

WHEN RECORDED MAIL TO:

ANTHIA SALCIDO
BOX "S"
SAN LUIS, ARIZONA 85349

ORDINANCE NO. 146

AN ORDINANCE 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 LEASE, A LEASEBACK AGREEMENT, A TRUST INDENTURE, AN ESCROW TRUST AGREEMENT, AND A BOND PURCHASE AGREEMENT; APPROVING THE ISSUANCE OF NOT TO EXCEED \$4,000,000 AGGREGATE PRINCIPAL AMOUNT OF SAN LUIS CIVIC IMPROVEMENT CORPORATION MUNICIPAL FACILITIES EXCISE TAX REVENUE REFUNDING BONDS, SERIES 1997; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS FOR THE PAYMENT THEREFOR 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 ORDINANCE; AND DECLARING AN EMERGENCY

WHEREAS, San Luis Civic Improvement Corporation, a nonprofit corporation incorporated pursuant to the laws of the State of Arizona (the "Corporation") to transact any or all lawful business for which nonprofit corporations may be incorporated under the laws of the State of Arizona, including, without limiting the generality of the foregoing, any civic, municipal, or governmental purpose such as financing the cost of acquiring, constructing and equipping certain facilities for use by and leasing to the City of San Luis, Arizona (the "City"); and

WHEREAS, the City has determined that it will be beneficial to refund the outstanding San Luis Municipal Property Corporation Municipal Facilities Revenue Bonds, Series 1989 (the "Prior Bonds"), previously issued at the request of the City to finance the acquisition of the water system owned by Fortuna Water Company, Inc. and the construction of certain improvements, extensions and additions to that water system, and to refinance certain obligations of the City; and

WHEREAS, the Corporation was formed to assist the City in refunding the Prior Bonds; and

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WHEREAS, in order to finance the costs of refunding the Prior Bonds as provided in the Escrow Trust Agreement, dated as of September 15, 1997 (the "Escrow Trust Agreement"), by and between the Corporation and an escrow trustee, the Corporation and the City find it necessary and desirable for the Corporation to issue its San Luis Civic Improvement Corporation Municipal Facilities Excise Tax Revenue Refunding Bonds, Series 1997 (the "Bonds"); and

WHEREAS, in connection with the issuance of the Bonds, the Corporation and the City shall enter into (i) a Lease, dated as of September 15, 1997 (the "Lease"), pursuant to which the City will lease the Leased Property, as defined therein (the "Leased Property"), to the Corporation, and (ii) a Leaseback Agreement, dated as of September 15, 1997 (the "Leaseback Agreement"), pursuant to which the Corporation will lease the Leased Property to the City; and

WHEREAS, the Corporation will not 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 Prior Bonds, 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; and

WHEREAS, the Bonds and any additional obligations on a parity therewith shall be secured by a Trust Indenture, dated as of September 15, 1997 (the "Indenture"), from the Corporation to Bank One, Arizona, NA, as trustee (the "Trustee"); 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 Escrow Trust Agreement, and (5) the proposed form of the Bond Purchase Agreement, to be dated the date of acceptance thereof (the "Purchase Contract"), by and between the Corporation and _____ (the "Purchaser") for the purchase of the Bonds; and

WHEREAS, immediate action is needed to authorize the execution and delivery of the Lease, the Leaseback Agreement, the Indenture, and the Escrow Trust Agreement (collectively, the "Basic Documents") and the issuance and sale of the Bonds in order to allow the City to proceed with the refunding of the Prior Bonds at the most favorable interest rate possible;

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 costs of refunding the Prior Bonds and the issuance of the Bonds pursuant to the terms of 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 or Vice Mayor of the City, the execution of such documents being conclusive evidence of such approval, and the Mayor or Vice Mayor and Clerk of the City are hereby authorized and directed, for and on behalf of the City, to sign and attest the Lease and the Leaseback Agreement.

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

Section 4. For payment of the Lease Payments and other amounts due and payable under the Basic Documents, there is hereby pledged all excise, transaction, franchise, privilege and business taxes, state-shared sales and income taxes, fees for licenses and permits and state revenue sharing now or hereafter validly imposed by the City or contributed, allocated or paid over to the City and not earmarked by the contributor for a contrary or inconsistent purpose which the City now collects, which it may collect in the future, or which are allocated or apportioned to the City by the State or any political subdivision thereof, or by any other governmental unit or agency, EXCEPT the City's share of any excise and franchise taxes which by state law, rule or regulation must be expended for other purposes, such as the motor vehicle fuel tax (the "Excise Taxes"). It is intended that this pledge of Excise Taxes shall be a lien superior to all prior pledges, set asides, designations, and reservations to the extent necessary or reasonably required for the City to pay the Lease Payments and other amounts due and payable under the Basic Documents as the same become due and payable.

The City covenants that the Excise Taxes which it imposes in each fiscal year shall be equal to at least two times the interest and principal requirements for the Bonds and any other outstanding parity obligations in such fiscal year. The City further covenants that if such receipts for any such fiscal year shall not equal two

times such principal and interest requirements, or if at any time it appears that the current fiscal year's receipts will not be sufficient to meet such fiscal year's actual principal and interest requirements, the City will either impose new or additional Excise Taxes or will increase the rate that such tax is then currently imposed in order that (i) the current fiscal year's receipts will be sufficient to meet such fiscal year's principal and interest requirements and (ii) the next succeeding fiscal year's receipts will be equal to at least two times the next succeeding fiscal year's principal and interest requirements.

Section 5. The City hereby requests the Corporation to take any and all action necessary in connection with the issuance and sale of the Bonds and the consummation of the transactions contemplated by the Basic Documents. The City covenants that it will do all things necessary to assist the Corporation in the issuance of the Bonds.

Section 6. The City hereby approves the issuance and delivery of the Bonds, as hereinafter described, by the Corporation. The Bonds shall be designated "San Luis Civic Improvement Corporation Municipal Facilities Excise Tax Revenue Refunding Bonds, Series 1997"; shall be issued in an aggregate principal amount of not to exceed \$4,000,000; shall be in the denomination of \$5,000 or any integral multiple thereof; shall be dated September 15, 1997 (or such later date designated in the Purchase Contract); and shall be fully registered bonds without coupons as provided in the Indenture. The City Manager is hereby authorized and directed (1) to determine on behalf of the City: (i) the final principal amounts and maturity schedule of the Bonds; (ii) the interest rate of each maturity of the Bonds; (iii) the provisions for the redemption of the Prior Bonds; (iv) the provisions for redemption in advance of maturity of the Bonds; (v) the sales price and terms of the Bonds (including original issue discount); (vi) the application of available funds, if any, to the transaction relating to the refunding of the Prior Bonds or the issuance of the Bonds; and (vii) the Lease Payments and (2) to communicate to the Board of Directors of the Corporation the determinations so made.

Section 7. The form, terms and provisions of the Bond and the provisions for the signatures, authentication, payment registration, transfer, exchange, redemption and number shall be as set forth in the Indenture and are hereby approved.

Section 8. The Purchase Contract in substantially the form of such document (including exhibits thereto) presented at this meeting is hereby approved, with such insertions, deletions, and changes, as approved by the officers of the Corporation authorized to execute the Purchase Contract, the execution of the document being conclusive evidence of such approval. The City hereby requests the Corporation to sell the Bonds to the Purchaser in accordance with the terms of the

Purchase Contract and at the price specified therein, as submitted to the Corporation by the Purchaser.

Section 9. The City Manager is hereby authorized and directed to enter into contracts and agreements for the services of bond counsel, financial advisor, trustee, bond registrar, accountants and auditors, and any other consultants with respect to the issuance of the Bonds, whose fees and expenses shall be paid from the proceeds of the Bonds, and any fees and expenses not paid from the proceeds of the Bonds shall be paid by the City.

Section 10. The City covenants that it will restrict or cause to be restricted the use of the proceeds of the Bonds in such manner and to such extent as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The Mayor, the Clerk or other officials of the City having responsibility for the issuance of the Bonds, alone or in conjunction with the Corporation or any officer, employee, agent of or consultant to the City, shall give an appropriate certificate of the City for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The City covenants that it (i) will take or require to be taken all actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes and from treatment as an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under Section 57 of the Code and (ii) will not take or authorize to be taken any actions that would adversely affect such exclusions under the provisions of the Code. The Mayor, Clerk, and City Manager are each hereby authorized and directed to take any and all actions and make or give reports and certifications, as may be appropriate to assure those exclusions of interest.

In its performance of these covenants and other covenants of the City pertaining to federal income tax law, the City may rely in good faith upon the advice of nationally recognized bond counsel which is in writing and is provided to the Trustee under the Indenture.

Section 11. The City designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City hereby certifies that it reasonably anticipates that the aggregate amount of tax-exempt obligations which will be issued by or for the City in calendar year 1997 will not exceed \$10,000,000.

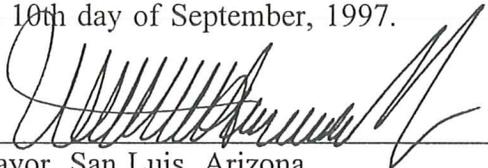
Section 12. After the Bonds are delivered by the Trustee to the Purchaser upon receipt of payment therefor, this Ordinance will be and remain irrevocable until the Bonds and the interest thereon have been fully paid, cancelled and discharged as described in Section 1-9-2 of the City Code.

Section 13. If any section, paragraph, clause or provision of this Ordinance is for any reason, held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision will not affect any of the remaining provisions of this Ordinance.

Section 14. All orders and resolutions or parts thereof inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver is not to be construed as reviving any order or resolution or any part thereof.

Section 15. The immediate operation of this Ordinance is necessary for the financing, on the most attractive terms available to the City, of the refunding of the Prior Bonds and the preservation of the public peace, health and safety; an emergency is hereby declared to exist; this Ordinance will be in full force and effect upon the affirmative vote of three-fourth of the City Council and approval by the Mayor; and this Ordinance is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

PASSED BY THREE-FOURTHS OF THE CITY COUNCIL AND ADOPTED BY THE MAYOR this 10th day of September, 1997.



Mayor, San Luis, Arizona

ATTEST;



Clerk, City of San Luis, Arizona

APPROVED AS TO FORM:

By 

City Attorney
San Luis, Arizona