

City of Scottsbluff, Nebraska

Monday, May 4, 2015

Regular Meeting

Item Reconvene1

Council to consider an Ordinance authorizing the City of Scottsbluff to issue \$3,850,000.00 principal amount of Lease Rental Revenue and Refunding Bonds, and authorize the Mayor to sign additional documents as needed for the issuance.

Minutes: Bond will provide payment and redemption of the Corporation's Lease Rental Revenue Bonds Series 2009 and Series 2010, and a City of Scottsbluff project.

Staff Contact: Renae Griffiths, Finance Director

CITY OF SCOTTSBLUFF, NEBRASKA

ORDINANCE NO. ____

AN ORDINANCE AUTHORIZING THE CITY OF SCOTTSBLUFF, NEBRASKA TO CONVEY TO THE CITY OF SCOTTSBLUFF LEASING CORPORATION CERTAIN ADDITIONAL REAL ESTATE OF THE CITY; APPROVING THE ISSUANCE OF NOT TO EXCEED \$3,850,000 PRINCIPAL AMOUNT OF TAX SUPPORTED LEASE RENTAL REVENUE AND REFUNDING BONDS IN ONE OR MORE SERIES BY THE CITY OF SCOTTSBLUFF LEASING CORPORATION, FOR THE PURPOSE OF PROVIDING FUNDS TO (1) PROVIDE FOR THE PAYMENT AND REDEMPTION OF \$2,205,000 AGGREGATE PRINCIPAL AMOUNT OF THE CORPORATION'S TAX SUPPORTED LEASE RENTAL REVENUE AND REFUNDING BONDS, SERIES 2009 AND \$1,285,000 AGGREGATE PRINCIPAL AMOUNT OF THE CORPORATION'S LEASE RENTAL REVENUE BONDS, SERIES 2010, UPON THE SATISFACTION OF CERTAIN CONDITIONS, AND (2) PAY THE COSTS OF A PROJECT FOR THE CITY INVOLVING SUCH REAL ESTATE; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

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

FINDINGS AND DETERMINATIONS

The Mayor and Council (the "**Council**") of the City of Scottsbluff, Nebraska (the "**City**"), hereby find and determine that:

1. The City is authorized pursuant to Section 19-2421, Reissue Revised Statutes of Nebraska, as amended (the "**Act**"), to enter into contracts for the lease of real or personal property for any purpose for which the City is authorized by law to purchase property or construct improvements, which contracts are not restricted to a single year, and may provide for the purchase of the property in installment payments.

2. The City of Scottsbluff Leasing Corporation (the "**Corporation**"), is a nonprofit corporation duly organized and existing under the Nebraska Nonprofit Corporation Act, Chapter 21, Article 19, Reissue Revised Statutes of Nebraska, as amended, for the purpose of acquiring property of any kind and nature, usable or useful to the City in performing its governmental functions and leasing the same to the City.

3. (a) Pursuant to a Trust Indenture Supplement Number One dated as of September 2, 2009 (the "**2009 Indenture**") between the Corporation and U.S. Bank National Association, trustee (the "**2009 Trustee**") the Corporation has heretofore issued \$4,005,000 principal amount Lease Rental Revenue and Refunding Bonds, Series 2009, dated the date of delivery (September 2, 2009) thereof (the "**2009 Bonds**") for the purpose of (i) providing for the payment and redemption of \$2,060,000 principal amount of the Corporation's Lease Rental Revenue and Refunding Bonds, Series 2003, dated as of February 15, 2003 (the "**2003 Bonds**") and (ii) paying the costs of acquiring, constructing, furnishing and equipping certain recreational facilities for the use and benefit of the City (the "**2009 Project**"). The 2003 Bonds were issued for the purpose of (i) providing for the payment and redemption of \$605,000 principal amount of the Corporation's Lease Rental Revenue Bonds, Series 1997, dated as of September 15, 1997 (the "**1997 Bonds**") and (ii) refinancing the costs of acquiring, constructing, furnishing and equipping certain recreation facilities for the use and benefit of the City (the "**2003 Project**"). The 1997 Bonds were issued to pay the costs of (i) acquiring two new fire trucks for the use of the City, (ii) making certain improvements to the City's Riverside Zoo, and (iii) developing two softball fields at Lacy Park (collectively the "**1997 Project**").

(b) Pursuant to a Trust Indenture Supplement Number Two dated as of July 8, 2010 (the "**2010 Indenture**") between the Corporation and U.S. Bank National Association, trustee (the "**2010 Trustee**") the Corporation has heretofore issued \$2,035,000 principal amount Lease Rental Revenue Bonds, Series 2010, dated the date of delivery (July 8, 2010) thereof (the "**2010 Bonds**") for the purpose

of paying the costs of acquiring, constructing, furnishing and equipping an addition to and renovations of the Lied Scottsbluff Public Library for the use and benefit of the City (the **"2010 Project"**). .

4. The City has leased the real property on which the 2003 Project, the 1997 Project and the 2010 Project (collectively, the **"Prior Projects"**) are located (collectively, the **"Project Sites"**) to the Corporation pursuant to a Site Lease, dated as of February 15, 2003, as amended by Site Lease Amendment Number One, dated as of September 2, 2009, and as further amended by Site Lease Amendment Number Two, dated as of July 8, 2010 (collectively, the **"Prior Site Lease"**) between the City, as lessor, and the Corporation, as lessee, and the Corporation has leased the Prior Projects to the City pursuant to a Lease Agreement dated as of February 15, 2003, as amended by Lease Agreement Amendment Number One, dated as of September 2, 2009, and as further amended by Lease Agreement Amendment Number Two, dated as of July 8, 2010 (collectively, the **"Prior Lease Agreement"**) between the Corporation, as lessor, and the City, as lessee.

5. The 2009 Bonds remain unpaid in the principal amount of \$2,205,000 and the 2010 Bonds remain unpaid in the principal amount of \$1,285,000 and are a legal liability against the Corporation, provision for the payment of which may be made by the lawful issuance and sale of refunding bonds of the Corporation pursuant to the Nebraska Nonprofit Corporation Act.

6. Upon the satisfaction of certain conditions, by making provision for the redemption and payment of the 2009 Bonds and the 2010 Bonds through the issuance of refunding bonds, a savings in the amount of annual debt service on the 2009 Bonds and the 2010 Bonds would be made by the Corporation for the benefit of the City.

7. By Resolution duly adopted by the Board of Directors, the Corporation has duly authorized the President, in the manner prescribed by law, upon the satisfaction of certain conditions, to call all of the outstanding 2009 Bonds and the 2010 Bonds for redemption and payment on a date determined by the President (the **"Redemption Date"**) in accordance with the resolution adopted by the Corporation.

8. Except for amounts representing accrued rental payments under the Prior Lease Agreement, all bond sinking fund money of the Corporation and the City in existence with respect to the 2009 Bonds and the 2010 Bonds has been used to pay principal and interest maturing, accruing and falling due on the 2009 Bonds and the 2010 Bonds on or before the Redemption Date, all of such sinking fund money being hereby appropriated and set aside for such purpose, it being found hereby that except for such accrued rental payments, no sinking fund money is presently in existence to pay the principal of the 2009 Bonds and the 2010 Bonds being called for redemption on the Redemption Date, and that neither the Corporation nor the City has any other funds accumulated for the payment thereof.

9. The Mayor and Council finds and determines that it is necessary and desirable for the City to grant to the Corporation a leasehold interest in and to certain real estate in addition to the Prior Project Site located within the geographic limits of the City (the **"2015 Project Site"**), including sites, buildings, structures and fixtures located thereon.

10. It is necessary and desirable that the City authorize the Corporation to (a) issue its Tax Supported Lease Rental Revenue and Refunding Bonds in one or more series in a principal amount not to exceed \$3,850,000 (the **"Bonds"**), for the purpose of providing funds to (i) provide for the payment and redemption of the outstanding 2009 Bonds and the 2010 Bonds on the Redemption Date upon the satisfaction of certain conditions, and (ii) acquire, construct, furnish and equip certain municipal facilities for the use and benefit of the City (the **"2015 Project"**); (b) lease the Prior Project and the 2015 Project (collectively, the **"Project"**) to the City; (c) enter into a Trust Indenture Supplement No. 3 (the **"Indenture Supplement"**), with U.S. Bank National Association, as Trustee (the **"Trustee"**), for the purpose of issuing and securing the Bonds, as therein provided, (d) enter into one or more Site Lease Amendments (the **"Site Lease Amendment(s)"**) with the City under which the City will lease to the Corporation the real property constituting the Prior Project Site and the 2015 Project Site (collectively, the **"Project Site"**), and (e) enter into one or more Lease Agreement Amendments (the **"Lease Agreement Amendment(s)"**) with the City under which the Corporation will use the proceeds of the Bonds to refinance the Prior Project upon the satisfaction of certain conditions and finance the 2015 Project and lease the Project to the City in consideration of rental payments by the City which are to be sufficient to pay the principal or redemption price of and interest on the Bonds as the same become due.

11. The Mayor and Council further finds and determines that it is necessary and desirable in connection with the conveyance of the Project Site, the lease of the Project and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

Section 1. Additional Findings and Determinations.

(a) The Corporation will engage in activities that are public in nature. The purposes and activities of the Corporation are those permitted under the Nebraska Nonprofit Corporation Act (Chapter 21, Article 19, Reissue Revised Statutes of Nebraska, as amended) and the Project is located within the geographic boundaries of the City.

(b) The Corporation is not organized for profit except to the extent of retiring indebtedness, and the Articles of Incorporation so provide.

(c) The income of the Corporation will not inure to any private person, and the Articles of Incorporation so provide.

(d) The City will have a beneficial interest in the Corporation and will have exclusive beneficial possession and use of the Project while the Bonds remain outstanding.

(e) The City will obtain full legal title to the Project upon payment in full of the Bonds and any Additional Bonds (as defined in the Indenture).

(f) The Corporation will be performing activities which otherwise would be the responsibility of the City.

Section 2. Approval of Issuance of the Bonds by the Corporation. The City hereby approves the issuance and sale by the Corporation of its Tax Supported Lease Rental Revenue and Refunding Bonds in one or more series in a principal amount not to exceed \$3,850,000, for the purpose of providing funds to (a) provide for the payment and redemption of the outstanding 2009 Bonds and the 2010 Bonds on the Redemption Date upon the satisfaction of certain conditions, and (b) acquire, construct, furnish and equip municipal facilities on the 2015 Project Site. The Bonds shall be issued and secured pursuant to the Indenture hereinafter approved. The Bonds shall be dated the date of delivery thereof and payment therefore, shall mature on December 1 in the years and in the respective amounts and shall bear interest from the date thereof payable semiannually on June 1 and December 1, beginning on the date determined by the Mayor in accordance with the provisions of **Section 9** hereof, in each year at the rates per annum approved by the Mayor in accordance with the provisions of **Section 9** hereof.

The Bonds shall be sold to the Purchaser (hereinafter defined) at a purchase price not less than 97.0% of the principal amount thereof, which purchase price shall include an underwriter's discount not to exceed 1.0%. The Bonds shall be in such denominations, shall be in such forms, shall be subject to redemption prior to maturity, shall have such other terms and provisions, and shall be issued, executed and delivered in such manner subject to such provisions, covenants and agreements, as are set forth in the Indenture.

Section 3. Limited Obligations. The Bonds and the interest thereon shall be limited obligations payable solely out of the rents, revenues and receipts received by the Corporation from the City pursuant to the Lease authorized herein. The Bonds and the interest thereon shall not constitute a debt or liability of the City, or of the State of Nebraska or of any political subdivision thereof, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

Section 4. Authorization of Documents. The City is hereby authorized to enter into the following documents, with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

(a) one or more Lease Agreement Amendment(s), appropriately numbered and dated and in substantially the form of the prior lease agreement amendments entered into in connection with the 2009 Bonds and 2010 Bonds, further amending and supplementing the Prior Lease Agreement, under which the Corporation shall (i) refinance the Prior Projects upon the satisfaction of certain conditions, and (ii) acquire, construct, furnish and equip the 2015 Project and shall lease the Prior Projects and 2015 Project to the City upon the terms and conditions set forth in the Prior Lease, as amended and supplemented from time to time, including with limitation, the Lease Agreement Amendment(s) (collectively, the "**Lease Agreement**").

(b) one or more Site Lease Amendments, appropriately numbered and dated and in substantially the form of the prior site lease amendments entered into in connection with the 2009 Bonds and 2010 Bonds, further amending and supplementing the Prior Site Lease pursuant to which the Corporation will acquire a leasehold interest in the 2015 Project Site upon the terms and conditions set

forth in the Prior Site Lease, as amended and supplemented from time to time, including, without limitation, the Site Lease Amendment (collectively, the **“Site Lease”**).

(c) one or more Bond Purchase Agreements, appropriately dated (the **“Bond Purchase Agreement(s)”**), in substantially the form entered into in connection with the 2009 Bonds and 2010 Bonds, among the Corporation, the City and Ameritas Investment Corp. (the **“Purchaser”**), under which the Corporation agrees to sell the Bonds to the Purchaser upon the terms and conditions as set forth in the Bond Purchase Agreement.

(d) one or more Continuing Disclosure Undertakings (the **“Disclosure Certificate(s)”**) pursuant to which the City agrees to provide certain financial and other information with respect to the Bonds, the form of which shall be described in the preliminary Official Statement (as defined below).

Section 5. Approval of Documents. The City hereby approves the following document:

(a) one or more Trust Indenture Supplements, appropriately numbered and dated (the **“Trust Indenture Supplement(s)”**), in substantially the form entered into in connection with the 2009 Bonds and 2010 Bonds, amending and supplementing the Trust Indenture, dated as of February 15, 2003, as supplemented by Trust Indenture Supplement Number One, dated as of September 2, 2009, and as further supplemented by Trust Indenture Supplement Number Two, dated as of July 8, 2010 (collectively, **“Existing Indenture”**), between the Corporation and the Trustee, pursuant to which the Bonds shall be issued and the Corporation shall pledge and assign the rents, revenues and receipts received pursuant to the Lease to the Trustee for the benefit of and security of the owners of the Bonds upon the terms and conditions as set forth in the Existing Indenture, as amended and supplemented from time to time, including, without limitation, the Trust Indenture Supplement(s) (collectively, the **“Indenture”**).

Section 6. Official Statement. The City hereby ratifies and approves the publication, distribution and use of a preliminary Official Statement in connection with the offering of the Bonds, with such changes, additions and modifications, as may be approved by the Mayor, City Clerk or Director of Finance (the **“Preliminary Official Statement”**). The Mayor and Director of Finance are each hereby authorized to deem the information contained in the Preliminary Official Statement to be “final” as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934, as amended. The City further authorizes and directs the preparation of, and authorizes and directs the execution and delivery by the Mayor or Director of Finance of a final Official Statement for use in connection with the sale of the Bonds.

Section 7. Execution of Documents. The City is hereby authorized to enter into and the Mayor is hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the Lease Agreement Amendment(s) (including one or more Memorandum of Lease Agreement to be recorded in the appropriate real estate records at closing to evidence the Lease), the Site Lease Amendment(s), the Bond Purchase Agreement(s), the Disclosure Certificate(s) and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

Section 8. Designation of Bonds as Qualified Tax-Exempt Obligations. The City hereby acknowledges that the Corporation may designate the Bonds to be “qualified tax-exempt obligations” as such term is defined in Section 265(b)(3) of the Code. If such bonds are so designated, the City hereby authorizes the Mayor or Director of Finance to represent that:

(a) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds or current refunding issues) which will be issued by or on behalf of the City and all entities subordinate to the City during calendar year 2015 does not exceed \$10,000,000; and

(b) the aggregate principal amount of obligations designated by the City as “qualified tax-exempt obligations” during calendar year 2015, including the Bonds but excluding any bonds which are “deemed designated”, does not and will not exceed \$10,000,000.

The Mayor and Director of Finance are each hereby authorized to take such other action as may be necessary to make effective the designation in this Section.

Section 9. Authority of Mayor; Further Authority.

(a) In connection with the issuance of a series of Bonds to pay the costs of the 2015 Project and as a part of such sale, the Mayor shall approve (i) the dated date; (ii) the principal amount of such series of Bonds including the principal amounts of the respective Serial Bonds and Term Bonds of such series of Bonds; provided, however that the aggregate amount of such series of Bonds shall not exceed Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000) but may be less than that amount; (iii) the rate or rates of interest to be borne by each maturity of such series of Bonds; provided that the true interest cost on such series of Bonds shall not exceed 2.50%, (iv) the principal amount of such series of Bonds maturing in each year; (v) the Sinking Fund Installments due and the dates thereof with respect to such series of Bonds in each year for which the Mayor determines that a Sinking Fund Installment shall be due; (vi) the dates upon which such series of Bonds will be subject to redemption at the option of the City and the redemption price, not to exceed 104% of the principal amount thereof, payable upon the redemption of such series of Bonds, (vii) the purchase price of such series of Bonds, which shall not be less than 97.0% of the principal amount thereof, which purchase price shall include an underwriter's discount not to exceed 1.0% and (viii) the number, date, form and contents of each Trust Indenture Supplement, Lease Agreement Supplement, Site Lease Amendment, Bond Purchase Agreement, Disclosure Certificate and any other agreement executed and delivered by the City in connection with the issuance of such series of Bonds.

The Mayor shall report from time to time to the Council the purchase price of such series of Bonds sold and the principal amount, maturities, Sinking Fund Installments and other terms thereof established in accordance with the provisions of this Resolution.

(b) A series of Bonds may be issued to refund the 2009 Bonds and the 2010 Bonds only if the present value savings (determined with respect to the principal amount of 2009 Bonds and the 2010 Bonds then outstanding) is not less than 3.0% of the par amount of the 2009 Bonds and the 2010 Bonds being refunded. At such time as such present value savings is not less than 3.0%, the Corporation is authorized to issue a series of Bonds to refund the 2009 Bonds and the 2010 Bonds. In connection with the issuance of a series of Bonds to refund the 2009 Bonds and the 2010 Bonds, and as a part of such sale, the Mayor shall approve (i) the dated date; (ii) the principal amount of such series of Bonds including the principal amounts of the respective Serial Bonds and Term Bonds of such series of Bonds; provided, however that the aggregate amount of such series of Bonds shall not exceed Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000) but may be less than that amount; (iii) the rate or rates of interest to be borne by each maturity of such series of Bonds; provided that yield on such series of Bonds shall not exceed 2.50%, (iv) the principal amount of such series of Bonds maturing in each year; (v) the Sinking Fund Installments due and the dates thereof with respect to such series of Bonds in each year for which the Mayor determines that a Sinking Fund Installment shall be due; (vi) the dates upon which such series of Bonds will be subject to redemption at the option of the City and the redemption price, not to exceed 104% of the principal amount thereof, payable upon the redemption of such series of Bond, (vii) the purchase price of such series of Bonds, which shall not be less than 97.0% of the principal amount thereof, which purchase price shall include an underwriter's discount not to exceed 1.0%, (viii) the number, date, form and contents of each Trust Indenture Supplement, Lease Agreement Supplement, Site Lease Amendment, Bond Purchase Agreement, Disclosure Certificate and any other agreement executed and delivered by the Corporation in connection with the issuance of such series of Bonds, and (ix) the redemption date of the 2009 Bonds and the 2010 Bonds and the form and content of any notice of redemption.

The Mayor shall report from time to time to the City Council the purchase price of such series of Bonds sold and the principal amount, maturities, Sinking Fund Installments and other terms thereof established in accordance with the provisions of this Resolution, together with the savings to be achieved in connection with refunding the outstanding 2009 Bonds and 2010 Bonds.

(c) The officers, agents and employees of the City, including the Mayor and the Clerk, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance, and to carry out, comply with and perform the duties of the City with respect to the Lease, the Site Lease, the Bond Purchase Agreement(s), the Disclosure Certificate(s), to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 10. Conveyance of Project to City when Bonds are Paid. The Mayor and Council hereby declares that the City will accept from the Corporation conveyance of unencumbered fee title to the Project after all the Bonds and any Additional Bonds (as defined in the Indenture) have been paid or payment therefor has been provided for in accordance with the herein approved Indenture.

Section 11. Severability. If any one or more of the provisions of this Ordinance should be determined by a court of competent jurisdiction to be contrary to law, then such provisions shall be deemed severable from the remaining provisions of this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds and the owners of the Bonds shall retain all the rights and benefits accorded to them under this Ordinance and under 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 in any particular case in any jurisdiction or 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 circumstances, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 12. Repeal of Conflicting Ordinances. All ordinances, resolutions or orders, or parts thereof in conflict with the provisions of this Ordinance are to be extent of such conflict hereby repealed.

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

PASSED AND APPROVED: _____, 2015.

CITY OF SCOTTSBLUFF, NEBRASKA

ATTEST:

By: _____
Mayor

By: _____
Clerk

[S E A L]