



Resolution **RESOLUTION NO. 639**

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AND A LEASEBACK AGREEMENT; APPROVING THE EXECUTION AND DELIVERY BY SAN LUIS CIVIC IMPROVEMENT CORPORATION OF A TRUST INDENTURE, LEASE, LEASEBACK AGREEMENT, AND A BOND PURCHASE AGREEMENT; APPROVING AN OFFICIAL STATEMENT; APPROVING THE ISSUANCE OF NOT TO EXCEED \$40,000,000 AGGREGATE PRINCIPAL AMOUNT OF SAN LUIS CIVIC IMPROVEMENT CORPORATION MUNICIPAL FACILITIES EXCISE TAX REVENUE BONDS, SERIES 2005, 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 THIS RESOLUTION; AND DECLARING AN EMERGENCY.

WHEREAS, San Luis Civic Improvement Corporation, a nonprofit corporation incorporated and existing pursuant to the laws of the State of Arizona (the "Corporation"), was formed to transact any or all lawful business for which nonprofit corporations may be incorporated under the laws of the State of Arizona (the "State"), including, without limiting the generality of the foregoing, any civic or charitable purpose such as financing or refinancing the cost of acquiring, constructing, reconstructing or improving buildings, equipment or other real and personal properties suitable for use by and for leasing to the City of San Luis, Arizona (the "City") or its agencies or instrumentalities; and

WHEREAS, the City has previously entered into a Leaseback Agreement with the San Luis Municipal Property Corporation ("San Luis MPC"), dated as of October 1, 1997 (the "1997 Lease") pursuant to which the City is obligated to make certain lease payments in an amount sufficient to pay the principal and interest requirements of the San Luis Municipal Property Corporation Municipal Facilities Excise Revenue Refunding Bonds, Series 1997 (the "1997 Bonds") previously issued by San Luis MPC (the 1997 Lease and 1997 Bonds being referred to herein as the "Outstanding Obligations"); and

WHEREAS, the City has now determined to finance various new municipal projects for the benefit of the City, including but not limited to a manganese clarifier, lift station, water well #7 and water meters, City Complex, and wastewater plant (collectively, the "Project"); and

WHEREAS, the Corporation has agreed to assist the City in refinancing the Outstanding Obligations and financing the Project; and

WHEREAS, in order to refinance the Outstanding Obligations and finance the Project, the Corporation and the City deem it necessary and desirable for the Corporation to issue its not to exceed \$40,000,000 aggregate principal amount of Municipal Facilities Excise Tax Revenue Bonds, Series 2005 (the "Series 2005 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2005 Bonds, the Corporation and the City will enter into a Lease, dated as of October 1, 2005 (the "Lease"), pursuant to which the City will lease the Real Property described on Exhibit A attached thereto (the "Real Property") to the Corporation, and the Corporation will pay to the City a rental payment from the proceeds of the Series 2005 Bonds; and

WHEREAS, the Corporation and the City will also enter into a Leaseback Agreement, dated as of October 1, 2005 (the "Leaseback Agreement"), pursuant to which the Corporation will lease the Real Property and the Improvements (the "Leased Property") back to the City, and the City will pay to the Corporation lease payments designed to be sufficient to pay debt service on the Series 2005 Bonds; and

WHEREAS, the Series 2005 Bonds and any additional bonds will be secured by a Trust Indenture, dated as of October 1, 2005 (the "Indenture"), between the Corporation and U.S. Bank National Association, as trustee (the "Trustee"); and

WHEREAS, the Series 2005 Bonds will be secured by the gross revenues generated by the City's water and wastewater system as well as the City's pledge of certain excise taxes, transaction privilege (sales, license and use) taxes and franchise fees described in the Leaseback Agreement (the "Excise Taxes"); and

WHEREAS, the Series 2005 Bonds will be additionally secured by a policy of municipal bond insurance issued by XL Capital Assurance; and

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 refinancing the Outstanding Obligations and financing the Project, and no part of the Corporation's net earnings, if any, will ever inure to the benefit of any person, firm or corporation except the City; and

WHEREAS, there have been placed on file with the Clerk of the City and presented to this meeting (1) the proposed form of the Indenture, (2) the proposed form of the Lease, (3) the proposed form of the Leaseback Agreement, (4) the proposed form of the Preliminary Official

Statement for the Series 2005 Bonds (the "Preliminary Official Statement"), which is hereby ratified and confirmed and which, as revised after the sale of the Series 2005 Bonds, will constitute the form of Official Statement relating to the Bonds (the "Official Statement"), (4) the proposed form of Purchase Agreement (the "Purchase Agreement") submitted by Hutchinson, Shockey, Erley & Co. (the "Purchaser") for the purchase of the Series 2005 Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, that:

Section 1. The Mayor and Council of the City hereby find and determine that the refinancing of the Outstanding Obligations, the financing of the Project, and the issuance of the Series 2005 Bonds by the Corporation pursuant to the terms of the Lease, the Leaseback Agreement and the Indenture is in furtherance of the purposes of the City and is in the public interest.

Section 2. The forms, terms and provisions of the Lease and the Leaseback Agreement, in the form of such documents (including the exhibits thereto) presented at this meeting are hereby approved, with such insertions, omissions and changes as shall be approved by the Mayor of the City, the execution of such documents being conclusive evidence of such approval, and the Mayor and Clerk of the City are hereby authorized, empowered and directed, for and on behalf of the City, to sign, attest, and deliver, the Lease and the Leaseback Agreement.

Section 3. The form, terms and provisions of the Indenture, in the form of such document (including exhibits thereto) presented at this meeting are hereby approved, with such insertions, omissions and changes as shall be approved by the President or Vice President of the Corporation, the execution of such documents being conclusive evidence of such approval.

Section 4. The Official Statement is hereby approved and confirmed.

Section 5. The City hereby requests the Corporation to take any and all action necessary in connection with the issuance and sale of the Series 2005 Bonds to the Purchaser in accordance with the terms and provisions of the Purchase Agreement.

Section 6. The City hereby approves the issuance and delivery of the Series 2005 Bonds by the Corporation in an aggregate principal amount not to exceed \$40,000,000. The Series 2005 Bonds shall mature no later than January 1, 2038 and shall bear interest at a rate not to exceed 6.00% per annum.

Section 7. The City hereby requests the Corporation to sell the Series 2005 Bonds to the Purchaser in accordance with the terms of the Purchase Agreement submitted by the Purchaser (which is hereby approved) and at the price specified therein.

Section 8. For the payment of the principal of, premium, if any, and interest on the Series 2005 Bonds, the City hereby agrees to pay and transfer to the Trustee the rent payments provided for in Article IV of the Leaseback Agreement and the other amounts required to be paid by the City pursuant to the provisions of the Leaseback Agreement.

Section 9. To secure the payment of the rent payments provided for in Article IV of the Leaseback Agreement, the City will pledge the Excise Taxes. The City intends that this pledge shall be a first lien upon such amounts of the Excise Taxes, as will be sufficient to make the rental payments pursuant to the Leaseback Agreement each month, and the City shall make said rent payments from the Excise Taxes, except to the extent that it chooses to make such payments from other funds.

Section 10. So long as any of the Series 2005 Bonds remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, the City shall not further encumber the Excise Taxes pledged under the Leaseback Agreement on a basis equal to the lien and pledge provided for in the Leaseback Agreement unless the Excise Taxes collected in the preceding fiscal year shall have amounted to at least two times (2.0 x) the highest combined interest and principal requirements for any succeeding fiscal year for all Series 2005 Bonds, any parity or additional bonds or other obligations secured by a pledge of the Excise Taxes then outstanding and any parity or additional bonds or other obligations so proposed to be secured by a pledge of the Excise Taxes.

Section 11. The obligation of the City to make the rental payments provided for in the Leaseback Agreement and to make other payments due under the Leaseback Agreement is limited to payment from the sources of taxes and revenues pledged therefor and the obligations of the City under the Leaseback Agreement 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 12. (a) In consideration of the purchase and acceptance of the Series 2005 Bonds by the registered owners and holders thereof from time to time, and in consideration of retaining the exemption from federal income taxes of the interest income on the Series 2005 Bonds, the City covenants, and the appropriate officials of the City are hereby directed, to take all action required, or to refrain from taking any action prohibited, by the Internal Revenue Code of 1986, as amended and as supplemented by all applicable Treasury Regulations promulgated in connection with any applicable section thereof (hereinafter referred to as, collectively the "Code to preserve the tax exempt status of the interest income of the Series 2005 Bonds.

(b) The City hereby represents and warrants that (i) the City has general taxing powers, (ii) the Series 2005 Bonds are not private activity bonds within the meaning of the Code, and (iii) 95% or more of the net proceeds of the Series 2005 Bonds shall be used for local governmental activities of the City.

Section 13. The City covenants that it will do all things necessary to assist the Corporation and the Trustee in the issuance and delivery of the Series 2005 Bonds.

Section 14. The Mayor of the City is hereby authorized, empowered and directed, for and on behalf of the City, to execute and deliver such materials as may be necessary for him to comply with the requirements of the Rule 15C2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time, with respect to the Series 2005 Bonds.

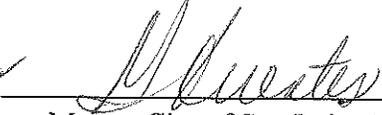
Section 15. After any of the Series 2005 Bonds are delivered by the Trustee to the Purchaser thereof upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Series 2005 Bonds and the interest thereon shall have been fully paid, cancelled and discharged.

Section 16. 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 17. All orders and 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 18. The immediate operation of this Resolution is necessary for the financing 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 Common Council of the City of San Luis, Arizona and this Resolution is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED this 16th day of September, 2005



Mayor, City of San Luis, Arizona

ATTEST:



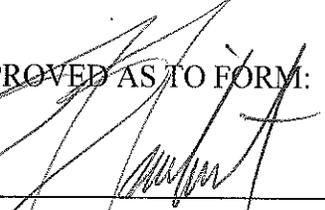
Clerk, City of San Luis, Arizona

APPROVED:



City Manager

APPROVED AS TO FORM:

By: 

City Attorney