

RESOLUTION NO. 2018-24

**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 CITY LEASE, APPROVING THE EXECUTION AND DELIVERY BY WILLCOX MUNICIPAL PROPERTY CORPORATION OF SUCH 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 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 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 “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 Government, make any change without the consent of the Government 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**, pursuant to Resolution No. 2017-05, adopted by them on March 2, 2017 (the “2017 Amending Resolution”), the Mayor and Council of the City determined that it would be beneficial to the citizens of the City and in furtherance of the purposes of the City and the public interest to borrow \$3,504,000 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 were provided through negotiation by the Corporation to the Government of the notes described in the 2017 Amending Resolution;

**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 \$1,200,000 to provide additional funds for the Project;

**WHEREAS**, such additional funds 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 providing such additional funds;

**WHEREAS**, the Government has agreed, if all of its requirements are satisfied, to loan to the Corporation such additional funds, 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 a Series 2018 City Lease, to be dated the date delivered (the “Series 2018 City Lease”), pursuant to which (A) the Corporation shall lease the real property and the improvements which are part of the Project to the City, and (B) the City shall (I) lease from the Corporation such real property and improvements and (II) as agent for the Corporation, shall agree to provide for the Project;

**WHEREAS**, the Note (in the amount of \$1,200,000) will be secured by the Series 2018 City Lease and the herein described Government Documents;

**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 incurred pursuant to a Loan Resolution Security Agreement, to be dated the date hereof, 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 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 three percent (3.00%) per

annum and shall be secured by the Series 2018 City Lease pursuant to which the City shall pledge the Net Revenues;

**WHEREAS**, in order to provide for such pledge, certain amendments, in addition to those made by the 2017 Amending Resolution, must be made to the Prior Resolution, to which the Government, 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 Series 2018 City Lease and (2) 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, 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 definition as used in the Prior Resolution as amended by the 2017 Amending Resolution is hereby amended as follows (added language in **bold** face):

**"Parity Obligation"** means, together, the Series 2017 City Leases approved on March 2, 2017 **and the Series 2018 City Lease approved on ....., 2018.**

(b) Except as provided by this Section and the 2017 Amending Resolution, the Prior Resolution is hereby ratified and confirmed in all respects.

**Section 2.** The form, terms and provisions of the Series 2018 City Lease, in the form of such document (including the exhibits thereto) presented at the meeting at which this Resolution was adopted, are hereby approved, with such insertions, omissions and changes, the requirements of the federal government, 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, and the Series 2018 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 Series 2018 City Lease is limited to payment from the pledge of the Net Revenues, and the obligations of the City under the Series 2018 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 Series 2018 City Lease, to carry out, give effect to and to consummate the transactions contemplated by the Series 2018 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 Notes.

**Section 7.** This Resolution shall be and remain irrevocable until the Notes 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.

*[Remainder of Page Intentionally Left Blank.]*


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Willcox, Arizona, on 20<sup>th</sup> day of November, 2018.



---

Mike Laws, Mayor

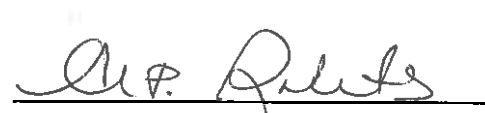
ATTEST:



---

CRYSTAL L. HADFIELD, City Clerk

APPROVED AS TO FORM:



---

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: \_\_\_\_\_