

ORDINANCE NO. O2020-027

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, (1) APPROVING THE SALE AND EXECUTION AND DELIVERY OF PLEDGED REVENUE AND/OR REVENUE REFUNDING OBLIGATIONS, IN ONE OR MORE SERIES, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN A LEASE-PURCHASE AGREEMENT; (2) APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS RELATED TO THE SALE AND EXECUTION AND DELIVERY OF SUCH OBLIGATIONS; (3) ADOPTING POST-ISSUANCE TAX AND CONTINUING DISCLOSURE COMPLIANCE PROCEDURES IN CONNECTION WITH ISSUANCE OF OBLIGATIONS OF THE CITY; (4) DELEGATING AUTHORITY TO THE CITY ADMINISTRATOR AND THE DIRECTOR OF FINANCIAL SERVICES OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; (5) AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE; AND (6) DECLARING AN EMERGENCY

WHEREAS, the City Council of the City of Yuma, Arizona (the “City”), have determined to (i) 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, and finance other projects of the City approved by the City Council (collectively, the “Project”); and (ii) refinance all or a portion of the payments due pursuant to the Series 2010 City Lease, dated as of June 1, 2010, as amended by the First Amendment to Series 2010 City Lease, dated as of August 1, 2016 (as so amended, the “City Lease”), to the City of Yuma Municipal Property Corporation (the “Corporation”), with respect to refinancing the costs of construction of a municipal administration complex and the acquisition of property and street improvements (collectively with the Project, the “Projects”); and

WHEREAS, the payments due from the City pursuant to the City Lease secure certain payments due with respect to the Corporation’s Municipal Facilities Revenue Refunding Bonds, Series 2010B (the amounts of such bonds to be refunded as provided herein are referred to herein as the “Bonds Being Refunded”); and

WHEREAS, the City Council, upon due investigation and consideration, have found and determined that in order to finance and refinance, as applicable, the costs of the Projects it is desirable and necessary to lease-purchase certain property in the City, to be determined as provided herein (the “Property”); and

WHEREAS, in connection with the financing and refinancing, as applicable, of the Projects, it is necessary that the City enter into a ground lease, to be dated as of the first day of the month of the dated date of the hereinafter defined Obligations (the “Ground Lease”), with respect to the Property with a trustee bank to be determined as provided herein (the “Trustee”), as 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, to be dated as of the first day of the month of the dated date of the Obligations (the “Lease Agreement”), in each case as determined by the hereinafter defined Authorized Representatives; and

WHEREAS, as the term of each of the Ground Lease and the Lease Agreement will exceed five years, the City Council is acting by this Ordinance as required by Article VII, Section 6(g)(2) of the Charter of the City; and

WHEREAS, in connection with the Lease Agreement, the City Council has deemed it necessary and desirable to provide for the sale and execution and delivery of pledged revenue and/or revenue refunding obligations, in one or more series, as provided for by this Ordinance (the “Obligations”), evidencing proportionate interests of the owners of the Obligations in lease payments to be made by the City pursuant to the Lease Agreement; and

WHEREAS, the Obligations will be executed and delivered pursuant to a trust agreement, to be dated as of the first day of the month of the dated date of the Obligations (the “Trust Agreement”), between the Trustee and the City; and

WHEREAS, the lease payments represented by the Obligations will be secured by amounts received under the Lease Agreement pursuant to which the City will pledge the Excise Tax Revenue Pledged Revenue (as defined in the Trust Agreement); and

WHEREAS, the City Council will receive a proposal from Stifel, Nicolaus & Company, Incorporated, serving in the capacity of and designated as the underwriter (the “Underwriter”), and not acting as a municipal advisor as defined in the Registration of Municipal Advisors Rule of the Securities and Exchange Commission, and has determined that the Obligations should be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the Authorized Representatives; and

WHEREAS, pursuant to the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (the “Regulations”), issuers of obligations, the interest on which is intended to be excludable from the gross income of the owners thereof for federal income tax purposes (the “Tax-Exempt Obligations”), are required to establish policies and procedures to ensure compliance with the applicable provisions of the Code and the Regulations; and

WHEREAS, the City Council hereby determines that procedures should be adopted in order to ensure that Tax-Exempt Obligations issued by the City comply with the provisions of the Code and the Regulations (the “Tax Compliance Procedures”); and

WHEREAS, pursuant to Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “Rule”), Participating Underwriters (as defined in the Rule) are required to reasonably determine that issuers have entered into written undertakings to make ongoing disclosure in connection with offerings of obligations to investors subject to the Rule, including with respect to the Obligations, to be dated the date of the Obligations (the “Undertaking”); and

WHEREAS, the City Council hereby determines that procedures should be adopted in order to document practices and describe various procedures for preparing and disseminating such ongoing disclosure for the benefit of the holders of obligations of the City and to assist the Participating Underwriters in complying with the Rule and such written undertakings (together with the Tax Compliance Procedures, the “Procedures”); and

WHEREAS, there have been presented to the City Council at the meetings at which this Ordinance is being introduced and adopted, and there are on file with the City Clerk, the proposed forms of: (1) the Ground Lease; (2) the Lease Agreement; (3) the Trust Agreement; (4) the Undertaking; (5) an obligation purchase contract, to be dated the date of the sale of the Obligations (the “Purchase Contract”), by and between the City and the Underwriter, for the purchase of the Obligations; (6) a preliminary official statement, to be dated the date of the dissemination thereof (the “Preliminary Official Statement”), relating to the Obligations, which, as to be revised after the sale of the Obligations, shall constitute the Official Statement, to be dated the date of sale of the Obligations (the “Official Statement”), relating to the Obligations; and (7) the Procedures; and

WHEREAS, financing and refinancing, as applicable, the costs of the Projects pursuant to the Lease Agreement is in furtherance of the purposes of the City and is in the public interest;

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

SECTION 1: (a) The execution and delivery of the Obligations by the Trustee is approved.

(b) The City Administrator, the Director of Financial Services of the City or the designees of any of them (collectively, the “Authorized Representatives”) are authorized to determine on behalf of the City: (1) the property which will comprise the Property for purposes of the Ground Lease and the Lease Agreement; (2) the entity to serve as Trustee, “Lessee” and “Lessor” with respect to the Trust Agreement, the Ground Lease and the Lease Agreement, respectively; (3) the series name and designation of each series of the Obligations; (4) whether the interest on each series of the Obligations will be excluded from gross income for federal income tax purposes; (5) the aggregate principal amount of the Obligations (but not to exceed in the aggregate for all series of the Obligations \$173,000,000); (6) the date the Obligations are to be sold to the Underwriter; (7) the date the Obligations are to be dated; (8) the dates on which interest on the Obligations is to be payable and the interest rates per annum the Obligations are to bear (but not to exceed 3.90% per annum); (9) the dates the Obligations are to become payable (but not later than a final stated payment date in 2039), the principal amounts to become payable on such dates and the provisions for prepayment thereof in advance of such dates; (10) the provisions for redemption of the Bonds Being Refunded (including the method of redemption and the amounts and dates of redemption thereof); and (11) the terms upon which the Obligations are to be sold to the Underwriter (including determinations of price, original issue discount and premium and underwriting compensation); provided, however, that the foregoing determinations shall result in a present value savings, net of all costs with respect to the refunding of the Bonds Being Refunded, of at least three percent (3.00%) of the principal amount of the Bonds Being Refunded.

(c) The Authorized Representatives are further authorized to determine on behalf of the City whether the purchase of an insurance policy securing payment of the Obligations would be advantageous to the City or the terms of the financing represented by the Obligations. The Authorized Representatives are authorized to negotiate with and secure, with proceeds of the Obligations or otherwise, such an insurance policy, 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 Authorized Representatives are authorized to execute and deliver any instruments or documents necessary in connection with the purchase of any such insurance policy, including those making provision for the repayment of amounts advanced by the institutions issuing such insurance policy.

(d) The form and other terms of the Obligations, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are approved.

(e) The Procedures are hereby adopted to establish policies and procedures related to the purposes set forth in the Recitals hereto. The right to use discretion as necessary and appropriate to make exceptions or request additional provisions with respect to the Procedures as may be determined is hereby reserved. The right to change the Procedures from time to time, without notice, is also reserved.

SECTION 2: The Obligations are to be sold to the Underwriter pursuant to the terms of the Purchase Contract, such terms to be determined as provided hereinabove.

SECTION 3: The forms, terms and provisions of the Ground Lease, the Lease Agreement, the Trust Agreement, the Purchase Contract and the Undertaking, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meetings of the City Council at which this Ordinance is being introduced and adopted, and are on file with the City Clerk, are approved, with such final provisions, insertions, deletions and changes as determined as provided hereinabove, and shall be approved by the Authorized Representatives, the execution of each such document being conclusive evidence of such approval. The Authorized Representatives are hereby authorized to enter into, if necessary, an Escrow Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations (the "Escrow Trust Agreement"), with a trustee bank to be determined by the Authorized Representatives, as escrow trustee (the "Escrow Trustee"), in standard form, for the establishment of an escrow to pay principal of and interest on the Bonds Being Refunded and to refund the Bonds Being Refunded. The Authorized Representatives, and the Clerk of the City, where applicable, are authorized and directed, for and on behalf of the City, to execute and deliver and attest or approve the Ground Lease, the Lease Agreement, the Trust Agreement, the Escrow Trust Agreement, the Purchase Contract and the Undertaking, in each case as necessary and as applicable, and to take all action to carry out and comply with the terms of such documents.

SECTION 4: The distribution of the Preliminary Official Statement by the Underwriter is approved, and the 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 Authorized Representatives, is approved, and the Authorized Representatives are 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 the Rule.

SECTION 5: The Trustee (including in its capacity as Lessor and Lessee) and the Escrow Trustee are requested to take any and all action necessary in connection with the execution and delivery of the Ground Lease, the Lease Agreement, the Trust Agreement and the Escrow Trust Agreement and the sale and execution and delivery of the Obligations and the refunding of the Bonds Being Refunded and are further authorized and directed to take such action as may be reasonable for the administration of the trusts so held by them.

SECTION 6: The covenants and agreements contained in the Lease Agreement as to the pledge of and the lien on Excise Tax Revenue Pledged Revenue and the restriction on the issuance of further parity obligations secured by Excise Tax Revenue Pledged Revenue are approved and confirmed.

SECTION 7: The Authorized Representatives and other officers of the City, on behalf of the City, are authorized and directed, without further order of the City Council, to do all such acts and things and to execute and deliver all such certificates, proceedings, agreements and other documents as may be necessary or convenient to be executed and delivered on behalf of the City to evidence compliance with, or further the purposes of, all the terms and conditions of this Ordinance and the consummation of the transactions contemplated hereby and as may be necessary to carry out the terms and intent of this Ordinance.

SECTION 8: All actions of the officers and agents of the City which conform to the purposes and intent of this Ordinance and which further the sale and execution and delivery of the Obligations as contemplated by this Ordinance, whether heretofore or hereafter taken, are ratified, confirmed and approved.

SECTION 9: If any section, paragraph, clause or phrase of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Ordinance. All orders, resolutions and ordinances 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, resolution or ordinance or any part thereof.

SECTION 10: The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety of the City for the reason that the Obligations authorized herein must be sold immediately to secure the best, available economic terms therefor; an emergency is, therefor, declared to exist, and this Ordinance is enacted as an emergency and shall be in full force and effect immediately upon its passage by the City Council, as required by law, and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona and the Charter of the City. After any of the Obligations are delivered by the Trustee to the Underwriter and upon receipt of payment therefor, this Ordinance shall be and remain irrevocable until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

[Remainder of page left blank intentionally.]

Adopted this 16th day of December, 2020.

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney

CERTIFICATION

I hereby certify that the foregoing Ordinance No. O2020-027 was duly passed and adopted by the City Council of the City of Yuma, Arizona, at a regular meeting held on the 16th day of December 2020, and the vote was ____ ayes and ____ nays.

Lynda L. Bushong
City Clerk