

RESOLUTION NO. 1755

A RESOLUTION OF THE BOARD OF SUPERVISORS OF YAVAPAI COUNTY FINDING THAT THE COUNTY WILL NOT EXPEND EIGHTY FIVE PERCENT (85%) OF THE NET SALE PROCEEDS RECEIVED BY THE COUNTY FROM THE LEASE-PURCHASE AGREEMENT BETWEEN THE COUNTY AND BANK OF AMERICA N.A., DATED MAY 15, 2008 WITHIN THE THREE YEAR TEMPORARY PERIOD PERTAINING TO SUCH AGREEMENT AND DETERMINING HOW THE PROCEEDS OF SUCH AGREEMENT WILL BE ADMINISTERED FROM AND AFTER MAY 14, 2011.

WHEREAS, on May 15, 2008 Yavapai County (the "*County*") entered into a lease purchase agreement (the "*Agreement*") with Bank of America N.A. (the "*Bank*") the proceeds of which were to be used as follows:

Construction of the Verde Valley Superior Court Building and construction of a Juvenile Detention facility at Prescott Lakes;

Construction at Prescott Lakes for County Sheriff, Adult Probation, County Attorney, Public Fiduciary and the Public Defender; and

WHEREAS, on May 15, 2008 the County reasonably expected to expend 85% of the Net Sale Proceeds (as defined in the United States Internal Revenue Code) of the Agreement within the three year period commencing May 15, 2008 and terminating May 14, 2011;

WHEREAS, by June of 2009 it became evident that the then-present economic circumstances were such that it was not in the County's best interest to be obligated to repay the full \$50,000,000 that was initially paid to the County in exchange for the execution and delivery of the Agreement and related documents by the County; and

WHEREAS, on June 15, 2009, the County and the Bank entered into a modification of the Agreement, which permitted the County to prepay twenty five million dollars (\$25,000,000), or one-half of the total original amount of the Agreement; and

WHEREAS, on June 15, 2009, the County repaid \$25,000,000 of the agreement; and

WHEREAS, on June 15, 2009 the County still reasonably expected to expend 85% of the remaining Net Sale Proceeds of the Agreement (reflecting the deduction of the twenty five million dollars that had been repaid to the Bank) within the three year period commencing May 15, 2008 and terminating May 14, 2011; and

WHEREAS, the scope of the project to be constructed with the proceeds from the agreement was reduced at the time of the modification of the Agreement and repayment of the \$25,000,000 to include only the construction of the Verde Valley Superior Court Building and construction of a Juvenile Detention facility at Prescott Lakes; and

WHEREAS, construction of the Verde Valley Superior Court Building has been completed; and

WHEREAS, the County has encountered delays in the final preparation of the plans and specifications for the Juvenile Detention Center and now expects to receive the plans and specifications for the Juvenile Detention Center in a form sufficient to call for construction bids during November, 2010, to receive bids for construction of the Juvenile Detention Center in January, 2010 and to complete the construction and remodeling of the Juvenile Detention Center by June 2012.

WHEREAS, the Board of Supervisors is advised that, even with the prepayment of one-half of the Agreement, more than eighty five percent (85%) of the original Net Sale Proceeds of the Agreement will not be expended by May 14, 2011; and

WHEREAS, the County now reasonably expects to complete the construction and remodeling of the Juvenile Center and expend the balance of the original Net Sale Proceeds of the Agreement to construct the Juvenile Detention Center on or before June, 2012; and

WHEREAS, by this resolution this Board of Supervisors intends to instruct the County staff and the escrow agent for the Agreement as to the investment and use of investment income on the remaining Net Sale Proceeds of the Agreement.

NOW THEREFORE BE RESOLVED BY THE BOARD OF SUPERVISORS OF YAVAPAI COUNTY, ARIZONA, as follows:

Section 1. Finding and determination. It is hereby found and determined that the County will not expend eighty five percent (85%) of the Net Sale Proceeds of the Agreement on or before May 14, 2011 (the end of the three year temporary period). It is further found and determined that the County will not receive the final plans and specifications for the Juvenile Detention Center until the month of November, 2010 and that the County now reasonably expects, that if it does receive the final plans and specifications by November, 2010, it will receive bids for the construction of the Juvenile Detention Center during January, 2011, and if an acceptable bid is received, construction will start during February, 2011 and construction and remodeling of the Juvenile Center will be complete on or about June, 2012.

Section 2. Directions to staff and Escrow Agent. From and after May 14, 2011, the then-remaining Net Sale Proceeds of the Agreement will not be invested at a yield that is in excess of the yield on the Agreement, as shown on the Internal Revenue Service Form 8038G, dated May 15, 2008 (4.45%). To achieve this goal, the County staff or the Escrow Agent will cause all investments of Net Sale Proceeds of the Agreement that are then and thereafter unexpended to either be invested at a yield no higher than the yield on the Agreement or to cause yield reduction payments (as defined in the Internal Revenue Service Regulations concerning limitation of yield). Such limitation, or the requirement to make yield reduction payments, shall be and remain in effect until all of the proceeds of the Agreement are expended. Notwithstanding the foregoing, the yield restrictions mandated by this Section shall not apply as to any portion of the Net Sale Proceeds of the Agreement that are invested in tax-exempt obligations, as provided for the investment of sinking funds pursuant to Arizona Revised Statutes

§ 35-313(A)(3). Notwithstanding the foregoing, the County Finance Director will retain an arbitrage rebate consultant to review and make a report to the Finance Director and this board as near as possible to May 14, 2011, that confirms the yield on the Agreement and determines how much, if any, Arbitrage Rebate was owed to the United States on May 14, 2011. Such consultant shall also provide instructions as to the investment of the proceeds of the Agreement on and after May 14, 2011, in order for the County to preserve the tax-exempt status of the Agreement.

ADOPTED AND APPROVED this 4th day of October, 2010.

By: /s/ A.G. "Chip" Davis
Chairman, Board of Supervisors

ATTEST:

By: Julie Ayers
Clerk, Board of Supervisors

APPROVED AS TO FORM:
GUST ROSENFELD, PLC

Special Counsel