

**ORDINANCE NO. 2022-08**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA (1) PROVIDING FOR THE SALE AND EXECUTION AND DELIVERY PURSUANT TO ONE OR MORE UTILITY SYSTEM REVENUE TRUST AGREEMENTS OF UTILITY SYSTEM REVENUE AND REVENUE REFUNDING OBLIGATIONS, IN ONE OR MORE SERIES, EVIDENCING PROPORTIONATE INTERESTS OF THE OWNERS THEREOF IN INSTALLMENT PAYMENTS OF THE PURCHASE PRICE TO BE PAID BY THE CITY OF FLAGSTAFF, ARIZONA, PURSUANT TO ONE OR MORE UTILITY SYSTEM REVENUE PURCHASE AGREEMENTS TO FINANCE AND/OR REFINANCE COSTS OF CERTAIN IMPROVEMENTS TO THE WATER, WASTEWATER AND STORMWATER UTILITY SYSTEM OF THE CITY; (2) AUTHORIZING THE COMPLETION, EXECUTION AND DELIVERY WITH RESPECT THERETO OF AGREEMENTS NECESSARY OR APPROPRIATE AS PART OF FINANCING AND/OR REFINANCING THE COSTS OF SUCH IMPROVEMENTS AND PAYING RELATED FINANCING COSTS; (3) DELEGATING TO THE MAYOR, THE CITY MANAGER AND THE MANAGEMENT SERVICES DIRECTOR CERTAIN AUTHORITY WITH RESPECT TO THE PURPOSES HEREOF; (4) AUTHORIZING THE MANAGEMENT SERVICES DIRECTOR TO EXPEND ALL NECESSARY FUNDS THEREFOR; AND (5) AUTHORIZING THE MANAGEMENT SERVICE DIRECTOR OR HIS DESIGNEES TO TAKE ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS ORDINANCE AND DECLARING AN EMERGENCY**

**RECITALS:**

WHEREAS, the City of Flagstaff, Arizona (the "City") has incurred loan agreements (the amounts of such loan agreements to be prepaid as provided herein are collectively referred to herein as the "Obligations Being Prepaid") with the Water Infrastructure Finance Authority of Arizona to finance certain costs of certain improvements for the water utility system of the City (the "Existing Projects"); and

WHEREAS, it is necessary and in the best interests of the City to (i) refinance all or a portion of the Obligations Being Prepaid, and (ii) finance the costs of certain improvements for the water, wastewater and stormwater utility system of the City (the "New Projects" and, collectively with the Existing Projects, the "Projects"); and

WHEREAS, therefore, the Mayor and Council of the City (the "Council") have determined to cause the execution and delivery of one or more Utility System Revenue Purchase Agreements, to be dated as of the first day of the month of the dated date of the related hereinafter described Series 2022 Obligations (referred to herein as the "Purchase Agreement"), in substantially the form presented at the meeting at which this Ordinance was adopted, by which the City will agree to purchase the portion of the Existing Projects which have not been paid to date and the New Projects; and

WHEREAS, financing and refinancing the costs of the Projects will be accomplished through the sale, by means of a competitively bid solicitation for financing, and execution and delivery of

certain proportionate interests (the "Series 2022 Obligations") in the Purchase Agreement pursuant to, and secured by, one or more Utility System Revenue Trust Agreements, to be dated as of the date of the related Purchase Agreement (referred to herein as the "Trust Agreement"), from the City to a trustee to be determined as provided herein (including any successor appointed and acting in such capacity, the "Trustee"), in substantially the form presented at the meeting at which this Ordinance was adopted; 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 Series 2022 Obligations pursuant to letter agreements between the City and the Financial Advisor; and

WHEREAS, there have been presented to the Council at the meeting at which this Ordinance is being adopted the proposed forms of: (1) the Purchase Agreement; and (2) the Trust Agreement; and

WHEREAS, the City has the requisite power and authority to execute and deliver the Purchase Agreement and to cause the sale and execution and delivery of the Series 2022 Obligations, and all acts, conditions and things required by the Constitution and laws of the State of Arizona and the requirements of the City to happen, exist and be performed precedent to and as a condition to the adoption of this Ordinance have happened, exist and been performed in the time and manner required to make the Purchase Agreement a valid and binding limited, special obligation of the City; and

WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Flagstaff, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

**ENACTMENTS:**

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

SECTION 1. Authorization and Execution and Delivery of Documents and Series 2022 Obligations; Acceptance of Proposal(s).

- (a) For the purpose of providing funds to finance and refinance the costs of the Projects and the related costs of the sale and execution and delivery of the Series 2022 Obligations, the Series 2022 Obligations shall be sold and executed and delivered in one or more series as provided herein. Each series of the Series 2022 Obligations shall be dated the date of their initial authentication and delivery, shall be executed and delivered in such form and denominations, shall be payable as to interest and principal on such dates, shall be executed in such manner and shall have such other provisions, including, without limitation, provisions with respect to prepayment prior to maturity, as set forth in the applicable form of the Trust Agreement, with such additions, deletions and modifications consistent with this Ordinance as shall be approved by the officers of the Trustee executing and delivering the same on behalf of the Trustee, the execution and delivery thereof to constitute conclusive evidence of their approval and of such additions, deletions or modifications. The identity of the Trustee, the aggregate principal amount of the Series 2022 Obligations (but not to exceed \$4,100,000 with respect to the financing of the New Projects), the number of series the Series 2022 Obligations shall be and the amount and designation of each such series, the period over which the Series 2022 Obligations shall

mature (including provisions for prepayment), whether the Series 2022 Obligations shall be executed and delivered pursuant to one or more Purchase Agreements and Trust Agreements, whether to proceed with the refinancing of the Existing Projects and, if so, the exercise of prepayment provisions with respect to the Obligations Being Prepaid; the date on, entity or entities to which and price at which each series of the Series 2022 Obligations shall be sold (including provisions for any discount or premium), and the rates of interest the Series 2022 Obligations shall bear (but, except in the case of an event of default or an event of taxability, not to exceed five percent (5%)) and the dates such interest shall be payable shall be determined by the Mayor, the City Manager or the Management Services Director of the City or the designees of any of them (collectively, the "Authorized Representatives") to which such authority is hereby delegated; provided, however, that if the refinancing of the Existing Projects proceeds in accordance with the foregoing direction, such refinancing must result in a present value debt service savings net of all costs, of two percent of the principal amount of the Obligations Being Prepaid.

- (b) The Mayor or, in the absence thereof, the Vice Mayor are hereby authorized to execute, and the Clerk is hereby authorized to attest and deliver, respectively, the Purchase Agreement and the Trust Agreement (multiple of each, if necessary, in accordance with the direction delegated by paragraph (a) of this Section), as well as, if necessary, an Escrow Trust Agreement, to be dated as of the first day of the month of the dated date of the Series 2022 Obligations (the "Escrow Trust Agreement"), with the Trustee, in its separate capacity as escrow trustee (the "Escrow Trustee"), for the establishment of an escrow to defease the Obligations Being Prepaid, in a standard form, all of which are hereby approved, with such additions, deletions and modifications as shall be approved by those officers executing and delivering the same on behalf of the City, the execution and delivery thereof to constitute conclusive evidence of their approval, and of such additions, deletions and modifications.
- (c) The Trustee is hereby requested to execute and deliver the Series 2022 Obligations (in one or more series), the Purchase Agreement and the Trust Agreement (multiple of each, if necessary, in accordance with the direction delegated by paragraph (a) of this Section), and the Escrow Trustee is hereby requested to execute and deliver, if necessary, the Escrow Trust Agreement.
- (d) The Authorized Representatives are hereby authorized to cause the sale and execution and delivery of the Series 2022 Obligations and are hereby delegated the authority to complete any information missing in, or necessary for the consummation of the transactions contemplated by, the Purchase Agreement and the Trust Agreement. The Authorized Representatives are authorized to select, and execute and deliver contracts with, appropriate professionals (including special counsel) to provide various professional services with respect to the sale and execution and delivery of the Series 2022 Obligations as well as to provide for such other matters (including credit enhancement providers if deemed advantageous by them) as are necessary in order to accomplish the purposes of this Ordinance. The Authorized Representatives are hereby further authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any such credit enhancement, including those making provision for the repayment of amounts advanced for credit enhancement thereunder. The fees, costs and expenses with respect to the foregoing shall be paid from proceeds of the sale of the Series 2022 Obligations or any other legally available moneys. The Management Services Director is hereby authorized to receive and expend such funds as necessary to accomplish the purposes of this Ordinance, including payment of installment payments related to debt

service on the Series 2022 Obligations.

- (e) Subject to the direction delegated by paragraph (a) of this Section, the proposal(s) of the purchaser(s) determined as provided in such paragraph may be accepted. The Series 2022 Obligations shall be prepared and executed and delivered following the adoption of this Ordinance and shall thereupon be delivered to such purchaser(s) upon payment therefor in accordance with the terms of the Trust Agreement.

SECTION 2. Severability

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. This Council 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 issuance of the Series 2022 Obligations 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.

SECTION 3. Ratification of Actions

All actions of the officers, employees and agents of the City, including the Council, which conform to the purposes and intent of this Ordinance and which further the actions contemplated by this Ordinance, whether taken before or after adoption of this Ordinance, are hereby ratified, confirmed and approved. The Management Services Director of the City or his designee(s) 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 4. Effective Date

It is necessary for the preservation of the peace, health and safety of the City of Flagstaff, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 19th day of April, 2022.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 2022-08 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.

.....  
Stacy Saltzburg, City Clerk, City of Flagstaff, Arizona