or other instruments or documents necessary or appropriate in connection with the transactions described in or contemplated by the City Documents and to do all acts and things as may be necessary or desirable to carry out the terms and intent of this Ordinance and of any of the documents referred to herein.

SECTION 7. All actions of the officers, agents and employees of the City which are in conformity with the purposes and intent of this Ordinance be, and the same are hereby, in all respects, authorized, approved, ratified and confirmed.

SECTION 8. After the Lease-Purchase Agreement is executed and delivered, this Ordinance shall be and remain irrevocable until the principal and interest represented thereby shall have been fully paid, cancelled and discharged.

SECTION 9. If any section, paragraph, clause or provision of this Ordinance 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. All orders, ordinances and resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, ordinance or resolution or any part thereof.

SECTION 11. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 12. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 13. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 14. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 5th day of November 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibits:
Notice of Proposed Lease and Lease-Purchase Back