

# ORDINANCE RECORD

No. 728-REDFIELD & COMPANY INC., OMAHA

## ORDINANCE NO. 1322

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING AND APPROVING A LEASE-PURCHASE TRANSACTION WITH FIRST NATIONAL BANK OF OMAHA (OR SUCH OTHER BANK OR TRUST COMPANY AS MAY BE DETERMINED), THE PROCEEDS OF WHICH WILL BE USED TO PAY THE COSTS OF REFUNDING CERTAIN OUTSTANDING INDEBTEDNESS WHICH WAS ORIGINALLY ISSUED TO FINANCE A FIRE STATION FACILITY AND RELATED IMPROVEMENTS FOR THE CITY; APPROVING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$3,200,000 PRINCIPAL AMOUNT OF CERTIFICATES OF PARTICIPATION IN SUCH LEASE; FIXING IN PART AND PROVIDING FOR THE FIXING IN PART OF CERTAIN PROVISIONS OF THE LEASE AND RELATED DOCUMENTS; AND RELATED MATTERS.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AS FOLLOWS:

Section 1. The Mayor and City Council ("Council") of The City of La Vista, Nebraska (the "City") hereby finds and determines as follows:

(a) The City previously determined that it was necessary, desirable, advisable and in the best interests of the City that the City acquire a fire station facility and related improvements, fixtures, furniture and equipment for use by the City (collectively, the "Project"). The Project has been constructed and is currently financed through the issuance of Refunding Bonds (La Vista Fire Station Project), Series 2011, date of original issue - July 15, 2011, by the City of La Vista Facilities Corporation (the "Corporation") and currently outstanding in the principal amount of \$3,095,000 (the "Outstanding Bonds"). The City is acquiring the Project through a Lease-Purchase Agreement dated as of December 1, 2005, as supplemented and amended by a First Amendment to Lease-Purchase Agreement dated as of July 1, 2011, by and between the Corporation as Lessor and the City as Lessee. Since the issuance of the Outstanding Bonds, interest rates have declined so that by taking up and paying off the Outstanding Bonds through entering into the Lease and delivery of the Certificates authorized herein, savings in interest costs can be made to ultimately reduce the City's cost of acquisition of the Project.

(b) The City has carefully considered the options available to it with respect to refinancing the acquisition of the Project.

(c) In order to facilitate the foregoing and to pay the costs thereof, it is necessary and desirable for the City to take the following actions:

1. Enter into an Assignment, License and Easement (the "License and Easement") between the City, as grantor, and First National Bank of Omaha (or such other bank or trust company as may be determined by an Authorized Officer (defined herein), the "Trustee"), as grantee, pursuant to which the City (a) assigns its rights in the Project to the Trustee for the term of the Lease, and (b) grants a license and easement with respect to the Real Property (as defined in the Lease) to the Trustee on the terms and conditions set forth therein, the form of which is presented herewith;

2. Enter into a Lease-Purchase Agreement (the "Lease") with the Trustee, pursuant to which the City, as lessee, will lease the Project from the Trustee, as lessor, with an option to purchase the Trustee's interest in the Project and pursuant to which the parties shall agree that the Project shall remain the personal property of the Trustee during the term of the Lease, the form of which is presented herewith;

3. Execute and deliver a Tax Compliance Agreement (the "Tax Agreement") pursuant to which the City makes certain representations and covenants related to the exclusion of the interest portions of basic rent under the Lease from gross income for purposes of federal income taxation, in a form as approved by an Authorized Officer;

4. Approve a Declaration of Trust (the "Declaration of Trust") by the Trustee, pursuant to which Certificates of Participation, Series 2018 (the "Certificates of Participation" or "Certificates"), evidencing proportionate interests

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of the owners thereof in basic rent payments to be made by the City under the Lease, will be executed and delivered, the form of which is presented herewith;

5. Approve an Official Statement respecting the Certificates of Participation, to be in substantially the same form as the Preliminary Official Statement respecting the Certificates of Participation, in a form as approved by an Authorized Officer (the "Preliminary Official Statement," and together, the "Official Statement"); and

6. Direct the call of the Outstanding Bonds for redemption on a date (the "Redemption Date") to be determined by an Authorized Officer and take any and all actions and execute and deliver any and all documents or notices in connection therewith as one or more Authorized Officers deem necessary or appropriate.

The License and Easement, the Lease and the Tax Agreement are referred to together herein as the "City Documents."

Section 2. The City Documents and the Declaration of Trust are hereby approved in substantially the forms presented herewith or in such forms as approved by an Authorized Officer, with such changes therein as are approved by the Mayor, City Administrator or City Clerk (each, an "Authorized Officer").

The Authorized Officers, or each individually, are hereby authorized and directed to determine (a) the stated principal amount of the Lease, which shall not exceed \$3,200,000, provided, however, the principal amount may be increased to account for any net original issue discount on the sale price of the Certificates, (b) the principal installments to be due thereunder, (c) the final maturity of the Lease, which shall not be later than December 15, 2026, (d) the rate or rates of interest to be borne by each principal maturity, provided that the City realize net present value savings from the issuance of the Certificates, (e) the prepayment provisions and (f) the Redemption Date of the Outstanding Bonds and other terms, conditions and documentation of such redemption. The Authorized Officers, or each individually, are hereby authorized to make such changes, additions or deletions with respect to the Lease as may be in the best interests of the City prior to the signing thereof. An Authorized Officer's execution of the City Documents will be conclusive evidence of such approval.

Each Authorized Officer is hereby authorized and directed to approve the form of, execute and deliver, or cause to be executed and delivered, the City Documents and to approve changes to the Declaration of Trust on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to affix the City's seal to the City Documents and attest such seal.

The Authorized Officers are each hereby authorized to cause the Outstanding Bonds to be called for redemption on the Redemption Date. Each Authorized Officer is hereby authorized to do any and all things and execute and deliver any and all documents deemed by them to be necessary or appropriate in connection with the redemption of the Outstanding Bonds.

Section 3. The Authorized Officers are each individually authorized to approve, deliver and deem final a preliminary Official Statement and final Official Statement and to distribute such documents to investors and the public.

Section 4. The Certificates shall be sold with a maximum underwriting discount of 0.75% of the stated principal amount of the Certificates to D.A. Davidson & Co., the underwriter thereof (the "Underwriter") pursuant to a Certificate Purchase Agreement between the City and the Underwriter with respect to the Certificates. The Authorized Officers are hereby authorized to enter into a Certificate Purchase Agreement, in such form as one or more Authorized Officers shall approve as being in the best interests of the City.

Section 5. Without in any way limiting the power, authority or discretion elsewhere herein granted or delegated, the City Council hereby (a) authorizes and directs the Authorized Officers (or each individually) and all other officers, officials, employees and agents of the City to carry out or cause to be carried out, and to perform such obligations of the City and such other actions as they, or any of them, in consultation with special tax counsel, the Lessor and its counsel and the Underwriter,

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shall consider necessary, advisable, desirable or appropriate in connection with this Ordinance, including, without limitation, the execution and delivery of all related documents, instruments, certifications and opinions, and (b) delegates, authorizes and directs to the Authorized Officers, or each individually, the right, power and authority to exercise his or her independent judgment and absolute discretion in (1) determining and finalizing the terms and provisions of the Lease and the Certificates not specifically set forth in this Ordinance and (2) the taking of all actions and the making of all arrangements necessary, proper, appropriate, advisable or desirable in order to effectuate the execution and delivery of the City Documents, the issuance, sale and delivery of the Certificates and the payment and redemption of the Outstanding Bonds. The execution and delivery by the Authorized Officers, or each individually, or by any such other officers, officials, employees or agents of the City of any such documents, instruments, certifications and opinions, or the doing by them of any act in connection with any of the matters that are the subject of this Ordinance, shall constitute conclusive evidence of both the City's and their approval of the terms, provisions and contents thereof and of all changes, modifications, amendments, revisions and alterations made therein and shall conclusively establish their absolute, unconditional and irrevocable authority with respect thereto from the City and the authorization, approval and ratification by the City of the documents, instruments, certifications and opinions so executed and the actions so taken.

All actions heretofore taken by the Authorized Officers and all other officers, officials, employees and agents of the City including, without limitation, the expenditure of funds and the selection, appointment and employment of special tax counsel, financial advisors, and other agents in connection with the execution and delivery of the City Documents and the issuance, sale and delivery of the Certificates and the redemption of the Outstanding Bonds, together with all other actions taken in connection with any of the matters that are the subject hereof, are in all respects hereby authorized, adopted, specified, accepted, ratified, approved and confirmed.

Section 6. The provisions of this Ordinance, of any supplemental ordinance, and of any resolutions or other proceedings providing for the execution and delivery of the City Documents, the sale of the Certificates and the redemption of the Outstanding Bonds and the terms and provisions thereof shall constitute a contract between the City, the Lessor and the registered owners of the Certificates, and the provisions thereof shall be enforceable by any owner of a Certificate for the equal benefit and protection of all such owners similarly situated, by mandamus, accounting, mandatory injunction or any other suit, action or proceeding at law or in equity that is presently or may hereafter be authorized under the laws of the State of Nebraska (the "State") in any court of competent jurisdiction. Such contract is made under and is to be construed in accordance with the laws of the State.

After the execution and delivery of the City Documents, and the issuance, sale and delivery of the Certificates, this Ordinance and any supplemental ordinance shall not be subject to repeal, but shall be subject to modification or amendment only to the extent and in the manner provided for in this Ordinance.

Section 7. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance, the City Documents or the Certificates is intended or should be construed to confer upon or give to any person other than the City, the Trustee and the registered owners of the Certificates, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, lease or provision herein contained. The Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the City, the Lessor and the registered owners from time to time of the Certificates as herein and therein provided.

Section 8. No officer or employee of the City shall be individually or personally liable for the performance of any duties or obligations under the City Documents or the payment of the principal of or interest on any Certificate. Nothing herein contained shall, however, relieve any such officer or employee from the performance of any duty provided or required by law.

Section 9. Whenever this Ordinance or the City Documents requires any action to be taken on a Saturday, Sunday or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance or the City

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Documents the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

Section 10. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such lease or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the City Documents, but the Lessor and the registered owners of the Certificates shall retain all the rights and benefits afforded to them hereunder and under the City Documents or any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatsoever.

Section 11. This Ordinance shall be construed and interpreted in accordance with the laws of the State. All suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State except to the extent necessary for enforcement, by any trustee or receiver appointed by or pursuant to the provisions of this Ordinance, or remedies under this Ordinance.

Section 12. Any ordinance of the City, and any part of any ordinance or resolution, inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

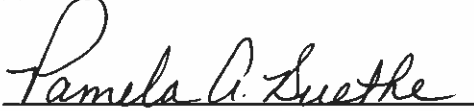
Section 13. This ordinance shall take effect and be in force from and after its passage and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 17TH DAY OF JULY, 2018.

CITY OF LA VISTA

  
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Douglas Kindig, Mayor

ATTEST:

  
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Pamela A. Buethe, CMC  
City Clerk

[SEAL]