

RESOLUTION NO. 1670

RESOLUTION DECLARING THE BOARD OF SUPERVISORS INTENTION TO ENTER INTO A LONG TERM OBLIGATION THAT IS NOT SECURED BY THE COUNTY'S FULL FAITH AND CREDIT; AUTHORIZING THE AWARD OF THE LEASE OF CERTAIN REAL PROPERTY TO THE HIGHEST BIDDER IN CONNECTION WITH THE FINANCING OF THE CONSTRUCTION OF COUNTY FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE, A LEASE-PURCHASE AGREEMENT, AN ESCROW AGREEMENT AND ANCILLARY DOCUMENTS; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, Yavapai County, Arizona (the "County") desires to finance the construction of a Camp Verde Superior Court building, a Juvenile Detention building, two buildings to provide office space for the Sheriff, Adult Probation, County Attorney, Public Defender and Public Fiduciary, and related improvements (the "Project") through the ground lease of two parcels of real property (the "Project Sites") and the leaseback of the Project Sites and the Project through a lease-purchase agreement; and

WHEREAS, the Board of Supervisors (the "Board") of the County did on March 17, 2008, hold a public hearing pursuant to the provisions of Arizona Revised Statutes Section 11-391 regarding the Project and the ground lease of the Project Sites and lease purchase acquisition of the Project; and

WHEREAS, notice of the hearing was given at least 15 days before the hearing by publication one time in *The Prescott Daily Courier*, posting on the County bulletin board, posting on the County's official website and delivery as a press release to print and electronic media; and

WHEREAS, the web posting included a link for submitting electronic comments to the Board; and

WHEREAS, at the hearing the Board presented an analysis of the need for the Project, the need to use financing through the ground lease and lease-purchase agreement and any other available options to accomplish the Project; and

WHEREAS, at the hearing and at the meeting at which this Resolution was adopted any member of the public was allowed to speak on the issue of incurring the obligations to finance the Project; and

WHEREAS, oral comments were received at the hearing and at the meeting at which this Resolution was adopted and electronic and written comments were received up until the adoption of this Resolution; and

WHEREAS, at least 15 days have elapsed from the date of the hearing; and

WHEREAS, the County has published and will publish a Notice of Proposed Lease of Land (the "Notice") and has otherwise complied or is complying with all legal requirements relating to the lease of the Project Sites; and

WHEREAS, the County will receive bids at public auction pursuant to the Notice for the ground lease of the Project Sites; and

WHEREAS, the County has selected Compass Bank to assist the County, directly or through a designee, an assignee or a lender group to be determined by Compass Bank and acceptable to the County (in any such case, the "Lessor"), in financing the Project, if the Lessor is the successful bidder for the ground lease of the Project Sites; and

WHEREAS, there have been placed on file with the County and presented to the Board the proposed forms of the following documents: (i) ground lease to be dated its date of execution and delivery (the "Ground Lease") by and between the County as ground lessor and the Lessor as ground lessee; (ii) a lease-purchase agreement to be dated its date of execution and delivery (the "Lease-Purchase Agreement") by and between the County, as lessee, and the Lessor, as lessor; (iii) an escrow agreement to be dated its date of execution and delivery (the "Escrow Agreement") by and among the County, the Lessor and an escrow agent acceptable to the Lessor and the County (the "Escrow Agent");

NOW, THEREFORE, the Board hereby finds and resolves as follows:

Section 1. The Board finds that there is a significant need for the Project and a need to use financing such as the Ground Lease and the Lease-Purchase Agreement for the Project.

Section 2. The Board finds that no other available options can accomplish the project in a manner more beneficial to the County.

Section 3. The Board hereby authorizes the incurring of the obligations represented by the Ground Lease and the Lease-Purchase Agreement to finance the Project.

Section 4. The principal amount of the obligation is \$50,000,000 and with interest estimated at \$27,857,485, the estimated total financing costs is \$77,857,485, although actual interest may differ from this estimate depending on many factors.

Section 5. It is advantageous for the County, in connection with the financing of the Project, to accept the highest bid to ground lease the Project Sites from the County pursuant to the terms as set forth in the Notice. The County Administrator is hereby authorized and directed to review all bids received and to accept the highest conforming bid for the ground lease of the Project Sites pursuant to the terms set forth in the Notice.

Section 6. The Board finds and determines that the financing of the costs of acquisition, construction and equipping of the Project pursuant to the terms of the Ground Lease and the Lease-Purchase Agreement is in furtherance of the purposes of the County and in the public interest. The principal amount of the financing shall not exceed \$50,000,000 and the interest rate shall be 4.41% or such other rate as is agreed to between the Lessor and the County Administrator in accordance with the Lessor's proposal, but in no event greater than 4.50%.

Section 7. The form, terms and provisions of the Ground Lease, the Lease-Purchase Agreement and the Escrow Agreement, in substantially the form of such documents (including the exhibits thereto) on file with the County are hereby approved, with such insertions, omissions and changes as shall be approved by the Chairman or any other member of the Board of Supervisors of the County or the County Administrator, the execution or acceptance of such documents being conclusive evidence of such approval and the performance by the County of the obligations

contained in such agreements are hereby authorized and approved. The Chairman or any other member of the Board of Supervisors of the County or the County Administrator are hereby authorized and directed finalize all terms and provisions of the financing and to execute and deliver the Ground Lease, the Lease-Purchase Agreement and the Escrow Agreement and any other certificates, agreements, instruments and receipts to complete the transactions contemplated by such agreements. The Chairman or any other member of the Board of Supervisors of the County or the County Administrator are hereby further authorized and directed to consider and approve, if appropriate, the designation of the actual Lessor and the Escrow Agent.

Section 8. All actions of the officers and agents of the County which conform to the purposes and intent of this Resolution and which further the lease-purchase transaction between the Lessor and the County as contemplated by this Resolution, whether heretofore or hereafter taken are hereby ratified, confirmed and approved, including without limitation the acceptance of rights in real property. The proper officers and agents of the County are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the County as may be necessary to carry out the terms and intent of this Resolution.

Section 9. The obligation of the County to make the lease payments pursuant to the Lease-Purchase Agreement does not constitute a general obligation or debt of the County, the State of Arizona or any political subdivision thereof for which the County, the State of Arizona or any political subdivision thereof is obligated to levy or pledge any form of *ad valorem* taxation; nor does the obligation to make such payments constitute a general obligation or debt of the County, the State of Arizona or any political subdivision thereof within the meaning of the Constitution of the State of Arizona, statutes thereof or otherwise. The Lease-Purchase Agreement and the obligation to make lease payments thereunder is subject to the annual approval and appropriation by the Board of Supervisors of the County.

Section 10. The County covenants and the appropriate officials of the County are hereby directed, to take all action required, or to refrain from taking any action prohibited, by the Internal Revenue Code of 1986, as amended and as supplemented by all applicable Treasury Regulations promulgated in connection with any applicable section thereof (collectively the "Code"), which would adversely affect in any respect the exclusion of the interest component of the payments under the Lease-Purchase Agreement from gross income for federal income tax purposes, including, particularly, but not by way of limitation, (i) to cause the Lease-Purchase Agreement to not be "private activity" bonds within the meaning of the Code (Section 141(a) of the Code), (ii) to cause the Lease-Purchase Agreement to not be "arbitrage bonds" within the meaning of the Code (Section 148(a) of the Code) or to be valid "reimbursement bonds" for purposes of the Code if proceeds of the Lease-Purchase Agreement are to be allocated to reimburse an expenditure that was paid prior to the date of the Lease-Purchase Agreement (Section 1.103.18 of the Treasury Regulations), (iii) to comply with the provisions of the Code relating to rebate (Section 148(f) of the Code), (iv) to cause the Lease-Purchase Agreement not to be "federally guaranteed" within the meaning of the Code (Section 149(b) of the Code), (v) to make the required information filing pursuant to Code (Section 149(e) of the Code), and (vi) to make the required expenditures so that the Lease-Purchase Agreement shall not be deemed to be "hedge bonds" within the meaning of the Code (Section 149(g) of the Code).

Section 11. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this resolution.

Section 12. All orders, resolutions and orders of this Board 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 or resolution or any part thereof.

Section 13. This resolution shall be in full force and effect from and after its passage and approval by this Board.

PASSED AND ADOPTED on April 7, 2008.

Chairman

CERTIFICATION

I, Julie Ayers, the Clerk of the Board of Supervisors Yavapai County, Arizona, do hereby certify that the above and foregoing resolution was duly passed by the Board of Supervisors of the County at a regular meeting held on April 7, 2008, and the vote was ____ aye's and ____ nay's and that ____ Board Members were present thereat.

DATED: _____

Clerk