

RESOLUTION NO. R12-07-26

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF EL MIRAGE, ARIZONA, APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO EXISTING LOAN AGREEMENTS AND OF NEW LOAN AGREEMENTS WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA FROM ITS CLEAN WATER REVOLVING AND DRINKING WATER REVOLVING FUND PROGRAMS; DELEGATING THE DETERMINATION OF CERTAIN MATTERS RELATING THERETO TO THE MANAGER AND THE FINANCE DIRECTOR OF THE CITY; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS 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 AMENDMENTS AND LOAN AGREEMENTS AND THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, the City of El Mirage, Arizona (the "City"), has heretofore entered into two loan agreements, each dated as of February 24, 2006, two loan agreements, each dated as of January 25, 2008, and three loan agreements, each dated as of September 11, 2009 (together, the "Prior Loan Agreements"), with the Water Infrastructure Finance Authority (the "Authority"); and

WHEREAS, the Mayor and Council of the City have determined to amend the Prior Loan Agreements to provide that certain revenues from the combined, complete drinking water and sewer plant and system of the City (collectively, the "Source of Repayment") be the security and source of repayment for the loans made pursuant to the Prior Loan Agreements (together, the "Prior Loans") instead of the revenues from the separate systems, proceeds from the loans from which were used for improvements to the separate systems as applicable; and

WHEREAS, the terms and conditions under which such amendments will be made will be set forth in First Amendments Regarding Loans Numbers 920100-06, dated February 24, 2006; 920127-08, dated January 25, 2008; 92A152-10, dated September 11, 2009, and 92A153-10, dated September 11, 2009, and First Amendments Regarding Loan Numbers 910080-06, dated February 24, 2006; 910100-08, dated January 25, 2008, and 91A121-10, dated September 11, 2009, to be executed and delivered by the City and the Authority (together, the "Amendments"); and

WHEREAS, separately, the Mayor and Council of the City have heretofore applied to the Authority for (1) a loan (the "CW Loan") from the Authority's Clean Water Revolving Fund Program (the "CW Program") to provide funds to replace an internal pump station with gravity flow and an ultraviolet treatment process with chlorination as well as payment of the City's proportionate share of expenses of administering the CW Program and any bonds issued by the Authority

with respect thereto (the "CW Project") and (2) a loan (the "DW Loan and, with the CW Loan, the "Loans") from the Authority's Drinking Water Revolving Fund Program (the "DW Program" and, with the CW Program, the "Programs") to provide funds to replace meters with automatic reading meters as well as payment of the City's proportionate share of expenses of administering the DW Program and any bonds issued by the Authority with respect thereto (the "DW Project" and, collectively with the CW Project, the "Projects"); and

WHEREAS, the terms and conditions under which the Loans will be made and the obligations of the City with respect to the Loans will be set forth in loan agreements to be executed and delivered by the City and the Authority (the "Loan Agreements"); and

WHEREAS, the Loans and the loan repayments payable by the City pursuant to Prior Loan Agreements and the Loan Agreements (the "Loan Repayments") will be secured by a pledge of the Source of Repayment; and

WHEREAS, the Mayor and Council of the City have determined that it will be beneficial to the citizens of the City to enter into and to perform the Loan Agreements, whereby the City will borrow not to exceed in total \$5,050,000 from the Authority; and

WHEREAS, the Loans shall be repaid on or before twenty-one (21) years from the date of the execution and delivery of the Loan Agreements and the Loans shall bear interest at rates not to exceed five percent (5%) per annum; and

WHEREAS, there has been placed on file with the Clerk of the City and presented at the meeting at which this Resolution was adopted the proposed forms of the Amendments and the Loan Agreements;

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

Section 1. The forms, terms and provisions of the Amendments and the Loan Agreements, 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 shall be approved by the Manager and/or the Finance Director of the City, the execution of such documents being conclusive evidence of such approval, and the Mayor or, in the absence thereof, the Vice Mayor of the City or the Manager of the City and the Clerk of the City are hereby authorized and directed, for and on behalf of the City, to execute and attest and deliver, respectively, the Amendments and the Loan Agreements.

Section 2. For the payment of the principal of and interest on the Prior Loans and the Loans, the City shall pay the Loan Repayments provided for in the Prior Loan Agreements and the Loan

Agreements. The City shall also pay all other amounts required to be paid by the City pursuant to the provisions of the Prior Loan Agreements and the Loan Agreements.

Section 3. The obligation of the City to pay the Loan Repayments provided for in the Prior Loan Agreements and the Loan Agreements and to make the other payments provided for in the Prior Loan Agreements and the Loan Agreements is limited to payment from the Source of Repayment, and the obligations of the City under the Prior Loan Agreements and the Loan Agreements 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 4. The appropriate officials and officers of the City are hereby authorized and directed to take all action necessary or reasonably required to carry out, give effect to and to consummate the transactions contemplated by the Amendments and the Loan Agreements, 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.

Section 5. If any section, paragraph, subdivision, sentence, clause or phrase of this Resolution is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Resolution. The Mayor and Council of the City hereby declare that it would have adopted this Resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the execution and delivery of the Amendments and the Loan Agreements pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Resolution may be held illegal, invalid or unenforceable. 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 resolution or any part thereof.

Section 6. All actions of the officers and agents of the City including the Mayor and Council of the City which conform to the purposes and intent of this Resolution and which further the execution and delivery of the Amendments and the Loan Agreements as contemplated by this Resolution, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this Resolution.

Section 7. All acts and conditions necessary to be performed by the City or to have been met precedent to and in the execution and delivery of the Amendments and the Loan Agreements in order to make it a legal, valid and binding obligation of the City

will at the time of delivery of the Amendments and the Loan Agreements have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the execution and delivery of the Amendments and the Loan Agreements.

Section 8. All formal actions of the Mayor and Council of the City concerning and relating to the passage of this Resolution were taken in an open meeting of the Mayor and Council of the City, and all deliberations of the Mayor and Council of the City and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 9. The immediate operation of the provisions of this Resolution is necessary for the preservation of the public health and welfare and for the further reason that the execution and delivery at the earliest possible date of the Loan Agreements is urgently needed to attempt to secure the lowest possible interest cost to the City; therefore, an emergency is hereby declared to exist and this Resolution is enacted as an emergency measure and shall be in full force and effect from and after the passage and adoption 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.

Section 10. After the execution and delivery of the Loans Agreement and upon receipt of the Loans from the Authority, this Resolution shall be and remain irrevocable until the Loans and the Loan Agreements and the interest thereon shall have been fully paid, cancelled and discharged.

PASSED AND ADOPTED on July 17, 2012.

Lana Mook

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Lana Mook, Mayor, City of El Mirage,
Arizona

ATTEST:

Richard Saathoff

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Richard Saathoff, Clerk, City of
El Mirage, Arizona

APPROVED AS TO FORM:

Robert Hall

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Robert Hall, City Attorney,
City of El Mirage, Arizona

CERTIFICATION

I hereby certify that the foregoing Resolution No. R12-07-26 was duly passed and adopted by the Mayor and Council of the City of El Mirage, Arizona, at a meeting held on the 17th day of July, 2012, and the vote was ayes and nays and that the Mayor and Councilmembers were present thereat.



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Richard Saathoff, Clerk, City of
El Mirage, Arizona