

**ORDINANCE NO. 3
(SERIES OF 2019)**

AN ORDINANCE AUTHORIZING THE ISSUANCE BY THE CITY OF ASPEN, COLORADO, OF ITS GENERAL OBLIGATION ELECTRIC UTILITY REFUNDING LOAN, SERIES 2019; AND APPROVING A LOAN AGREEMENT AND CERTAIN OTHER DOCUMENTS IN CONNECTION THEREWITH; AND PROVIDING OTHER MATTERS RELATING THERETO.

RECITALS

WHEREAS, the City of Aspen (the “City”), in the County of Pitkin and State of Colorado, is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the City (as more particularly defined in Section 1 herein, the “Charter”) (all capitalized terms used and not otherwise defined in the recitals hereof shall have the meaning assigned in Section 1 of this Ordinance); and

WHEREAS, under the Charter, the City is possessed of all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, all powers which are granted to home rule municipalities by the Colorado Constitution, and all rights and powers that now or hereafter may be granted to municipalities by the laws of the State of Colorado; and

WHEREAS, the City is authorized by Section 10.1 of the Charter to borrow moneys and to issue general obligation bonds to evidence such borrowing, subject to the approval of a question proposing their issuance at a general or special election by a majority of registered electors of the City voting thereon; and

WHEREAS, at an election called on November 6, 2007 (the “Election”), the City submitted the following question (the “Ballot Question”) to the registered electors of the City for approval:

SHALL CITY OF ASPEN DEBT BE INCREASED BY UP TO \$5,500,000, WITH A MAXIMUM REPAYMENT COST OF \$10,780,000 BY THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING A NEW HYDROELECTRIC FACILITY ON CASTLE CREEK, WHICH DEBT SHALL BE PAYABLE FROM (1) ELECTRIC UTILITY FEES AND (2) TO THE EXTENT THE CITY COUNCIL DETERMINES THAT THE REVENUES PROJECTED TO BE AVAILABLE FROM SUCH ELECTRIC UTILITY FEES WILL BE INSUFFICIENT TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT AND TO OTHERWISE COMPLY WITH THE COVENANTS OF THE ORDINANCE OR OTHER INSTRUMENTS GOVERNING SUCH DEBT IN ANY YEAR, FROM THE TAXES DESCRIBED BELOW; SHALL CITY TAXES BE INCREASED BY UP TO

\$359,128 ANNUALLY IN ANY YEAR BY THE LEVY OF AD VALOREM PROPERTY TAXES, WITHOUT LIMITATION AS TO RATE OR AMOUNT OR ANY OTHER CONDITION, TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON SUCH DEBT AND TO OTHERWISE COMPLY WITH THE COVENANTS OF THE ORDINANCE OR OTHER INSTRUMENTS GOVERNING SUCH DEBT AND TO THE EXTENT THE CITY COUNCIL DETERMINES THAT THE REVENUES PROJECTED TO BE AVAILABLE FROM SUCH ELECTRIC UTILITY FEES WILL NOT BE SUFFICIENT THEREFOR; SHALL SUCH DEBT MATURE, BE SUBJECT TO REDEMPTION, WITH OR WITHOUT PREMIUM, AND BE ISSUED, DATED AND SOLD AT SUCH TIME OR TIMES, AT SUCH PRICES (AT, ABOVE OR BELOW PAR) AND IN SUCH MANNER AND WITH SUCH TERMS, NOT INCONSISTENT HERewith, AS THE CITY COUNCIL MAY DETERMINE; AND SHALL THE CITY BE AUTHORIZED TO COLLECT, RETAIN AND EXPEND ALL OF THE REVENUES OF SUCH TAXES, THE PROCEEDS OF SUCH BONDS AND THE EARNINGS THEREON IN 2007 AND EACH SUBSEQUENT YEAR, NOTWITHSTANDING THE LIMITATIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION (TABOR), SECTION 29-1-301, COLORADO REVISED STATUTES, OR ANY OTHER LAW?

WHEREAS, pursuant to such Ballot Question as approved by the voters on November 6, 2007, the City issued its General Obligation Electric Utility Bonds, Series 2008, originally issued in the aggregate principal amount of \$5,500,000; and

WHEREAS, pursuant to Section 10.6 of the Charter, the City Council of the City (the "City Council") may authorize, by ordinance, without an election, the issuance of refunding bonds or any like securities for the purpose of refunding and providing for the payment of the City's outstanding bonds; and

WHEREAS, Article X, Section 20 of the Colorado Constitution ("TABOR") provides that voter approval in advance is required for the creation of any district (as such term is defined in TABOR, which includes governmental entities such as the City) direct or indirect debt or other multiple-fiscal year financial obligation whatsoever except for refinancing district bonded debt at a lower interest rate; and

WHEREAS, the 2008 Bonds maturing on and after December 1, 2019 are subject to redemption prior to their maturity, at the option of the City, on December 1, 2018, or on any date thereafter, at a redemption price equal to the principal amount of the bonds so redeemed, plus accrued interest to the redemption date; and

WHEREAS, the City Council has determined that it is in the best interests of the City to refund such portion of the outstanding 2008 Bonds as specified in the Sale Certificate (as more particularly defined herein, the "Refunded Bonds") for the purpose of refunding such Refunded Bonds at a lower interest rate (the "Refunding Project"); and

WHEREAS, the City Council has been presented with a proposal from ZMFU II, Inc. (the “Lender”), for a loan to finance the costs of the Refunding Project; and

WHEREAS, such loan (the “Loan”) will be evidenced by a Loan Agreement (the “Loan Agreement”) between the City and the Lender, and a promissory note (the “Note”) delivered by the City to the Lender; and

WHEREAS, the Lender is a wholly-owned subsidiary of Zions Bancorporation, N.A., which is (a) an “accredited investor,” as defined in Rule 501(A)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended (an “Institutional Accredited Investor”) or (b) a “qualified institutional buyer,” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (a “Qualified Institutional Buyer”); and

WHEREAS, Stifel Nicolaus & Company, Incorporated, is acting as Placement Agent to the City with respect to the placement of the Loan with the Lender; and

WHEREAS, the City Council intends to pay the principal of and interest on the Loan from: (a) customer usage fees and any other fees received from the operation of the City’s Electric Utility system on deposit in the City’s Electric Fund (as defined herein) and available for the payment of the Loan (as more particularly defined herein, “Available Electric Utility Fees”); and (b) to the extent Available Electric Utility Fees are not sufficient, ad valorem property taxes authorized in the Ballot Question; and

WHEREAS, notwithstanding the City’s intention to pay amounts due on the Loan from Available Electric Utility Fees and ad valorem property taxes authorized in the Ballot Question, the Loan is a general obligation of the City and the full faith and credit of the City are pledged to its payment; and

WHEREAS, no member of the City Council has a potential conflict of interest in connection with the authorization, issuance, sale or use of proceeds of the Loan; and

WHEREAS, there has been presented to the City Council, among other things, substantially final forms of (a) the Placement Agent Agreement, and (b) the Loan Agreement, including the form of Note; and

WHEREAS, subject to the limitations set forth in this Ordinance, the City Council desires, as provided in the Supplemental Public Securities Act, Part 2 of Article 57 of Title 11 of the Colorado Revised Statutes, as amended, to delegate the authority to the Mayor, the City Manager, or the Finance Director, to identify the Refunded Bonds and to determine certain provisions of the Loan to be set forth in the Sale Certificate, in accordance with the provisions of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO:

Section 1. Definitions. The following shall have the following meanings for purposes of this Ordinance:

“*Acts*” means, collectively, the State Constitution, the Charter, and Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended.

“*Authorized Officer*” means the person or persons authorized to execute the Financing Documents, which shall be the Mayor and/or City Clerk, or in the absence of the Mayor and City Clerk, the Mayor Pro-Tem and/or Deputy City Clerk, and the Finance Director.

“*Available Electric Utility Fees*” means, as of any particular date of determination, all Electric Utility Fees and earnings thereon on deposit in the City’s Electric Fund and available for payment of the principal of and interest on the Note after taking into account all administrative, operation and maintenance expenses of the City payable from the Electric Fund, as determined by the City.

“*Ballot Question*” means the ballot question approved by City voters on November 6, 2007, defined as such in the preambles hereto.

“*Business Day*” means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the State are authorized or obligated by law or executive order to be closed for business.

“*Charter*” means the Charter of the City of Aspen, adopted June 16, 1970, as amended.

“*City*” is defined in the recitals hereof.

“*City Council*” means the City Council of the City, and any successor body.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Note or the use of proceeds thereof, unless the context clearly requires otherwise.

“*Dated Date*” means the original dated date for the Note as established in the Sale Certificate.

“*Electric Fund*” means the City’s Electric Enterprise Fund (formerly consisting of the Electric Enterprise Fund and Ruedi Hydroelectric Enterprise Fund, which funds have been combined), and any other fund created by City Council for the purpose of accounting for revenues received in connection with its operation of electric utilities (including, but not limited to, any fund created to account for revenues relating to the Hydroelectric Facility on Castle Creek).

“*Electric Utility Fees*” means customer usages fees and any other fees received by the City as a result of the City’s operation of its Electric Utility.

“*Finance Director*” means the Director of Finance, or his or her absence, the Assistant Finance Director.

“*Financing Documents*” means the Loan Agreement and the Note.

“*Loan*” means the General Obligation Electric Utility Refunding Loan, Series 2019, made by Lender to the City pursuant to the Loan Agreement.

“*Note*” means the promissory note in the form attached to the Loan Agreement executed by the City and delivered to the Lender evidencing the City’s obligations to pay the Loan.

“*Ordinance*” means this Ordinance, including any amendment or supplement hereto.

“*Placement Agent*” means Stifel, Nicolaus & Company, Incorporated.

“*Placement Agent Agreement*” means that agreement between the Placement Agent and the City concerning the private placement of the Loan with the Lender.

“*Pledged Revenue*” means the moneys derived by the City from the following sources, net of any costs of collection:

- (i) the Available Electric Utility Fees;
- (ii) the Ad Valorem Property Taxes; and
- (iii) any other legally available moneys which the City determines, in its absolute discretion, to transfer to the Trustee for application as Pledged Revenue.

“*Redemption Date*” means the first date or dates on which any Refunded Bonds may be called for redemption as specified in the Sale Certificate

“*Refunded Bonds*” means any of the outstanding 2008 Bonds as specified in the Sale Certificate.

“*Refunding Project*” means the execution and delivery of the Loan for the purpose of defraying the costs of refunding the Refunded Bonds and payment of the costs of execution and delivery of the Loan.

“*Sale Certificate*” means the certificate executed by the Sale Delegate, under the authority delegated pursuant to this Ordinance, including, among other things, the aggregate principal amount of the Note, the prices at which the Note will be sold, interest rates and annual maturing principal for the Note, as well as the dates on which the Note may be redeemed and the redemption price therefore.

“*Sale Delegate*” means any of the Mayor of the City, the Mayor Pro Tem and the Finance Director.

“*State*” means the State of Colorado.

“*2008 Bonds*” means the City of Aspen, Colorado, General Obligation Electric Utility Bonds, Series 2008, as further described in the recitals hereto.

Section 2. Approvals, Authorizations, and Amendments. The Financing Documents and the Placement Agent Agreement are incorporated herein by reference and are

hereby approved. The City shall enter into and perform its obligations under the Financing Documents and the Placement Agent Agreement in the forms of such documents presented at this meeting, with only such changes as are not inconsistent herewith. The Authorized Officers are hereby authorized and directed to execute the Financing Documents and the Placement Agent Agreement, and to affix the seal of the City thereto as appropriate, and to further execute and authenticate such other documents, instruments or certificates as are deemed necessary or desirable in order to secure the Loan. Such documents are to be executed in substantially the forms presented at this meeting of the City Council, provided that such documents may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution. Copies of all of the Financing Documents and the Placement Agent Agreement shall be delivered, filed and recorded as provided therein.

Upon execution and delivery of the Financing Documents and the Placement Agent Agreement, the covenants, agreements, recitals and representations of the City therein shall be effective with the same force and effect as if specifically set forth herein, and such covenants, agreements, recitals and representations are hereby adopted and incorporated herein by reference.

The proper officers of the City are hereby authorized and directed to prepare and furnish to any interested person certified copies of all proceedings and records of the City relating to the Loan and such other affidavits and certificates as may be required to show the facts relating to the authorization and issuance thereof.

The execution of any instrument by an Authorized Officer of the City in connection with the issuance, sale or delivery of the Financing Documents and the Placement Agent Agreement not inconsistent herewith shall be conclusive evidence of the approval by the City of such instrument in accordance with the terms thereof and hereof.

Section 3. Authorization. In accordance with the Constitution of the State of Colorado; the Acts; and all other laws of the State of Colorado thereunto enabling, the City shall execute and deliver the Financing Documents for the purpose of paying a portion of the costs of the Refunding Project. The Loan shall constitute a general obligation of the City as provided in the Loan Agreement. The Board hereby determines to apply all of the provisions of the Supplemental Act to the Note and the Loan.

Section 4. Delegated Authority. Pursuant to Section 11-57-205, C.R.S., the City Council hereby delegates to any Sale Delegate the authority to execute and deliver the Sale Certificate setting forth the final terms of the Loan subject to the parameters contained in Section 9 below.

Section 5. Payment of Refunded Bonds. The proceeds of the Loan and the Notes shall be promptly delivered to Wells Fargo Bank, National Association, as the paying agent for the Refunded Bonds (the "Paying Agent"), and be applied to the payment of the Refunded Bond Requirements as of the Redemption Date.

Section 6. Permitted Amendments to Ordinance. The City may amend this Ordinance in the same manner, and subject to the same terms and conditions, as apply to an amendment or supplement to the Loan Agreement.

Section 7. Authorization to Execute Collateral Documents. Each City Council member and each officer of the City is hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance, including but not limited to the execution of such certificates and affidavits as may be reasonably required.

Section 8. Costs and Expenses. All costs and expenses incurred in connection with the Loan, the Note, and the transactions contemplated by this Ordinance shall be paid from legally available moneys of the City and such moneys are hereby appropriated for that purpose.

Section 9. Delegation and Parameters.

(a) The City Council hereby delegates to the Sale Delegate the authority to determine and set forth in the Sale Certificate: (i) the matters set forth in subsection (b) of this Section, subject to the applicable parameters set forth in subsection (c) of this Section; and (ii) any other matters that, in the judgment of the Sale Delegate, are necessary or convenient to be set forth in the Sale Certificate and are not inconsistent with the parameters set forth in subsection (c) of this Section.

(b) The Sale Certificate shall set forth the following matters and other matters permitted to be set forth therein pursuant to subsection (a) of this Section, but each such matter must fall within the applicable parameters set forth in subsection (c) of this Section:

- (i) the date on which the Loan and Note will be executed and delivered;
- (ii) the Dated Date of the Note and, if not the date of delivery of the Note, the amount of proceeds of the Note constituting accrued interest to be deposited into the Note Account;
- (iii) the aggregate principal amount of the Loan;
- (iv) the principal amount of the Loan maturing in each year;
- (v) the interest payment dates;
- (vi) the rate of interest;
- (vii) the dates upon which any prepayment of the Loan may occur, and the prices at which such prepayment may occur;

(viii) the principal amounts, if any, of the Note subject to mandatory sinking fund redemption, and the years in which such Note will be subject to such redemption;

(c) The authority delegated to the Sale Delegate by this Section shall be subject to the following parameters:

(i) the aggregate principal amount of the Loan shall not exceed \$2,150,000;

(ii) the final maturity of the Loan shall be no later than December 1, 2025; and

(iii) the maximum annual repayment cost due and owing under the Loan shall not exceed \$356,970 and the maximum total repayment cost shall not exceed \$2,385,000;

(iv) the interest rate on the Loan shall not exceed 2.90%.

Section 10. Application of Supplemental Act. The City Council specifically elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. (as previously defined, the “Supplemental Act”), to the Note.

Section 11. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Loan as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Ordinance. The revenues pledged for the payment of the Loan, as received by or otherwise credited to the City, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge on the revenues pledged for payment of the Loan and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the City. The lien of such pledge shall be valid, binding, and enforceable as against all Persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such Persons have notice of such liens.

Section 12. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the City Council, or any officer or agent of the City acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal, interest or prior redemption premiums on the Loan. Such recourse shall not be available either directly or indirectly through the City Council, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Loan and as a part of the consideration of their sale or purchase, any Person purchasing or selling such Note specifically waives any such recourse.

Section 13. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Note shall contain a recital that they are issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note after their delivery for value.

Section 14. Limitation of Actions. Pursuant to Section 11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of the Loan shall be commenced more than thirty days after the authorization of the Note.

Section 15. Events Occurring on Days That Are Not Business Days. Except as otherwise specifically provided herein with respect to a particular payment, event or action, if any payment to be made hereunder or any event or action to occur hereunder which, but for this Section, is to be made or is to occur on a day that is not a Business Day, such payment, event or action shall instead be made or occur on the next succeeding day that is a Business Day with the same effect as if it was made or occurred on the date on which it was originally scheduled to be made or occur.

Section 16. Ordinance Is Contract with Lender and Irrepealable. After the Note has been issued, and the Loan and Loan Agreement executed and delivered, this Ordinance shall be and remain a contract between the City and the Lender and shall be and remain irrepealable until all amounts due with respect to the Loan shall be fully paid, satisfied and discharged and all other obligations of the City with respect to the Loan shall have been satisfied in the manner provided herein.

Section 17. Headings. The headings to the various sections and subsections to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance and shall not be used in any manner to interpret this Ordinance.

Section 18. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 19. Repeal of Inconsistent Ordinances. All ordinances, or parts thereof, that are in conflict with this Ordinance, are hereby repealed.

Section 20. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance, or the Charter) by the City Council or by the officers and employees of the City directed toward the issuance of the Note for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 21. Recordation. A true copy of this Ordinance, as adopted by the City Council of the City, shall be numbered and recorded, and its adoption and publication shall be authenticated by the signatures of the Mayor and the City Clerk and by a certification of publication.

Section 22. Effective Date

. This Ordinance shall be effective thirty (30) days after final passage of the Ordinance upon second reading by the City Council, as provided in Section 4.9 of the Charter.

INTRODUCED, READ AND PASSED ON FIRST READING by the City Council of the City of Aspen at its regular meeting on January 14, 2019, as provided by the City's Charter and applicable law.

[SEAL]

By _____
Mayor

Attest:

By _____
City Clerk

READ, PASSED ON SECOND READING, FINALLY ADOPTED AND APPROVED AND ORDERED PUBLISHED BY TITLE AFTER SUCH FINAL PASSAGE by the City Council of the City of Aspen at its regular meeting on January 28, 2019, as provided by the City's Charter and applicable law.

[SEAL]

By _____
Mayor

Attest:

By _____
City Clerk

[signature page to Note Ordinance]

5. The Ordinance was authenticated by the signature of the Mayor, sealed with the City seal, attested by the City Clerk, and recorded in the minutes of the City Council.

6. There are no bylaws, rules or regulations of the City Council that might prohibit the adoption of the Ordinance.

7. Notices of the meetings of January 14, 2019, and January 28, 2019, in the forms attached hereto as **Exhibit A** were posted at the City Hall not less than 24 hours prior to each meeting in accordance with law.

8. The Ordinance was published by posting on the City's internet website, www.cityofaspen.com, as provided by Section 4.10(h) of the Home Rule Charter, on _____, 2019.

WITNESS my hand and the seal of the City affixed this ____ day of _____, 2019.

City Clerk

(SEAL)

EXHIBIT A
Notices of Meetings

45255460.v3