

ORDINANCE NO. 2022-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA 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 MAYOR, THE CITY MANAGER AND THE MANAGEMENT SERVICES DIRECTOR OF THE CITY; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY SUCH LOAN AGREEMENT AND THIS ORDINANCE AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff, Arizona (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 (the "Program") to provide funds for the Rio de Flag Flood Control Project and the payment of the City's proportionate share of expenses of administering the Program and any bonds issued by the Authority with respect thereto (collectively, the "Project"); 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 Loan and the loan repayments payable by the City pursuant to the Loan Agreement (the "Loan Repayments") will be secured by a pledge of the net revenues of the City's water, sewer and stormwater utility system (the "Source of Repayment"); and

WHEREAS, the Mayor and Council of the City have determined that it will be beneficial to the citizens of the City to enter into and to perform the Loan Agreement, whereby the City will borrow not to exceed \$20,000,000 from the Authority; and

WHEREAS, the Loan shall be repaid on or before July 1, 2047 (25 years) from the date of the execution and delivery of the Loan Agreement and shall bear interest at a rate not to exceed five percent (5%) 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 application of the City to the Authority or the requirements of the federal government or the Authority, as shall be approved by the Mayor, the City Manager or the Management Services Director of the City, the execution of such document being conclusive evidence of such approval, and the Mayor, the City Manager, the Management Services Director and the Clerk of the City are hereby authorized and directed, as applicable, 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.

SECTION 3. 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 is limited to payment from the Source of Repayment which is pledged therefor pursuant to the Loan Agreement, and the obligations of the City pursuant to the Loan Agreement shall not constitute or give rise to a general obligation of the City or any claim against its ad valorem property taxing powers, or constitute an indebtedness within the meaning of any statutory or constitutional debt limitation applicable to the City.

SECTION 4. The appropriate officials and officers of the City are hereby authorized and directed to take all action necessary or reasonably required 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 Council of the City hereby declares 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, 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. 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 19th day of April, 2022.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 2022-07 was duly passed and adopted by the Mayor and Council of the City of Flagstaff, Arizona, at a regular meeting held on the 19th day of April 2022, and the vote was ayes and nays and that the Mayor and Councilmembers were present thereat.

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Stacy Saltzburg, City Clerk, City of Flagstaff, Arizona