

**ORDINANCE NO. 2020-17**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF RELATING TO THE FINANCING OF A PROJECT, 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; 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 fund all or a portion of the City's unfunded liabilities with respect to the Arizona Public Safety Personnel Retirement System and one or more contingency reserve funds with respect to pension and related liabilities (the "Project"); 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 Project it is desirable and necessary to lease-purchase certain property in Coconino County, Arizona, to be determined as provided herein (the "Property"), which, when determined as provided herein, will be described in the hereinafter described Notice; and

WHEREAS, in connection with the financing of the Project, 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 financing of the Project, 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 Project be undertaken through the sale and delivery to the hereinafter defined Underwriter 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, a proposal in the form of the hereinafter defined Purchase Agreement will be received from Stifel, Nicolaus & Company, Incorporated (the "Underwriter"), for the purchase by the Underwriter of the Certificates; 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 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 finance the costs of the Project.

#### **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.

(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.

(A) The Management Services Director of the City is hereby authorized and directed to determine on behalf of the City: (1) the property which will comprise the Property for purposes hereof, to be selected from the property listed in the Exhibit to the form of the Ground Lease presented at the meeting at which this Ordinance was adopted; (2) 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; (3) the dated date and total principal amount of the Lease-Purchase Agreement (but not to exceed \$135,000,000 in principal amount); (4) the final principal and maturity date schedules of the Lease-Purchase Agreement; (5) the interest rate on each maturity of the principal components of the Lease-Purchase Agreement (but not to exceed 5% for any maturity) and the dates for payment of such interest; (6) the provisions for redemption in advance of maturity of the payment of the principal components of the Lease-Purchase Agreement; and (7) the sales price and terms of the Certificates (including for original issue discount, original issue premium and underwriter's compensation). (The solicitation of proposals from corporate trust banks for purposes of the foregoing is hereby ratified and confirmed in all respects.)

(B) The Management Services Director of the City is further hereby authorized and directed to determine on behalf of the City whether the purchase of an insurance policy securing payment of the Certificates or a surety bond or other reserve fund guaranty would be advantageous to the City or the terms of the financing represented by the Certificates. Any officer, agent or employee of the City is hereby authorized to negotiate with and secure, with proceeds of the Certificates or otherwise, such an insurance policy or a reserve fund guaranty, or both, from one or more institutions, the claims-paying ability of which are then assigned one of the two highest rating categories by a nationally recognized credit rating agency. The Management Services Director of the City is hereby further authorized and directed to execute and deliver any instruments or

documents necessary in connection with the purchase of any such insurance policy and/or reserve fund guaranty, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policy and/or reserve fund guaranty.

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. Repeal of Conflicting Ordinances

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

#### SECTION 10. 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 hereof.

#### SECTION 11. 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 12. 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 23rd day of June 2020.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

Exhibit:  
Notice of Proposed Lease

EXHIBIT

NOTICE OF PROPOSED LEASE OF LAND AND BUILDINGS BY,  
AND LEASE-PURCHASE BACK OF SUCH LAND AND  
BUILDINGS TO, THE CITY OF FLAGSTAFF, ARIZONA, AND  
REQUEST FOR BIDS IN CONNECTION THEREWITH

NOTICE IS HEREBY GIVEN THAT the parcels of land owned by the City of Flagstaff, Arizona (the "City"), located at ....., containing, in total, approximately ..... acres, and the buildings located thereon which comprises ..... (collectively, the "Property"), will be leased to the highest responsible bidder therefor. Bids must be submitted to the Mayor and Council of the City c/o the Clerk of the City, 211 West Aspen Avenue, Flagstaff, Arizona 86001-5399 by 5:00 p.m., Arizona Time, on or about ....., 2020, pursuant to the Charter of the City. The lessee of the Property will be required to lease the Property from the City pursuant to a ground lease (the "Ground Lease") and to lease-purchase back the Property to the City pursuant to a Lease-Purchase Agreement (the "Lease"). The Lease will be for a period commencing on or about ..... 1, 2020, and ending on or about August 2, 20..... The successful bidder must cause not less than \$135,000,000 to be paid to the City as a result of entering into the Ground Lease. The amount paid under the Ground Lease will be used to fund all or a portion of the City's unfunded pension liabilities and one or more contingency reserve funds with respect thereto (the "Project").

The City reserves the right to reject any and all bids at the discretion of the Mayor and Council of the City and to waive any informality in any bid. Unless all bids are rejected, the Mayor and Council of the City will award the lease of the Property pursuant to the Ground Lease to the highest responsible bidder offering to lease the Property pursuant to the Ground Lease and agreeing to lease-purchase back the Property to the City pursuant to the Lease at the price most favorable to the City as described above before 5:00 p.m. Arizona Time on or about ....., 2020. The award of the lease of the Property pursuant to the Ground Lease and the Lease will be contingent upon provision for the financing of the Project on the date of the execution and delivery of the Lease with respect to the lease and lease-purchase back of the Property.

Bidders are to take note that, pursuant to Arizona law, if within three years from the award of the Ground Lease or the Lease, any person who was significantly involved in initiating, negotiating, securing, drafting, or creating the Ground Lease or the Lease on behalf of the City becomes an employee or agent of the winning bidder in any capacity or a consultant to the winning bidder with respect to the Ground Lease or the Lease, the City may cancel the award of the Ground Lease or the Lease without penalty or further obligation by the City. In addition to such cancellation, if such person becomes an employee or agent of the winning bidder with respect to the Ground Lease or the Lease, the City may recoup any fees or commissions paid or due to said winning bidder with respect to the award to said bidder and the actual lease of the Property pursuant to the Ground Lease or the Lease.

Further information may be obtained from the Clerk of the City, 211 West Aspen Avenue, Flagstaff, Arizona 86001-5399.

CITY OF FLAGSTAFF, ARIZONA  
By /s/ Stacy Saltzburg.....  
City Clerk