

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2015-25

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, ARIZONA, AMENDING RESOLUTION NO. 01-01, ADOPTED ON JANUARY 23, 2001, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AND A CITY LEASE, APPROVING THE EXECUTION AND DELIVERY BY WILLCOX MUNICIPAL PROPERTY CORPORATION OF SUCH GROUND LEASE AND CITY LEASE AND APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE GOVERNMENT DOCUMENTS (AS SUCH TERM IS DEFINED HEREIN), THE NEGOTIATION OF A NOTE TO THE UNITED STATES GOVERNMENT, ACTING THROUGH RURAL UTILITIES SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS FOR THE PAYMENT THEREOF AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY SUCH GROUND LEASE, CITY LEASE AND GOVERNMENT DOCUMENTS AND THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, the Mayor and Council of the City of Willcox, Arizona (the "City"), have heretofore, pursuant to Resolution No. 01-01, adopted on January 23, 2001 (the "Prior Resolution"), authorized and ordered the issuance of and sale to the United States of America, Rural Utilities Service, United States Department of Agriculture (the "Purchaser" or "Government") of City of Willcox, Arizona, Sewer Revenue Bonds, Project of 2001A, in the form of a single bond in the principal amount of \$688,500 and City of Willcox, Arizona, Sewer Revenue Bonds, Project of 2001B, in the form of a single bond in the principal amount of \$463,200;

WHEREAS, Section 18 of the Prior Resolution provides (i) that the owner of two-thirds (2/3) in principal amount of the Bonds (as such term and all other undefined terms used in these Recitals are defined in the Prior Resolution) at any time Outstanding shall have the right from time to time to consent to and approve the adoption by the Council of a resolution or resolutions modifying or amending any of the terms or provisions contained in the Prior Resolution, provided, however, that the Prior Resolution may not be so modified or amended in such manner, among other things, as to, while any Bond remains owned by the Purchaser, make any change without the consent of the Purchaser or which is contrary to the regulations of the United States Department of Agriculture, and (ii) further that certain notices are required and specific consent requirements to be followed in connection with any such modification or amendment (the "Modification Process");

WHEREAS, the Mayor and Council of the City have now determined that it will be beneficial to the citizens of the City and in furtherance of the purposes of the City and the public interest to borrow not to exceed \$2,005,000 to provide funds to make improvements (the "Project") to the complete sewer system of the City and all sewer properties of every nature hereafter owned by the City, including all improvements and extensions made by the City and including all real

and personal property of every nature comprising part of or used or useful in connection with the City's sewer system, and including all appurtenances, contracts, leases, franchises, and other intangibles;

WHEREAS, Willcox Municipal Property Corporation, a nonprofit corporation incorporated and existing pursuant to the laws of the State of Arizona (the "Corporation"), was formed to assist the City in acquiring land and constructing improvements thereon and in constructing and acquiring improvements upon any land, buildings, improvements or facilities for any civic, municipal or governmental purpose, as may be desired by the City, and to pay all legal, financial, architectural or incidental expenses incurred with respect thereto;

WHEREAS, the financing of certain costs of the Project will be provided through negotiation of the hereinafter described Note;

WHEREAS, the Board of Directors of the Corporation has determined to assist the City in funding such portion of the costs of the Project;

WHEREAS, the Government has agreed, if all of its requirements are satisfied, to loan to the Corporation such portion of the funds for the costs of the Project, such loan to take the form of a promissory note (the "Note");

WHEREAS, in connection with the negotiation of the Note, the Corporation and the City shall enter into (i) a Wastewater Facilities Site Master Ground Lease, to be dated the date delivered (the "Ground Lease"), pursuant to which the City will lease the real property described on the Exhibit attached thereto (the "Real Property") to the Corporation, and (ii) a Series 2015 City Lease, to be dated the date delivered (the "City Lease"), pursuant to which (A) the Corporation shall lease the Real Property and the improvements which are part of the Project (the "Improvements") to the City, and (B) the City shall (I) lease from the Corporation the Real Property and the Improvements and (II) as agent for the Corporation, shall agree to provide for the Project;

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the assistance it renders the City in financing the Project, and no part of the net earnings of the Corporation, if any, shall ever inure to the benefit of any person, firm or corporation except the City;

WHEREAS, the Note shall be issued pursuant to a Loan Resolution Security Agreement, to be dated the date delivered, by and between the Corporation and the Government and secured by a Real Estate Deed of Trust for Arizona with Assignment of Rents, to be dated the date delivered (the "Deed of Trust"), from the Corporation and a Security Agreement (Chattel and Crops), to be dated the date delivered (the "Security Agreement"), from the Corporation;

WHEREAS, the Note shall be repaid before or on forty (40) years from the date of the execution and delivery thereof, shall bear interest at rates not to exceed five percent (5%) per annum and shall be secured by the City Lease pursuant to which the City shall pledge the Net Revenues;

WHEREAS, in order to provide for such pledge, certain amendments must be made to the Prior Resolution, to which the Purchaser, as the owner of all the 2001 Bonds, may consent pursuant to the Prior Resolution; and

WHEREAS, there have been placed on file with the Clerk of the City and presented to the meeting at which this Resolution was adopted (1) the proposed form of the Ground Lease, (2) the proposed form of the City Lease and (3) the proposed form of the Note and the agreements required by the Government in connection with the negotiation of the Note, being the Deed of Trust and the Security Agreement as well as the "Water and Waste System Grant Agreement", the "Assurance Agreement" and the "Equal Opportunity Agreement" (collectively, with the Note, the Deed of Trust and the Security Agreement, the "Government Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, ARIZONA, THAT:

Section 1.

(a) The following defined terms are added in appropriate alphabetical order to the Prior Resolution:

"Government" means the United States of America Department of Agriculture, Rural Utilities Service.

"Ground Lease" means the Wastewater Site Master Ground Lease approved on September 3, 2015.

"Parity Obligation" means the Series 2015 City Lease approved on September 3, 2015.

(b) The following definitions as used in the Prior Resolution are hereby amended as follows (added language in **bold** face):

"Annual Debt Service Requirement" shall mean for any Fiscal Year the amount to be paid in such Fiscal Year with respect to any series of Bonds **and to the Parity Obligation** for payment of principal and interest on the series of Bonds (whether at maturity or because of mandatory redemption) and **the Parity Obligation**.

"Deficiency" shall mean the difference between (i) the total amount due on a principal or interest payment date for the Bonds **or for the Parity Obligation** and (ii) the amount which has been deposited in the Bond Fund from money paid by the City or from other funds legally available to the Paying Agent for payment to the Owners **or to the Government**.

"Maximum Annual Debt Service" shall mean, at the time of computation, the greatest **combined** scheduled principal and interest requirements of the Bonds **and of the Parity Obligation** occurring in the then-current, or any subsequent, Fiscal Year. When computing Maximum Annual Debt Service, Bonds subject to mandatory redemption shall be treated as maturing on the date of such mandatory redemption.

"Parity Bonds" shall mean any additional bonds issued after the 2001 Bonds on a parity with the 2001 Bonds **and the Parity Obligation** pursuant to the provisions of Section 15 of this resolution.

(c) Section 8 of the Prior Resolution is hereby amended as follows (added language in **bold** face):

Section 8. Source of Payment and Pledge of Revenues. The Bonds **and the Parity Obligation** shall be payable solely from Net Revenues. The Bonds **and the Parity Obligation** shall be equally and ratably secured by a pledge thereof and a lien thereon without priority one over the other.

(d) Section 10 of the Prior Resolution is hereby amended as follows (added language in **bold** face):

Section 10. Coverage. The City covenants and agrees with the Owners **and the Government** that it will establish and maintain rates, fees and other charges for all services supplied by the System to provide Revenues fully sufficient at all times, after making reasonable allowance for contingencies and errors in estimates, to pay the Operating Expenses and to produce an aggregate amount of Net Revenues in each Fiscal Year equal to one hundred twenty-five percent (125%) of the Annual Debt Service Requirements of all of the Outstanding Bonds **and of the Parity Obligation.**

(e) Section 10(B)(2) of the Prior Resolution is hereby amended as follows (added language in **bold** face):

(2) Bond Fund. Second. On or before the tenth (10th) day of each month, to the Bond Fund the following amounts in the following manner:

(a) Commencing March 10, 2001, through June 10, 2001, one-fourth (1/4) of the amount which, when added to accrued interest received from the Bonds, will be sufficient to pay all interest coming due July 1, 2001, and thereafter, one-sixth (1/6) of the interest becoming due on the next interest payment date on all of the Bonds then Outstanding **and commencing the first date required by the Parity Obligation, the amount treated as interest becoming due on the next payment date on the Parity Obligation;** and

(b) Commencing March 10, 2001, through June 10, 2001, one-fourth (1/4) of the principal becoming due on July 1, 2001, and thereafter, one-twelfth (1/12) of the principal becoming due on the next succeeding principal or mandatory redemption payment date on the Bonds then Outstanding **and commencing the first date required by the**

Parity Obligation, the amount treated as the principal becoming due on the next payment date on the Parity Obligation.

The Bond Fund shall be a trust fund and shall be used solely for the purpose of paying the principal of and interest on the Bonds **and on the Parity Obligation.** Moneys in the Bond Fund shall be transferred to the Paying Agent as needed to punctually pay all principal and interest as it matures or comes due.

(f) Section 13(E) of the Prior Resolution is hereby amended as follows (added language in **bold** face):

Other than the Wastewater Site Master Ground Lease approved on September 3, 2015, the City will not sell, lease as lessor, mortgage or in any manner dispose of the System or any part thereof, including any and all extensions and additions that may be made thereto, until all of the Bonds shall have been paid in full; provided, however, that this covenant shall not be construed to prevent the disposal by the City or property which in its judgment has become inexpedient for use in connection with the System; and provided further that the foregoing shall not prohibit the City from leasing from any entity any portion of the System in connection with the financing of any extension or addition thereto.

(g) Section 14 of the Prior Resolution is hereby amended as follows (added language in **bold** face):

Section 14. Remedies of Owners. Any Owner **and the Government** may either at law or in equity, by suit, action, mandamus or other proceedings, in any court of competent jurisdiction protect the lien on the Net Revenues created by this resolution, **as amended,** and enforce and compel performance of all duties imposed upon the City by the provisions of this resolution, **as amended,** including the setting and collecting of sufficient rates and revenues, and the segregation of the income and Revenues of the System and the proper application thereof.

If any default be made in the payment of principal or of interest on any of the Bonds **or the Parity Obligation,** then upon the filing of suit by any Owner **or the Government,** any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the City with power to charge and collect fees sufficient to provide for the payment of all Bonds and obligations Outstanding **and the Parity Obligation** against the System and for payment of Operating Expenses, and to apply Revenues in conformity herewith.

(h) The lead in to Section 15 and Section 15(B) of the Prior Resolution is hereby amended as follows (added language in **bold** face):

Section 15. Equality of Lien: Prohibition of Future Lien. The 2001A Bond, the 2001B Bond and all Parity Bonds shall each enjoy complete parity of lien on the Net Revenues despite the fact that the 2001 Bonds may be delivered at an earlier date than any other of the Bonds. The City will issue no other bonds or obligations of any kind

or nature payable from or enjoying a lien on the Net Revenues of the System having priority over the 2001 Bonds herein authorized; provided, however, that additional Parity Bonds may hereafter be issued on a parity with the 2001 Bonds herein authorized under the following conditions, but not otherwise:

B. Additional bonds may also be issued on a parity with the 2001 Bonds **and the Parity Obligation** herein authorized if all of the following conditions are met:

(1) The Net Revenues for the completed Fiscal Year immediately preceding the issuance of the Parity Bonds must have been at least equal to one hundred twenty-five percent (125%) of Maximum Annual Debt Service on all outstanding Bonds **and the Parity Obligation** immediately after issuance of such Parity Bonds as shown by a certificate signed by the City Finance Officer.

(i) Section 19(L) of the Prior Resolution is hereby amended as follows (added language in **bold** face):

L. Liens and Encumbrances. The City represents that, **other than the Ground Lease**, there will be, after acquisition and improvement of the System is complete, no liens or encumbrances of any nature whatsoever on or against the System or the revenues derived or to be derived from the operation thereof other than as heretofore disclosed to the Government.

(j) Section 19(M) of the Prior Resolution is hereby amended as follows (added language in **bold** face):

M. Retention of Title. So long as the Government holds the 2001 Bonds, the City shall not dispose of its title to the System or to any useful part thereof, including any facility necessary to the operation and use of the System and the lands and interest in land comprising the site of the System **other than as result of the Ground Lease**.

(k) Except as provided by this Section, the Prior Resolution is hereby ratified and confirmed in all respects.

Section 2. The forms, terms and provisions of the Ground Lease and the City Lease, in the forms of such documents (including the exhibits thereto) presented at the meeting at which this Resolution was adopted, are hereby approved, with such insertions, omissions and changes, not inconsistent with the City's application to the Authority or the requirements of the federal government or the Authority, as limited by the Recitals hereto, as shall be approved by the Mayor or, in the absence thereof, Vice Mayor of the City, the execution of such documents being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor of the City and Clerk of the City are hereby authorized and directed, for and on behalf of the City, to execute and attest and deliver, respectively, the Ground Lease and the City Lease.

Section 3. The forms, terms and provisions of the Government Documents in the forms of such documents (including exhibits thereto) presented at the meeting at which this Resolution was adopted, are hereby approved, with such insertions, omissions and changes as shall be approved by the President or, in the absence thereof, the Vice President of the Corporation, the execution of such documents being conclusive evidence of such approval.

Section 4. The Board of Directors and officers of the Corporation are hereby requested to take any and all action necessary in connection with the negotiation of the Note (which are hereby approved) pursuant to the terms and requirements of the Government Documents. The application of the proceeds thereof to the costs of the Project is also hereby approved.

Section 5. The obligation of the City to repay the Note as well as to make the other payments provided for in the City Lease is limited to payment from the pledge of the Net Revenues, and the obligations of the City under the City Lease shall not constitute nor give rise to a general obligation of the City or any claim against its ad valorem taxing powers, or constitute an indebtedness within the meaning of any statutory or constitutional debt limitation applicable to the City.

Section 6. The appropriate officials and officers of the City are hereby authorized and directed to take all action necessary or reasonably required by the parties to the City Lease, to carry out, give effect to and to consummate the transactions contemplated by the City Lease and by this Resolution, including, without limitation, the execution and delivery of any closing and other documents reasonably required to be delivered in connection therewith and shall do all things necessary to assist the Corporation in the negotiation of the Note.

Section 7. This Resolution shall be and remain irrevocable until the Note and the interest thereon shall have been fully paid, cancelled and discharged.

Section 8. If any section, paragraph, clause or provision of this Resolution 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 Resolution.

Section 9. All resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order or resolution or any part thereof.

Section 10. The immediate operation of this Resolution is necessary for the financing on the most attractive terms available to the City of the Project and the preservation of the public health and welfare; an emergency is hereby declared to exist; this Resolution shall be in full force and effect from and after its passage and

approval by the Mayor and Council of the City, as required by law and this Resolution is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF WILLCOX, ARIZONA, on September 3, 2015.

/s/ Robert A. Irvin
ROBERT A. IRVIN, Mayor

ATTEST:

APPROVED AS TO FORM:

/s/ Virginia A. Mefford
VIRGINIA A. MEFFORD, City Clerk

/s/ Ann P. Roberts
ANN P. ROBERTS, City Attorney

THE UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE, RURAL
UTILITIES SERVICE HEREBY
CONSENTS TO THE AMENDMENTS
PROVIDED IN THE RESOLUTION TO
WHICH THIS IS APPENDED WITH
WAIVER OF COMPLIANCE WITH THE
MODIFICATION PROCESS FOR ALL
PURPOSES OF RESOLUTION NO. 01-
01, ADOPTED BY THE MAYOR AND
COUNCIL OF THE CITY OF WILLCOX,
ARIZONA, JANUARY 23, 2001

By: _____
Printed Name: _____
Title: _____