

COUNCIL DECISION REQUEST

SUBJECT: WIFA CCC Loan Financial Services Agreement

MEETING DATE: July 23, 2009

PAYSON GOAL: NEW: EXISTING: X

ITEM NO.:

TENTATIVE SCHEDULE: Immediate

SUBMITTED BY: Buzz Walker 

AMOUNT BUDGETED: \$40,000.00

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: \$40,000.00



CONT. FUNDING REQUIRED: \$-0-

EXHIBITS (If Applicable, To Be Attached): Stone and Youngberg Financial Advisory Agreement

POSSIBLE MOTION: I MOVE TO AUTHORIZE THE MAYOR TO SIGN A FINANCIAL ADVISORY AGREEMENT IN THE AMOUNT OF \$40,000.00 WITH STONE & YOUNGBERG LLC FOR SERVICES RELATIVE TO A WATER INFRASTRUCTURE FINANCE AUTHORITY LOAN FOR THE C C CRAGIN WATER SUPPLY PROJECT AND TO ALLOCATE ALL COSTS TO THE WATER ENTERPRISE FUND.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION: Town Council action of April 2, 2009, Res. No. 2483, authorized the application to the Arizona Water Infrastructure Finance Authority, an independent agency of the State of Arizona, for financial assistance for Payson's CC Cragin Reservoir water supply project. WIFA subsequently approved Payson's application for \$10,585,000.00 of which \$4,000,000.00 is forgivable principal (or a grant under the federal stimulus act). The remaining \$6,585,000.00 is a low interest (approximately 3.5%) loan payable over the next 20 years at \$463,327.69 per year. Stone & Youngberg will advise Payson and provide services on this debt action with focus on future debt actions necessary to complete the CC Cragin project with similar of other types of debt financing.

PROS: Continues actions towards making CC Cragin Reservoir water supply a reality in Payson. Meets requirements of federal stimulus grant of \$4,000,000.00 that we move forward on the project in a timely manner.

CONS: N/A

PUBLIC INPUT (if any): CSP process and budget process.

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes): N/A

FUNDING:
Acct: 662-5-5451-00-8306 Budget: \$350,000 Available: \$350,000 Expense: \$40,000 Remaining: \$310,000
JUL 23 2009 I. 3

COUNCIL DECISION REQUEST

Acct: Budget: Available: Expense: Remaining:
Acct: Budget: Available: Expense: Remaining:

BA: Hope Credit Date: 7/14/09

FINANCIAL ADVISORY AGREEMENT

This will serve as an agreement (the "Agreement") between the Town of Payson, Arizona (the "Town") in connection with the proposed Water Infrastructure Finance Authority ("WIFA" or "Authority") Loan Agreement and Reserve Fund Credit Agreement (and funding thereunder) and Stone & Youngberg LLC ("Stone and Youngberg"); whereby Stone & Youngberg will serve as Financial Advisor (the "Financial Advisor") to the Town to secure WIFA funding for all or a portion of the construction costs of the Cragin Surface Water Project, Phase I (the "Project").

The Town wishes to analyze the various options of financing capital improvements, and for this purpose requires the services of the Financial Advisor to provide various financial advisory services related to securing WIFA funding, and other such services related to financing the improvements as customarily provided by financial advisors.

The Financial Advisor will use its best efforts to assist the Town in evaluating financing alternatives and to secure WIFA funding with appropriate covenants for future borrowing(s) by the Town for drinking water system improvements. The Financial Advisor agrees to undertake the services listed below.

A. General Services

The Financial Advisor will be involved at the earliest opportunity to:

1. Be available on a timely basis to meet with the Town and coordinate the financing with Town staff and relevant consultants and attorneys.
2. Commit the time and professional resources required to facilitate a smooth and efficient process in completing financing requirements.
3. Evaluate the advantages and risks of various financing alternatives.
4. Attendance at Town meetings and other financing team meetings.
5. Coordinate and work closely with the Town's Bond Counsel.

B. Structuring the Financing

1. The Financial Advisor will work with the Town to create a appropriate financing structure to meet the Town's objectives and requirements with regards to the Project.
2. The Financial Advisor will work with the Town's staff, Bond Counsel and other special consultants in evaluating and recommending program parameters.
3. Review the Town's WIFA application and attend meetings with Authority Staff and WIFA Board Meetings, as necessary.
4. Work with a bond insurance company (if necessary) to secure a debt service reserve fund surety policy and possibly a principal and interest debt service insurance policy as may be required by WIFA or bond investors.
5. Review a Town resolution, WIFA loan documents and other transactional documents.
6. Prepare a Financing Team Distribution List, Financing Calendar and other necessary documents or schedules to assist in securing the WIFA funding.
7. Attend the loan closing.

C. Compensation

The Town will pay the Financial Advisor a financial advisory fee of not to exceed \$40,000. The Financial Advisor will be additionally reimbursed for its own out-of-pocket expenses, if any, which are estimated to be no more than \$1,000 per financing.

Payment of the fee to the Financial Advisor will be contingent and due upon closing of the WIFA loan and payable out of the proceeds of loan.

D. General Provisions Relating to the District and the Financial Advisor

1. The Town agrees to make available to the Financial Advisor without cost, sufficient copies of any applicable reports, agreements, contracts, resolutions, and other relevant documents pertaining to the capital program, the Town or the pertinent WIFA documents as the Financial Advisor may reasonably require from time to time the Financial Advisor with its obligations hereunder.

E. Notices

Any notices or other communications to be given to either party pursuant to this Agreement will be given by delivering personally, by mail or by reputable overnight delivery service the same in writing to the parties at the addresses set forth below:

Town: Town of Payson, Arizona
303 N. Beeline Highway
Payson, Arizona 85541

Attention: Debra Galbraith, Town Manager

Financial Advisor: Stone & Youngberg LLC
2555 E. Camelback Road, Suite 280
Phoenix, Arizona 85016

Attention: Grant Hamill, Managing Director

F. Independent Contractor

1. It is understood and agreed that the Financial Advisor (including Financial Advisor's employees) is an independent contractor and that no relationship of employer-employee, partnership or joint venture exists between the parties hereto.
2. It is further understood and agreed by the parties hereto that the Financial Advisor, in performance of its obligation hereunder, is subject to the control or direction of the Town or the Town as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods or sequence used by the Financial Advisor for accomplishing the results.
3. It is further understood and agreed that as independent contractors and not employees or agents of the Town, neither the Financial Advisor nor Financial Advisor's assigned personnel will have any entitlement as a Town employee, right to act on behalf of the Town in any capacity whatsoever as agent, nor to bind the Town to any obligation whatsoever.

G. Termination

This Agreement will terminate upon the closing of the financing and the payment of fees and expenses due hereunder.

The Town and Financial Advisor will have the right to terminate this Agreement at any time by serving upon the other party thirty days advance notice of termination.

H. Amendments

Modifications or amendments to the terms hereunder will be in writing and executed by both parties.

I. Assignment

Neither party will assign or transfer its duties, responsibilities or interests pursuant to the Agreement without the express written consent of the other.

J. Miscellaneous

1. Upon termination of this Agreement, the parties will be under no further obligation to each other hereunder.
2. This Agreement will be construed as if jointly prepared by the Town or the District and the Financial Advisor. Any uncertainty or ambiguity will not be interpreted against any one party.

Upon your acceptance set forth below, this letter will constitute an Agreement between the Town and Stone & Youngberg.

Accepted by:

Stone & Youngberg LLC



Signature

Grant Hamill

Name

Managing Director

Title

July 7, 2009

Date

Accepted by:

Town of Payson, Arizona

Signature

Kenny Evans

Name

Mayor

Title

Date

**ADDENDUM NO. 1
TO
FINANCIAL ADVISORY AGREEMENT
BETWEEN
THE TOWN OF PAYSON
AND
STONE & YOUNGBERG LLC**

THIS ADDENDUM to the _____, 2009, Financial Advisory Agreement (the "Agreement") between Stone & Youngberg LLC, a California limited liability company authorized to conduct business in the State of Arizona ("S&Y"), and the Town of Payson, an Arizona municipal corporation ("CLIENT") (collectively, the "Parties"), is made contemporaneous with the Agreement. S&Y and CLIENT agree to the following amendments and modifications to the Agreement:

1. Cancellation. This Agreement is subject to A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest.
2. Dispute Resolution. This Agreement shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq., and judgment upon any award rendered by the arbitrator(s) shall be entered in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.
3. Time Periods. Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 PM (Payson Time) on the last day of the applicable time period provided for herein. If the time for the performance of any obligation or the taking of any action under this Agreement expires on a Saturday, Sunday, or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday, or legal holiday.
4. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter contained in this Agreement. All prior and contemporaneous contracts, agreements, representations, and understandings of the parties, whether oral or written, are superseded by and merged in this Agreement.

5. Construction of Agreement. The Agreement and Addendum No. 1 thereto shall be construed and interpreted according to their plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting either the Agreement or Addendum No. 1 thereto. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into both the Agreement and Addendum No. 1 thereto.
6. Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect.

STONE & YOUNGBERG LLC
a California limited liability company

TOWN OF PAYSON,
an Arizona municipal corporation

Grant Hamill, Managing Director

Kenny J. Evans, Mayor

APPROVAL AS TO FORM

The Town of Payson Legal Department has reviewed this Addendum No. 1 to the Geophysical Services Agreement between the Town and Stone & Youngberg LLC and has approved it as to form. When reviewing this addendum and the underlying agreement for form, the Legal Department considers whether the following situations have been addressed:

1. Identification of parties;
2. Offer and acceptance;
3. Existence of consideration (we do not review to determine if consideration is adequate);
4. That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

We have not reviewed the addendum and the underlying agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the agreement, the addendum or the underlying transaction. In addition, approval as to form should not be considered approval of the underlying policy considerations addressed by the agreement and addendum.

Dated: _____, 2009.

By _____
Samuel I. Streichman, Town Attorney