

**AGREEMENT
BETWEEN
CITY OF DOUGLAS
AND
ARIZONA DEPARTMENT OF CORRECTIONS, REHABILITATION AND REENTRY**

This agreement is made and entered into this _____ day of _____, 2021, by and between the City of Douglas, a municipal corporation of the State of Arizona, hereinafter referred to as the “City”, and the Arizona Department of Corrections, Rehabilitation and Reentry, herein after referred to as the “ADCRR”

WHEREAS, the ADCRR desires to receive wastewater treatment services from the City for its Arizona State Prison Complex- Douglas (ASPC-D) which is located on land the Arizona Department of Corrections leases from Cochise County at the Bisbee- Douglas International Airport (BDI) under Lease No. 18-025-42 and

WHEREAS, the ADCRR and the City established Agreement No. DC-ADMIN/PO-WWTP-98/99-6784 in which the ADCRR funded various sized sewer piping, manholes, valves, cleanouts, bar screen/lift station, force main collection station and a new clarifier necessary to connect to the City of Douglas’ Wastewater Treatment Plant located approximately 6.8 miles from BDI and having the City provides wastewater treatment services and maintenance and charge for said services that included a monthly credit to the ADCRR structured in order for the City to repay back \$910,000 in cost for the construction of improvements to the City of Douglas Wastewater Treatment Plant, and

WHEREAS, the ADCRR improvements to the City’s WWTP performed in the 1990s have been repaid in full with reduced or waived user fees through May 31, 2021. In order to continue the equitable sewer service arrangement, this agreement institutes new user fees for ongoing wastewater treatment services.

WHEREAS, there is an existing force main and an existing gravity sewer (herein pipeline) and required appurtenances to continue service to convey wastewater from ASPC-D to the City’s Wastewater

Treatment Plant (WWTP) and the City's WWTP has the capacity to treat sewage generated by ASPC-D and,

WHEREAS, Cochise County as Lessor and the ADCRR as Lessee in accordance with their land lease agreement have provided approvals granting the City the necessary rights-of-way and easements across County owned land to the ADCRR's leased land and onto the subject premises for the City to have continued access to the pipelines as may be required for maintenance and repair as set forth herein, and

WHEREAS, ADCRR is responsible for payment of wastewater treatment services and for certain maintenance as defined herein.

NOW, THEREFORE, the ADCRR and the City do hereby agree as follows:

I. THE CITY AGREES:

A. To provide treatment plant capacity to meet the needs of ASPC-D at an average discharge rate of 256,000 gallons per day and a peak discharge rate of 450,000 gallons per day. If ASPC-D desires additional capacity in the future, the City shall provide said capacity if capacity exists that has not been taken by the City or allocated for some specific future use. This additional capacity shall be made available to ASPC-D at the current price per gallon as described in Section I (1) and I (2). The City shall comply with all presently applicable State, Federal, international treaty laws, agreements, and regulatory requirements related to the effluent quality of its WWTP, permit compliance and reporting, the maintenance of the pipelines and appurtenances, and the day-to-day operations of providing wastewater treatment services to its customers and ASPC-D.

B. To invoice the ADCRR each month for services provided. Invoices shall be calculated based on the prior year's average flow per month. At the end of the fiscal year, the City shall provide the ADCRR with actual readings from meters read and provide the actual billing according to gallons treated. The difference between the actual calculation and the average calculation shall be applied to the next month's

invoice. The ADCRR shall pay each invoiced amount within twenty (20) days after receipt of the City's invoice. Invoices shall be sent to:

Arizona State Prison Complex- Douglas
Attn: Business Manager
P.O. Box 3867
Douglas, Arizona 85608

C. To notify the ASPC-D Warden, or designee when the daily average sewage flow is approaching or exceeds the limits of its basic allotted usage.

D. To provide the ADCRR with written notice of planned service interruptions that will impact ASPC-D, a minimum of forty-eight (48) hours in advance of any system shutdown, repair or maintenance of the pipelines or WWTP. Immediate notification shall be provided for any unscheduled interruption in service. Unless other alternative disposal methods can be provided by the City, interruptions shall be limited to emergencies or maintenance.

E. To give prior notice to the ASPC-D institutional property is needed to perform maintenance, repair and replacement work related to the pipelines. The City shall observe and comply with all ADCRR rules and regulations while on institutional property.

F. To be responsible for and hold the ADCRR harmless from any local or international claims that may arise from the use of, or environmental conditions caused by the City's discharged wastewater of which claims or conditions were not directly attributed to the ADCRR. The City agrees to comply with all permit reporting and monitoring requirements necessary for compliance with all State, Federal, applicable international treaty laws, and agreements at all times while ASPC-D is connected to the City WWTP.

G. To provide all necessary maintenance to ensure proper functioning of all sewer connection improvements made by the ADCRR to include the flow meter at the ASPC-D connection. Costs associated with said maintenance shall be borne by the ADCRR as described in Section III(D).

H. To charge the ADCRR the following user fees:

1. A fixed monthly charge of \$145.00 user fee and \$5.00 surcharge fee for a total monthly charge of \$150.00.
2. A monthly charge of \$8.50 per 100,000 gallons over 300,000 gallons per year. As an example, if the ADCRR uses 90,000,000 gallons per year, the monthly charge shall be \$7,624.50 per month $((90,000,000-300,000)/100,000) \times 8.50$.

The City has agreed to initially bill the ADCRR incrementally as follows:

- a. 2021 - \$4.50 per 100,000 gallons over 300,000 gallons per year
- b. 2022 - \$5.50 per 100,000 gallons over 300,000 gallons per year
- c. 2023 - \$6.50 per 100,000 gallons over 300,000 gallons per year
- d. 2024 - \$7.50 per 100,000 gallons over 300,000 gallons per year
- e. 2025 - \$8.50 per 100,000 gallons over 300,000 gallons per year
- f. *2026 - \$9.50 per 100,000 gallons over 300,000 gallons per year

*2026 rates shall be increased by \$1.00 above the established rate in section I (2) until the difference in reduced billing from years 2021 through June 30, 2025 to actual billing established in section I (2) are paid back in full. At the point the City is paid back in full, rates shall revert to rates established in section I (2).

**Rates take effect July 1 of the year listed above

I. Credit ADCRR for additional wastewater discharge from other buildings that are metered by the ADCRR wastewater flow meter. Credit shall be based on the amount of wastewater discharged or the current Commercial 1 rate for outside city limits as established in the City of Douglas sewer service rate tables currently at \$65.00 per month per building. There are currently two building connected. Credit is subject to change in accordance to any rate adjustments.

J. Notify the ADCRR ninety (90) days prior to any proposed user fee increase. Notification shall include at least notices of public hearings related to the proposed increase. The proposed request for increase shall be accompanied by information and/or documentation from the City that recorded approval of the rate increases, i.e., City Council minutes with authorized signatures affixed. The approved user fee increase shall become effective with the ADCRR's next fiscal year, commencing on July 1 of the designated fiscal year. The City may only increase water and sewer rates it charges the ADCRR by the

same percentage as commercial rate increases. The City shall send requests, notices, information and/or documentation to the ADCRR at the address listed in Section C above. At the time this agreement was put together, the City of Douglas Mayor and Council are considering sewer rate increases that are proposed to increase 4% every year for the next five years, with the first year's increase proposed to go into effect January 15, 2022. If the rate increases take place as proposed, the new rates would change in section H(2) above as follows: 2021 - \$4.50, 2022 - \$5.72, 2023 - \$6.99, 2024 - \$8.31, 2025 - \$9.68, 2026 - \$11.34. The 2026 rate is established as \$1.00 greater than the proposed increase at the end of year 5 in until the reduced rate difference amount in years 2021 – 2025 are paid back.

K. To provide the ADCRR with service as described herein.

L. To provide the ADCRR or ADCRR's agents access to the wastewater facilities and facility records on flow data and water quality data.

M. No further waivers shall apply to any new ADCRR sewer service.

II. THE ADCRR AGREES:

A. To pay the City for wastewater treatment services in accordance with Section I, Paragraphs I within twenty (20) days after receipt of the City's invoice. Payment shall be sent to the City at the following address:

City of Douglas
Attn: Utility Billing
425 10th Street
Douglas, Arizona 85607

B. The ADCRR shall, in accordance with its land lease agreement, acquire and maintain necessary approvals to grant the City required rights-of-way and easements across County owned land to the ADCRR's leased land and onto the leased premises as may be required for maintenance and repair of the sewer connection at ASPC-D.

C. Comply with all State, Federal and applicable international treaty laws relative to the ADCRR's wastewater discharge, to include pretreatment of wastewater as required.

III. IT IS MUTUALLY AGREED THAT:

A. The ADCRR and City acknowledge that the prior Agreement is hereby replaced in its entirety by this Agreement. Upon execution of this agreement, all provisions of the Prior Agreement are hereby superseded in their entirety and replaced herein and shall have no further force or effect.

B. This Agreement shall be executed when all signatures are affixed and shall remain in effect as long as ASPC-D requires wastewater treatment services from the City, or its successors in interest, or is terminated as permitted herein.

C. The ADCRR and the City represent that each will in good faith maintain within their respective budgets sufficient funds to discharge the obligations and duties assumed under this Agreement.

D. The ADCRR shall reimburse the City for all maintenance costs associated with lifting the sewage from the prison to the City's gravity flow sewer system. This includes all costs associated with the Operation and Maintenance of the bar screen/lift station/force main provided that such costs are solely attributable to the ADCRR's use. ADCRR and City agree that it is necessary to replace the lift station/bar screen currently in use due to the end of its useful life and that the City has procured design and construction services for the replacement of such equipment. ADCRR agrees to reimburse the City for the total costs of the bar screen lift station project completed on October 5, 2021, in the amount of not less than \$212,197.00. The City shall submit an invoice to the ADCRR with written justification documenting such costs in accordance with Section I, Paragraph B.

IV. STANDARD CLAUSES:

A. Changes to the Agreement to accomplish the following may be handled by written notice rather than formal amendment. All other changes shall be accomplished by formal amendment, signed by all parties.

1. Change of address of the City or ADCRR.
2. Change of City or ADCRR authorized signatory, or designee. (Unless such change impacts respective obligations under this Agreement.)
3. Change in the name or address of the person(s) to whom notices are to be sent.

4. Changes in user fees, except changes in fees relative to prison expansion which shall be accomplished by amendments to this Agreement.

B. Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this Agreement, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as shown on the signature page of this document.

C. This In accordance with A.R.S. § 38-511, State may within three years after execution cancel the Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State, at any time while the Agreement is in effect, becomes an employee or agent or any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the matter of the Agreement.

D. In accordance with A.R.S. § 12-1518, the parties agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review except as may be required by other applicable statutes.

E. In accordance with A.R.S. § 41-1461, et seq, both parties shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. Both parties shall comply with the Americans with Disabilities Act.

F. In accordance with A.R.S. § 35-214 the City shall retain and shall contractually require each subcontractor to retain all data, books and other records (“records”) relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the City and subcontracted providers shall produce the original of any or all such records.

G. In accordance with A.R.S. § 41-2501, et seq, and AAC R2-7-101, et seq, Agreement shall be governed and interpreted by the laws of the State of Arizona and the Arizona Procurement Code.

H. In accordance with A.R.S. § 35-154, every payment obligation of the State under the Agreement is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

I. In accordance with A.R.S. § 41-4401, both parties warrant compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with AAC Section A.R.S. § 23-214, Subsection A.

J. Any acceptance or approval required to be made by a party to this Agreement shall be made in view of the purpose of this Agreement and shall not be unreasonably withheld. Each party, upon the request of the other, shall execute and deliver to the other any and all further instruments necessary to give effect to the provisions of this Agreement.

K. Each party shall be responsible for any and all costs including, but not limited to attorney fees, court costs and other litigations expenses incurred as a result of the errors and omissions of its officers, employees, agents, or assigns arising out of the performance of this Agreement.

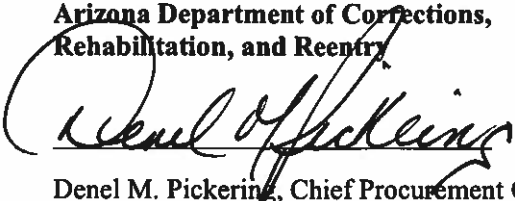
In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

APPROVED:

APPROVED:

**Arizona Department of Corrections,
Rehabilitation, and Reentry**

City of Douglas:



Denel M. Pickering, Chief Procurement Officer

Ana Urquijo, City Manager

Date: 11-2-2021

Date:

ATTEST:

Alma Andrade, City Clerk
Date: