

RESOLUTION

A RESOLUTION CONCERNING THE FINANCING OF THE CONSTRUCTION AND EQUIPMENT OF A DORMITORY ON THE NORTHERN WYOMING COMMUNITY COLLEGE DISTRICT/GILLETTE COLLEGE CAMPUS, TO BE LEASED BY THE CITY OF GILLETTE, WYOMING, FROM THE GILLETTE COLLEGE STUDENT HOUSING PHASE II STATUTORY TRUST; AUTHORIZING AND APPROVING THE SITE LEASE, THE LEASE PURCHASE AGREEMENT, A PURCHASER AGREEMENT, WRITTEN PROCEDURES RELATING TO TAX-EXEMPT OBLIGATIONS OF THE CITY, AND RELATED DOCUMENTS AND TRANSACTIONS; RATIFYING ACTION PREVIOUSLY TAKEN; PROVIDING OTHER MATTERS RELATING THERETO; AND PROVIDING THE EFFECTIVE DATE THEREOF.

WHEREAS, the City of Gillette, Wyoming (the “City”) is a duly and regularly created, organized and existing municipality of the first class and body corporate and politic, existing as such under and by virtue of the Constitution and laws of the State of Wyoming (the “State”), and a “political subdivision” within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, pursuant to Wyo. Stat. § 15-1-103, the governing body of the City (the “Governing Body”) has a variety of powers including, but not limited to, the following: (iv) sell, convey and lease any estate owned and make any orders respecting it deemed to be in their best interest; and (v) perform all acts in relation to the property and concerns of the City necessary to the exercise of its corporate powers; and

WHEREAS, Wyo. Stat. § 18-2-108 provides in part as follows:

- (a) Each ... municipality or other special district, or any two (2) or more of them may enter into contracts or agreements to jointly establish and operate ... community college facilities ...;
- (b) Each ... municipality or other special district, or any two (2) or more of them may enter into contracts or agreements to jointly purchase, lease, construct and operate facilities and equipment used in joint operations permitted under this section and may issue their bonds for such purpose as provided by law;
- (c) The costs of the joint operations and joint use of machinery and facilities specified in this section shall be shared among the contracting parties as determined by their governing boards but no cost shall be incurred nor monies expended by any contracting party which will be in excess of limits prescribed by law for expenditures by it; and

WHEREAS, the City and the Northern Wyoming Community College District/Gillette College (the “College”) have entered into a Memorandum of Understanding, dated as of December 16, 2014 (the “MOU”) with respect to the financing and construction of a building (approximately 50,000 sf) to provide living quarters for approximately 140 students, a resident dining hall with kitchen facilities, laundry facilities, office space for two employees, classroom/study room, custodial and storage areas, associated site work and landscaping (the “Project”), said Project to be located on property owned by the City (the “Site”). The layout of the building and parking will correspond with the latest Gillette College Master Plan; and

WHEREAS, for purposes of the Project, the City, as landlord, desires to enter into that certain Site Lease dated as of October 22, 2015 (the "Site Lease") with the Gillette College Student Housing Phase II Statutory Trust, a Wyoming statutory trust (the "Trust") acting by and through Zions First National Bank, as trustee (the "Trustee") under a Declaration of Statutory Trust dated as of October 22, 2015 (the "Declaration of Statutory Trust"), as tenant, whereby the City will lease the Site to the Trust. For purposes of financing the Project, the City will enter into an annually terminable Lease Purchase Agreement dated as of October 22, 2015, with the Trust (the "Lease"), under which the City, on behalf of the Trust, has agreed to construct and equip the Project, and has leased from the Trust the Site and the Project (collectively, the "Leased Property"); and

WHEREAS, to finance the costs of the Project, there is being executed and delivered, pursuant to the Declaration of Statutory Trust, a single Certificate of Participation dated October 22, 2015, in the Principal Component of \$_____ (the "Certificate"), evidencing an undivided interest in the Lease and the Revenues (as defined in the Lease); and

WHEREAS, the Base Rentals and Additional Rentals (as defined in the Lease) payable by the City under the Lease shall constitute currently appropriated expenditures of the City and shall not constitute a general obligation or other indebtedness of the City or a mandatory charge or requirement against the City in any Fiscal Year (as defined in the Lease) beyond the then current Fiscal Year; and

WHEREAS, the City and the Trustee have now received from Compass Mortgage Corporation (the "Purchaser"), an offer to purchase, at private sale, the Certificate in accordance with its Purchaser Agreement dated as of October 20, 2015 (the "Purchaser Agreement"); and

WHEREAS, the Governing Body has determined and hereby declares that it is in the best interests of the City that the City enter into the Site Lease and the Lease and accept such Purchaser Agreement subject to the terms and conditions stated therein; and

WHEREAS, there have been filed with the Governing Body at this meeting (i) the proposed Declaration of Statutory Trust; (ii) the proposed Site Lease; (iii) the proposed Lease; (iv) the Purchaser Agreement; along with (v) Post Issuance Compliance Policies and Procedures for Bonds and other obligations of the City (the "Written Procedures");

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GILLETTE, WYOMING:

Section 1. Ratification of Actions; Meanings of Terms. All action (not inconsistent with the provisions of this Resolution) heretofore taken by the Governing Body (both officers and members) and the officers and employees of the City, directed toward the construction and equipping of the Project is hereby ratified, approved and confirmed. Unless otherwise noted, capitalized terms used hereinafter shall have the meanings assigned to them in the Declaration of Statutory Trust, the Site Lease and the Lease.

Section 2. Finding as to Governmental Purpose. The construction and equipping of the Project, the leasing of the Site to the Trust and the leasing of the Leased Property from the Trust are necessary and in the best interest of the City, and the Governing Body hereby approves the same.

Section 3. Finding as to Litigation. The Governing Body finds and determines that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or to the knowledge of the City threatened against the City (or, also to the City's knowledge, any basis therefor) wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Declaration of Statutory Trust, the Site Lease, the Lease, the Purchaser Agreement, the Written Procedures or other documents related to the Project

(collectively, the Declaration of Statutory Trust, the Site Lease, the Lease, the Purchaser Agreement, the Written Procedures and any other documents related to the Project are the “Related Documents”), the ability of the City to make payments under the Lease or its ability to perform its other obligations under the Lease, or the validity or enforceability of the Related Documents.

Section 4. Acknowledgment and Approval of Documents. The Governing Body hereby approves the Site Lease, the Lease, the Purchaser Agreement and the Written Procedures and acknowledges the Declaration of Statutory Trust. The City shall enter into the Site Lease, the Lease and the Written Procedures in substantially the forms of such documents presented to the Governing Body at this meeting, with such changes therein, if any, that are approved by the City Attorney. The City shall accept the Purchaser Agreement as received from the Purchaser. The Mayor and the City Clerk are hereby authorized and directed to execute the Site Lease, the Lease and the Written Procedures.

Section 5. Acknowledgment of Certificate. The form, terms, and provisions of the Certificate, in substantially the form contained in Declaration of Statutory Trust, are hereby acknowledged.

Section 7. No Indebtedness. The Lease does not constitute a general obligation or a debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory debt limitation. The Lease does not directly or indirectly obligate the City to make any payments beyond those appropriated for any Fiscal Year in which the Lease shall be in effect. All payment obligations of the City under the Lease, including, without limitation, the obligation of the City to pay Base Rentals, are from year to year only and do not constitute a mandatory payment obligation of the City in any Fiscal Year beyond a Fiscal Year in which the Lease shall be in effect. The Lease is subject to annual renewal at the option of the City and will be terminated upon the occurrence of an Event of Nonappropriation or Event of Default. In such event, all payments from the City under the Lease will terminate.

Section 8. Base Rentals; Purchase of Project. The Base Rentals shall be payable during the Lease Term on the dates and in the amounts as set forth in the Lease. The Governing Body hereby determines and declares that said Base Rentals do not exceed a reasonable amount so as to place the City under an economic compulsion to renew the Lease or to place the City under an economic compulsion to exercise its option to purchase the Project pursuant to the Lease.

Section 9. Authorization and Execution of Other Documents. The officers and members of the Governing Body and the officers and employees of the City are authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Resolution.

Section 10. Severability. 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, the intent being that the invalid or unenforceable section, paragraph, clause, or provision shall be severable from the remaining sections, paragraphs, clauses, or provisions.

Section 11. Repealer. All bylaws, orders, and resolutions, or parts thereof, inconsistent with this Resolution or with any of the documents hereby approved, are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed as reviving any bylaw, order, or resolution, or part thereof.

Section 12. Effective Date. This Resolution shall be in full force and effect upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED this 20th day of October, 2015.

CITY OF GILLETTE, WYOMING

Mayor

ATTESTED:

City Clerk