

ORDINANCE NO. 2019-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA FROM ITS CLEAN WATER REVOLVING FUND PROGRAM; DELEGATING THE DETERMINATION OF CERTAIN MATTERS RELATING THERETO TO THE MANAGEMENT SERVICES DIRECTOR OF THE CITY; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY SUCH LOAN AGREEMENT; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, at a special bond election held in and for the City of Flagstaff, Arizona (the "City"), on November 6, 2012 (the "Election"), there was submitted to the qualified electors thereof, among others, the following question:

QUESTION NO. 405

Purpose: **Forest Health and Water Supply Protection Project**

Amount: **\$10,000,000**

To prevent flood damage to the City of Flagstaff ("City"), and to protect the City water supply from damages which occur from large-scale and/or severe wildfire(s) in two watersheds serving the City, shall the City be authorized to sell and issue general obligation bonds in a principal amount up to \$10,000,000:

- to expedite and conduct forest treatments in the Dry Lake Hills watershed north of town to reduce wildfire threat, thereby mitigating subsequent flooding to Sunnyside, downtown, the NAU campus, and neighborhoods bordering the Rio de Flag;
- to plan and conduct forest treatments in the Lake Mary watershed south of the City to reduce wildfire threat, thereby protecting the storage capacity and water quality of Lake Mary; and
- to pay all costs and expenses properly incidental thereto and to the issuance of bonds?

The bonds may be issued in one or more series, will not mature more than 25 years from the date or dates of their issue, will bear interest at a rate or rates not to exceed 10% per annum, and will have such other provisions as are approved by the City Council. The following sentence has been included on this ballot as required by Arizona Revised

Statutes 35-454(C): The issuance of these bonds will result in a property tax increase sufficient to pay the annual debt service on the bonds; and

A vote for the bonds shall have the effect of allowing the City Council to issue up to \$10,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects.

For the Bonds

A vote against the bonds shall have the effect of not allowing the City Council to issue up to \$10,000,000 in general obligation bonds for planning and implementation of forest health and water supply protection projects.

Against the Bonds

WHEREAS, the returns of the Election were duly canvassed by the Mayor and Council of the City and a certificate disclosing the purpose of the Election, the total number of votes cast thereat, the total number of votes for and against the issuance of such bonds, and stating that the creation of the indebtedness by the issuance of the bonds in accordance with the question was ordered and has been filed and recorded in the office of the County Recorder of Coconino County, Arizona; and

WHEREAS, a majority of the qualified electors of the City, voting at the Election voted "For the Bonds", in answer to the foregoing question; and

WHEREAS, the City has heretofore applied to the Water Infrastructure Finance of Arizona (the "Authority"), for a loan (the "Loan") from the Authority's Clean Water Revolving Fund Program for not to exceed \$6,000,000 to fund the Flagstaff Watershed Protection Project as well as the payment of the City's proportionate share of expenses of administering the Authority's Clean Water Revolving Fund Program and any bonds issued by the Authority with respect thereto (collectively, the "Project"); and

WHEREAS, to repay the Loan, the City may enter into a financial assistance loan repayment agreement with the Authority which is payable from any revenues otherwise authorized by law to be used to repay long-term obligations; and

WHEREAS, the terms and conditions under which the Loan will be made and the obligations of the City with respect to the Loan will be set forth in a loan agreement to be executed and delivered by the City and the Authority (the "Loan Agreement"); and

WHEREAS, the Mayor and Council of the City has determined that it will be beneficial to the citizens of the City to enter into and to perform the Loan Agreement; and

WHEREAS, the Loan is to be made by the Authority to the City pursuant to the provisions of the Loan Agreement and the loan repayments payable by the City pursuant to the Loan Agreement (the "Loan Repayments") will be secured by the "Source of Repayment" (as described in the Loan Agreement); and

WHEREAS, the Loan shall be repaid on or before July 1, 2041, twenty-one (21) years from the date of the execution and delivery of the Loan Agreement and the Loan shall bear interest at a

rate not to exceed ten percent (10%) per annum; and

WHEREAS, there has been placed on file with the Clerk of the City and presented at the meeting at which this Ordinance was adopted the proposed form of the Loan Agreement;

ENACTMENTS:

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

SECTION 1. The form, terms and provisions of the Loan Agreement, in the form of such document (including the exhibits thereto) presented at the meeting at which this Ordinance was adopted are hereby approved, with such insertions, omissions and changes, not inconsistent with the City's application to the Authority or the requirements of the federal government or the Authority, as shall be approved by the Management Services Director of the City, the execution of such document being conclusive evidence of such approval, and the Management Services Director of the City and the Clerk of the City are hereby authorized and directed, for and on behalf of the City, to execute and attest and deliver, respectively, the Loan Agreement.

SECTION 2. For the payment of the principal of and interest on the Loan, the City shall pay the Loan Repayments provided for in the Loan Agreement. The City shall also pay all other amounts required to be paid by the City pursuant to the provisions of the Loan Agreement and, if the Credit Instrument is required by the Authority, the Reserve Fund Agreement.

SECTION 3. (A) For the purpose of the obligation of the City to pay the Loan Repayments provided for in the Loan Agreement as well as to make the other payments provided for in the Loan Agreement, there shall be levied on all the taxable property in the City a continuing, direct, annual, ad valorem tax sufficient to pay all such amounts as the same become due, such taxes to be levied, assessed and collected at the same time and in the same manner as other taxes of the City are levied, assessed and collected. The tax shall be extended and collected for the City, and the officials of the City and Coconino County, Arizona, charged with the annual extension and collection of taxes, without further instructions from the Council, shall extend and collect the tax upon issuance of the Loan. All moneys collected through such tax shall be paid into the treasury of the City, to the credit of a "Debt Service Fund" of the City for the Loan, from which fund the Loan shall be payable, which tax moneys shall be held in subfunds to be known as the "Interest Fund" and the "Redemption Fund," which funds shall be kept separate and apart from and not commingled with any other funds or moneys and which shall be used solely for, respectively, payment of interest on and principal on the Loan.

(B) The Loan or portion thereof in authorized amount shall be deemed paid and defeased and thereafter shall have no claim on ad valorem taxes levied on taxable property in the City (i) if there is deposited with a bank or comparable financial institution, in trust, moneys or obligations issued by or guaranteed by the United States government ("Defeasance Obligations") or both which, with the maturing principal of and interest on such Defeasance Obligations, if any, will be sufficient, as evidenced by a certificate or report of an accountant, to pay the principal thereof and interest thereon or portion thereof as the same matures, comes due or becomes payable upon prior redemption and (ii) if such defeased amount thereof is to be redeemed, notice of such redemption has been given in accordance with provisions of the Loan Agreement. Amounts the payment of which has been provided for in accordance with this Section shall no longer be deemed payable or outstanding and thereafter such amounts shall be payable only

from the moneys or Defeasance Obligations deposited to provide for the payment thereof.

SECTION 4. The appropriate officials and officers of the City are hereby authorized and directed to take all action necessary or reasonably required by the parties to the Loan Agreement, to carry out, give effect to and to consummate the transactions contemplated by the Loan Agreement and by this Ordinance, including, without limitation, the execution and delivery of any closing and other documents reasonably required to be delivered in connection therewith.

SECTION 5. If any section, paragraph, subdivision, sentence, clause or phrase of this Ordinance is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Ordinance. The Mayor and Council of the City hereby declare that it would have adopted this Ordinance and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the execution and delivery of the Loan Agreement pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Ordinance may be held illegal, invalid or unenforceable. All 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 ordinance or resolution or any part thereof.

SECTION 6. All actions of the officers and agents of the City including the Mayor and Council of the City which conform to the purposes and intent of this Ordinance and which further the execution and delivery of the Loan Agreement as contemplated by this Ordinance, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Ordinance.

SECTION 7. All acts and conditions necessary to be performed by the City or to have been met precedent to and in the execution and delivery of the Loan Agreement in order to make it a legal, valid and binding obligation of the City will at the time of delivery of the Loan Agreement have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the execution and delivery of the Loan Agreement.

SECTION 8. All formal actions of the Mayor and Council of the City concerning and relating to the passage of this Ordinance were taken in an open meeting of the Mayor and Council of the City, and all deliberations of the Mayor and Council of the City and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION 9. After the execution and delivery of the Loan Agreement and upon receipt of the Loan from the Authority, this Ordinance shall be and remain irrevocable until the Loan and the Loan Agreement and the interest thereon shall have been fully paid, cancelled and discharged.

SECTION 10. Repeal of Conflicting Ordinances

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

SECTION 11. 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 12. 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 13. 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: