


**COUNCIL COMMUNICATION**

|  |                             |   |
|--|-----------------------------|---|
| <b>DATE: March 8, 2010</b>   | <b>AGENDA NO. VII. 8. b</b> | <b>SUBJECT:</b> Ordinance 4- 2010, establishing parameters for the proposed Certificates of Participation for the construction of a Library, City Hall, and Public Safety facility. |
| <b>Department Head:</b>  |                             |   |
| <b>City Manager:</b>  |                             |   |
| <b>PRESENTED BY:</b> Nathan M. Cherpeski   |                             |   |

**Recommendation**

It is the recommendation of staff, to approve alternative 1 conduct a public hearing and adopt the ordinance.

**Background**

The City's need to expand, replace, or build facilities has been discussed for a very long time. In 1985, the year Farris Bervig was first elected Mayor, the City Council was discussing the need to replace or expand its existing City Hall. Now 25 years later we are much closer to accomplishing that task. In 1999, the City had a study done showing a new 25,000 square foot building and several other small buildings being placed at this site. Staff examined several alternatives before determining that the complex as proposed would be the most economical and still address the many needs of the City. While not cheap, this project will address the needs of public safety, the library, and City Hall. It will also be built with efficiency at its base to help reduce on-gong operational costs.

As we have discussed in several work sessions of late, the City has retained the services of Stifel Nicolaus and Kutak Rock to assist with the Certificate of Participation (COP) issues for the Library, City Hall, and Public Safety facility. The attached ordinance establishes parameters for these firms in marketing the COP's. The numbers used are the same numbers we have been using for our planning.

Current interest rates are lower than those planned for in this document. Additionally, it appears that the bidding market is still very competitive for projects of this size. The project is anticipated to be out to bid, if Council moves forward with this ordinance, by March 3. Bids will be do back to the City on April 8 at 2:00 P.M. So far more than 15 contractors have expressed formal interest in bidding the project.

**Issue Before the Council**

Does the Council wish to conduct a public hearing and adopted or reject the attached ordinance?

**Alternatives**

Alternative 1. Adopt the attached ordinance as written.

Alternative 2. Decline to act at this time and give them further direction. Failure to act up or down on this ordinance tonight would create significant ambiguities for the process.

**Fiscal Impact**

The impact of this action has been the subject of several work sessions. As drafted it would fit into the City's 5 year capital plan and 10-year planning process. Current interest rates are still at record lows and the construction market is still very much an owners market. The City anticipates receiving several competitive bids.

### **Legal Opinion**

The City Attorney will be present for any comments.

### **Conclusion**

This is the next step in our efforts to address the shortcomings in our current facilities. It is anticipated that if all moves forward as planned that a bid would be awarded by early May.

**ORDINANCE NO. 4, 2010**

AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AND SUBLEASE AGREEMENT AND OTHER DOCUMENTS AND ACTIONS IN CONNECTION WITH FINANCING THE CITY'S MUNICIPAL COMPLEX PROJECT.

WHEREAS, the City Council (the "City Council") of the City of Alamosa, Colorado (the "City") has the power, pursuant to the Charter of the City (the "Charter") and Section 31-15-801, Colorado Revised Statutes, to enter into long-term rental or leasehold agreements to provide necessary land, buildings, equipment and other property for governmental or proprietary purposes, and such agreements may include an option to purchase and acquire title to such leased or rented property within a period not exceeding the useful life of such property and not exceeding thirty years; and

WHEREAS, the City Council has the power, pursuant to the Charter and Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease any real estate, together with any facilities thereon, owned by the City when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City Council has determined, and hereby determines, that the City is in need of (i) constructing a new City Hall/Library Building (the "New City Hall/Library Building"), (ii) remodeling the present City Hall building for use by the City's police and fire departments (the "Public Safety Building"), and (iii) constructing a new fire station building (the "Fire Station Building") as an addition to the Public Safety Building to replace the fire station that is part of the present City Hall building; and

WHEREAS, the City owns the real property on which the New City Hall/Library Building will be constructed (the "New City Hall/Library Site") and the real property on which the Fire Station Building will be constructed and on which the Public Safety Building is located (the "Public Safety Building Site"); and

WHEREAS, the City is authorized by the Charter and by Sections 31-15-101(1)(d) and 31-15-713(1)(c), Colorado Revised Statutes, to lease the New City Hall/Library Site and the Public Safety Building Site, together with the present City Hall building thereon, to the Alamosa Capital Leasing Corporation (the "Corporation") when deemed by the City Council to be in the best interest of the City; and

WHEREAS, the City Council has determined, and hereby determines, that it is necessary and in the best interests of the City that the New City Hall/Library Building and the Fire Station Building be constructed and equipped and the Public Safety Building be remodeled and equipped and leased or subleased to the City by the Corporation; and

WHEREAS, for purposes of financing the construction and equipping of the New City Hall/Library Building and the Fire Station Building and the remodeling and equipping of the Public Safety Building, the City Council has determined, and hereby determines, that it is in the best interests of the City and its residents that the City lease the New City Hall/Library Site and

the Public Safety Building Site (collectively, the "Sites") and the Public Safety Building thereon to the Corporation pursuant to a Site Lease (the "Site Lease"), between the City, as lessor, and the Corporation, as lessee, and that the City and the Corporation enter into a Lease Purchase and Sublease Agreement (the "Lease") to provide for the construction and equipping of the New City Hall/Library Building and the Fire Station Building and the remodeling and equipping of the Public Safety Building and for the subleasing by the City from the Corporation of the Sites and the Public Safety Building and the leasing by the City from the Corporation of the New City Hall/Library Building and the Fire Station Building; and

WHEREAS, the obligation of the City to pay Base Rentals and Additional Rentals (both as defined in the Lease) shall be from year to year only, shall constitute currently budgeted expenditures of the City, shall not constitute a mandatory charge or requirement in any ensuing budget year, and shall not constitute a general obligation or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which the Lease shall be in effect; and

WHEREAS, there have been presented to the City Council at this meeting copies of the proposed forms of the Lease, the Site Lease, a Continuing Disclosure Undertaking (the "Continuing Disclosure Undertaking"), and a Certificate Purchase Agreement (the "Certificate Purchase Agreement") between the Corporation and Stifel, Nicolaus & Company, Incorporated (the "Underwriter"); and

WHEREAS, there also has been presented to the City Council at this meeting a copy of the proposed form of the Preliminary Official Statement (the "Preliminary Official Statement") to be distributed to prospective purchasers of Certificates of Participation, Series 2010 (the "Certificates"), which represent proportionate undivided interests in rights to receive Base Rentals paid by the City under the Lease; and

WHEREAS, pursuant to certain provisions of the Lease, the Corporation will deposit, in escrow, deeds for the New City Hall/Library Building and the Fire Station Building from the Corporation to the City to be delivered to the City upon satisfaction of certain provisions of the Lease; and

WHEREAS, neither the Lease nor the execution and delivery of the Certificates shall directly or indirectly obligate the City to make any payments beyond those appropriated for any fiscal year during which the Lease shall be in effect; and

WHEREAS, the City Council is desirous of authorizing, approving and directing the execution of the agreements and instruments described above and the transactions evidenced thereby;

Be it ordained by the City Council of Alamosa:

**Section 1.** All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or the officers, employees and agents of the City Council or the City, directed toward the leasing of the Sites and the Public Safety Building to the Corporation,

the construction of the New City Hall/Library Building and the Fire Station Building and the remodeling of the Public Safety Building, and the subleasing of the Sites and the Public Safety Building and the leasing of the New City Hall/Library Building, the Fire Station Building and the Equipment (as defined in the Lease) (collectively, the "Leased Property") from the Corporation to the City are hereby ratified, approved and confirmed.

**Section 2.** The City Council hereby finds and determines, pursuant to the constitution, the Charter and laws of the State of Colorado, that the leasing of the Sites and the Public Safety Building to the Corporation under the terms and provisions of the Site Lease, the construction of the New City Hall/Library Building and the Fire Station Building and the remodeling of the Public Safety Building, and subleasing and leasing of the Leased Property from the Corporation under the terms and provisions of the Lease, are necessary, convenient and in furtherance of the governmental purposes of the City and are in the best interests of the City and its residents; and the City Council hereby authorizes, approves and directs the accomplishment of the foregoing under the terms and provisions of the Lease and the Site Lease.

**Section 3.** The Lease, in substantially the form and with substantially the content presented to this meeting of the City Council, is in all respects approved, authorized and confirmed, and the Mayor or, in the absence thereof, the Mayor pro-tempore is authorized and directed to execute the Lease in substantially the form and with substantially the same content as the form thereof presented to this meeting of the City Council, for and on behalf of the City, but with such changes therein as shall be consistent with this Ordinance and as the City Attorney shall approve, the execution thereof being deemed conclusive of the approval of any such changes. The City Council hereby approves the amount of \$13,600,000 as the maximum total amount of Base Rentals and the amount of \$700,000 as the maximum annual amount of Base Rentals to be paid for the leasing of the Leased Property by the City from the Corporation under the terms and conditions of the Lease. The number of Renewal Terms (as defined in the Lease) of the Lease shall not exceed twenty.

**Section 4.** The Site Lease, in substantially the form and with substantially the content presented to this meeting of the City Council, is in all respects approved, authorized and confirmed, and the Mayor or, in the absence thereof, the Mayor pro-tempore is authorized and directed to execute the Site Lease in substantially the form and with substantially the same content as the form thereof presented to this meeting of the City Council, for and on behalf of the City, but with such changes therein as shall be consistent with this Ordinance and as the City Attorney shall approve, the execution thereof being deemed conclusive of the approval of any such changes.

**Section 5.** The Continuing Disclosure Undertaking, in substantially the form and with substantially the content presented to this meeting of the City Council, is in all respects approved, authorized and confirmed, and the Mayor or, in the absence thereof, the Mayor pro-tempore is authorized and directed to execute the Continuing Disclosure Undertaking in substantially the form and with substantially the same content as the form thereof presented to this meeting of the City Council, for and on behalf of the City, but with such changes therein as shall be consistent with this Ordinance and as the City Attorney shall approve, the execution thereof being deemed conclusive of the approval of any such changes.

**Section 6.** The City Council hereby approves the execution and delivery by the Corporation and a trustee to be named later (the “Trustee”) of the Mortgage and Indenture of Trust (the “Indenture”) in connection with the transactions authorized herein.

**Section 7.** The City Council hereby acknowledges and consents to the assignment by the Corporation to the Trustee, pursuant to the Indenture, of all right, title and interest of the Corporation in, to and under the Site Lease and the Lease (with certain exceptions as provided in the Site Lease, the Lease and the Indenture), and the delegation by the Corporation to the Trustee, pursuant to the Indenture, of all duties of the Corporation under the Site Lease and the Lease.

**Section 8.** The Mayor or, in the absence thereof, the Mayor pro-tempore is authorized and directed to acknowledge the Certificate Purchase Agreement between the Corporation and the Underwriter for and on behalf of the City.

**Section 9.** The Official Statement, in substantially the form of the Preliminary Official Statement presented to this meeting of the City Council, is in all respects approved and authorized. The Mayor or, in the absence thereof, the Mayor pro-tempore is hereby authorized and directed to affix his or her signature to the Official Statement, for and on behalf of the City, in substantially the form presented to this meeting of the City Council, but with such changes therein as shall be consistent with this Ordinance and as the City Attorney and the City Manager may deem necessary or appropriate, the execution thereof being deemed conclusive of the approval of any such changes. The distribution by the Underwriter of the Official Statement is hereby authorized.

**Section 10.** The City Clerk or, in the absence thereof, the Deputy City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the Lease and the Site Lease authorized and approved by this Ordinance and all other additional certificates, agreements, documents and other papers, associated with the transactions and other matters authorized by this Ordinance. The Mayor or, in the absence thereof, the Mayor pro-tempore and other officials, employees and agents of the City Council or the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, agreements, documents and other papers, including but not limited to a guaranty or reimbursement agreement between the City and any insurance company that issues a surety bond or insurance policy as a reserve fund for the payment of Base Rentals by the City, 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 or contemplated by this Ordinance. The appropriate members or officers of the City Council or the City are authorized to execute on behalf of the City agreements concerning the deposit and investment of funds in connection with the transactions contemplated by this Ordinance.

**Section 11.** No provision of this Ordinance, the Lease, the Site Lease, the Indenture, the Official Statement, the Certificate Purchase Agreement or the Certificates or other additional certificates, agreements, documents and other papers associated with the transactions authorized by this Ordinance shall be construed as creating or constituting a general obligation or multiple fiscal year direct or indirect indebtedness or other financial obligation whatsoever of the City nor

a mandatory payment obligation of the City in any fiscal year beyond a fiscal year for which the Lease is in effect. The City shall have no obligation to make any payment under the Indenture or with respect to the Certificates except in connection with the payment of the Base Rentals (as defined in the Lease) and certain other payments under the Lease, which payments may be terminated by the City in accordance with the provisions of the Lease.

**Section 12.** The City Council hereby determines and declares that the Base Rentals represent the fair value of the use of the Leased Property, and that the Purchase Option Price (as defined in the Lease) represents the fair purchase price of the Leased Property. The City Council hereby determines and declares that the Base Rentals do not exceed a reasonable amount so as to place the City under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Leased Property pursuant to the Lease. In making such determinations, the City Council has given consideration to the current value of the Leased Property and the value of the Leased Property upon the construction and equipping of the New City Hall/Library Building and the Fire Station Building and the remodeling and equipping of the Public Safety Building, the cost of acquiring, constructing and equipping property similar to the Leased Property, the uses and purposes for which the Leased Property is being and will be employed by the City, the benefit to the citizens and residents of the City by reason of the use of the Leased Property by the City pursuant to the terms and provisions of the Lease, the option of the City to purchase the Leased Property, and the expected eventual vesting of full title to the Leased Property in the City. The City Council hereby determines and declares that the leasing of the Leased Property by the City pursuant to the Lease will result in facilities of comparable quality and meeting the same requirements and standards as would result if the City had acquired use of the Leased Property other than pursuant to the Lease. The City Council hereby determines and declares that the duration of the Lease, including all optional renewal terms, authorized under this Ordinance, does not exceed the weighted average useful life of the Leased Property.

**Section 13.** The City Council hereby determines and declares that, in the event the Site Lease shall remain in effect after the termination of the Lease related thereto and authorized under this Ordinance, the rentals to be received by the City under the Site Lease represent the fair rental value of the property leased by the City to the Corporation under the Site Lease, and that such rentals do not place the City under an economic or practical compulsion to renew the Lease related thereto or to exercise its option to purchase the Leased Property.

**Section 14.** The City Council hereby elects to apply all of the provisions of the Supplemental Public Securities Act, part 2 of article 57 of title 11, Colorado Revised Statutes, as amended, to the transactions authorized by this Ordinance and delegates to the City Manager the authority to determine the terms and details of the leasing and subleasing of the Leased Property not otherwise determined herein and within the parameters set forth in this Ordinance.

**Section 15.** If any section, paragraph, clause or provision of this Ordinance (other than provisions as to the payment of Base Rentals by the City during the Lease Term and provisions for the conveyance of the Leased Property to the City under the conditions provided in the Lease) 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 Ordinance.

**Section 16.** All bylaws, orders, ordinances and resolutions, or parts thereof, inconsistent with this Ordinance 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, ordinance or resolution, or part thereof.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED, this  
1<sup>st</sup> day of March, 2010.

PASSED ON FINAL READING AND ORDERED PUBLISHED this \_\_\_\_ day of March,  
2010.

[SEAL]

By \_\_\_\_\_  
Mayor

Attest:

By \_\_\_\_\_  
City Clerk