

The Barnes County Commission met in special session on Tuesday, September 29, 2020 with Cindy Schwehr, Vicky Lovell, Bill Carlblom, and John Froelich present. Shawn Olason was unable to attend. Chairman Carlblom called the meeting to order at 5:00 p.m.

Resolution 2020-5

RESOLUTION RELATING TO LEASE-PURCHASE OF COUNTY CORRECTIONS FACILITY; PROVIDING FOR THE FINANCING THEREOF AND ISSUANCE OF CERTIFICATES OF PARTICIPATION THEREIN; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT AND APPROVING AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS

BE IT RESOLVED by the County Commission (the "County Commission") of Barnes County, North Dakota (the "County"), as follows:

SECTION 1. AUTHORIZATION AND SALE.

1.1. Authorization. The County is authorized by Section 11-11-14 of the North Dakota Century Code, to enter into a Lease-Purchase Agreement (the "Lease"), for the purpose of financing the acquisition, construction, and equipping of a new County corrections facility, as further described in the Lease (the "Project"). It is hereby found, determined and declared to be necessary and desirable and in the best interest of the County to execute and deliver the Lease and to create certificates of participation therein (the "Certificates") for such purposes. The County Commission hereby authorizes the execution and delivery of the Lease and the creation of the Certificates therein for the purpose of financing the Project.

1.2. Financing and Sale. The County has engaged Colliers Securities LLC (the "Underwriter") as the underwriter with respect to the financing of the Project. The Underwriter has offered to purchase the Certificates at a price of \$15,615,866.20, representing the principal amount of the Certificates of \$15,435,000.00, plus a net reoffering premium of \$373,803.70, less the Underwriter's discount of \$192,937.50, and upon the further terms and conditions set forth in the Certificate Purchase Agreement between the County and the Underwriter (the "Purchase Agreement"), which terms are equivalent to a net interest rate on the Certificates of 3.3075% per annum. The offer is hereby accepted and the Chair of the County Commission, or any authorized designee thereof, is hereby authorized to execute the Purchase Agreement. The County Commission hereby ratifies all action heretofore taken with respect to the sale of the Certificates.

SECTION 2. DOCUMENTS.

2.1. Ground Lease. The County has agreed with the Bank of North Dakota, Bismarck, North Dakota, acting as trustee (the "Trustee"), that the County will ground lease certain real property underlying the Project to the Trustee pursuant to a Ground Lease (the "Ground Lease") between the Trustee, as ground lessee, and the County, as ground lessor.

2.2. Lease-Purchase Agreement. The County has agreed with the Trustee that the Trustee will sublease the real property underlying the Project to the County and lease and agree to sell the Project to the County pursuant to the Lease between the Trustee, as lessor, and the County, as lessee.

2.3. Trust Agreement. The Trustee will execute and deliver a Trust Agreement (the "Trust Agreement"), joined in by the County, pursuant to which the Trustee will (i) issue the Certificates representing proportionate interests in the Rental Payments (as defined in the Lease) to be made by the County under the Lease, and (ii) receive the proceeds of the sale of the Certificates and disburse such proceeds to finance the Project and to pay costs of issuance of the Certificates.

2.4. Continuing Disclosure. In order to permit the Underwriter to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (as in effect and interpreted from time to time, the "Rule"), the County shall enter into a Continuing Disclosure Agreement with the Trustee (the "Continuing Disclosure Agreement"). Pursuant to the Continuing Disclosure Agreement the County will agree, for the benefit of the Owners from time to time of any Certificates which are Outstanding, to provide annual reports of financial statements and other specified information and notice of the occurrence of certain events, if material, as thereafter described (the "Disclosure Covenants"). The County is the only "obligated person" in respect of the Certificates within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made.

2.5. Forms of Documents. In connection with this proposed financing and the issuance of the Certificates, forms of the Purchase Agreement, the Ground Lease, the Lease, the Trust Agreement and the Continuing Disclosure Agreement (the "Documents") have been prepared, submitted to the County and filed with the County Auditor.

SECTION 3. APPROVAL OF DOCUMENTS; OFFICIAL STATEMENT.

3.1. Approval of Documents. The Documents are hereby approved and shall be executed in the name and on behalf of the County by the Chair and County Auditor, or their respective authorized designees, in substantially the form on file, but with such changes as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof. The Chair and County Auditor, or their respective authorized designees, are also authorized and directed to execute such closing certificates and other contracts or documents as may be necessary in the opinion of special counsel to the County, Arntson Stewart Wegner PC, to complete the issuance and delivery of the Certificates, and the certifications, recitals, representations, warranties

and covenants therein shall constitute the certifications, recitals, representations, warranties and covenants of the County. County approval of all documents, certificates, contracts and documents relating to the Lease and the Certificates shall be conclusively evidenced by the execution thereof, and no further County Commission action shall be required.

3.2. Official Statement. The County Auditor, or any authorized designee thereof, is hereby authorized to approve and execute, and the Underwriter is hereby authorized to prepare and distribute, on behalf of the County, the Preliminary Official Statement and the Final Official Statement relating to the Certificates (together, the "Official Statement"), which Final Official Statement shall include the offering price, payment dates, the interest rates, selling compensation, delivery date and such other information relating to the Lease and Certificates required to be included in the Official Statement by Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934. The officers of the County are hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

SECTION 4. ISSUANCE OF CERTIFICATES. Upon all acts, conditions and things which are required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of the Lease and the Certificates, the County shall proceed forthwith to cause the Trustee to issue the Certificates in the form and upon the terms set forth in the Trust Agreement. The Certificates shall be prepared, executed and delivered as prescribed in the Trust Agreement and the officers of the County shall deliver to the Trustee a certified copy of this resolution and other documents required by the Trust Agreement, for authentication and delivery to the Underwriter or the registered owners of the Certificates. The Trustee is hereby appointed authenticating agent with respect to the Certificates, and as paying agent for the Certificates pursuant to the Trust Agreement.

SECTION 5. PAYMENT OF RENTAL PAYMENTS. The County will pay to the Trustee promptly when due, all of the Rental Payments and other amounts required by the Lease. Payment of the Rental Payments is subject to the provisions for termination set forth in the Lease, which provides that the Lease is subject to termination by the County, without penalty, at the end of any fiscal year of the County, in accordance with the terms thereof. Neither the full faith and credit nor the ad valorem taxing powers of the County are pledged to the payment of the County's obligations under the Lease, the Certificates, or any obligation of the County thereunder.

SECTION 6. TAX COVENANTS AND ARBITRAGE MATTERS.

6.1. Covenant. The County covenants and agrees with the owners from time to time of the Certificates, that it will not take, or permit to be taken by any of its officers, employees or agents, any action which would cause the interest component of the Rental Payments payable under the Lease and received by the registered owners of the Certificates to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and any regulations issued thereunder (the "Treasury Regulations"), in effect at the time of such action, and that it will take, or it will cause its officers, employees or agents to take, all affirmative actions within their powers which may be necessary to insure that the interest component of the Rental Payments payable under the Lease and received by the registered owners of the Certificates will not become subject to taxation under the Code and the Treasury Regulations, as presently existing or as hereafter amended and made applicable to the Certificates. So long as the Certificates are outstanding, the County will not enter into any lease, use agreement or other contract or agreement respecting the Project which would cause the Lease and Certificates to be considered a "private activity bond" or "private loan bond" pursuant to the provisions of Section 141 of the Code.

6.2. Arbitrage Certification. The Chair and County Auditor, or their respective authorized designees, being the officers of the County charged with the responsibility for issuing the Lease and Certificates pursuant to this resolution, are authorized and directed to execute and deliver to the Underwriter a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Treasury Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Lease and Certificates which make it reasonable to expect that the proceeds of the Lease and Certificates will not be used in a manner that would cause the Lease and Certificates to be an arbitrage bond within the meaning of the Code and Treasury Regulations.

6.3. Arbitrage Rebate. The County acknowledges that the arbitrage rebate requirements of Section 148(f) of the Code are applicable to the Lease and Certificates, and the County hereby covenants and agrees to make computations, retain records and pay amounts to the United States at the times and in the manner required by said Section 148(f) of the Code. The County reserves the right to avail itself of any of the spending exceptions to arbitrage rebate set forth in Section 148(f)(4)(C) of the Code and related Treasury Regulations.

Dated: September 29, 2020

Chair, Board of County Commissioners

ATTEST:
County Auditor

The motion for the adoption of the foregoing resolution was duly made by Commissioner Schwehr, seconded by Commissioner Lovell, and upon vote being taken thereon, the following voted in favor: Schwehr, Lovell, Carlblom and Froelich; the following voted against the same: None; and the following were absent: Olauson; whereupon the resolution was declared duly passed and adopted and was signed by the Chair and attested by the County Auditor.

With no further business, Cindy Schwehr made a motion, seconded by Vicky Lovell, to adjourn the meeting.

Motion carried unanimously, and the meeting was adjourned at 5:24 p.m.

Bill Carblom, Chairman
Barnes County Commission

Beth M Didier
Barnes County Auditor