RESOLUTION NO. 2504

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING A DRAFT AND AUTHORIZING THE COMPLETION, EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE TOWN OF PAYSON, ARIZONA, AND THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA EVIDENCING A LOAN FROM THE SAID AUTHORITY TO THE TOWN IN AN AMOUNT NOT TO EXCEED $10,585,000.00; TO IMPROVE THE TOWN'S WATER SYSTEM AND TO PAY FOR ENGINEERING, LEGAL AND FINANCIAL EXPENSES THEREFOR; PLEDGING THE NET REVENUES OF THE TOWN'S WATER SYSTEM TO THE PAYMENT OF THE LOAN; AUTHORIZING THE EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO SUCH LOAN; ORDERING THE PRIOR REDEMPTION OF OUTSTANDING BONDS SECURED BY A PLEDGE OF THE NET REVENUES OF THE TOWN'S WATER SYSTEM; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Payson has a population of less than 50,000; and

WHEREAS, the Town of Payson (the "*Town*") now operates a water utility system (the "*System*"); and

WHEREAS, the Water Infrastructure Finance Authority of Arizona ("*WIFA*") has offered a loan (the "*WIFA Loan*") to the Town of not to exceed **$10,585,000.00** to construct pipeline improvements make needed repairs and upgrades to the system, obtain pipes and other materials and to pay all environmental, engineering, legal and financial expenses of the Project and the Loan Agreement (the "*Project*"); and

WHEREAS, the Town desires to enter into such Loan Agreement with WIFA in order to borrow not to exceed **$10,585,000.00** from WIFA to finance the Project; and

WHEREAS, a draft of a loan agreement (the "*WIFA Loan Agreement*") has been presented to this Mayor and Council at the meeting at which this resolution was adopted and is also attached to this resolution as *Exhibit A* ; and

WHEREAS, by this resolution the Mayor and Council of the Town will authorize the completion, the execution and delivery of the WIFA Loan; and

WHEREAS, the WIFA Loan will be secured by a pledge of the net revenues of the System; and

WHEREAS, the Town has a Series of Bonds now outstanding that are known as the Town of Payson Water Revenue Bond, Project of 1980, Series A (1980), which may be fully prepaid from moneys now on hand in the reserve fund created for such Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA:

Added 08-04-09, 4:30pm AUG 0 6 2009 G.7

FHR:rwr 1067435.1 8/03/2009

Section 1. That the WIFA Loan Agreement between the Town and WIFA, substantially in the form attached hereto and marked *Exhibit A* (the "*WIFA Loan Agreement*"), is approved and the Mayor is ordered and directed to complete, execute and deliver the WIFA Loan Agreement in substantially the form attached hereto with such insertions, deletions, modifications and changes as the Mayor or the Town Manager in their sole and exclusive discretion believes to be in the best interest of the Town, and the Clerk is authorized and directed to attest the Mayor's signature thereon and to cause the same to be delivered to WIFA. The total amount that the Town may borrow pursuant to the WIFA Loan Agreement shall not exceed **$10,585,000.00** and the interest rate on the WIFA Loan Agreement shall not exceed 4.00%. The WIFA Direct Debit Agreement (the "*Debt Agreement*") in substantially the form set forth as *Exhibit B* is approved and authorized for use by WIFA and the Town to aid in the administration of the WIFA Loan Agreement.

A direct debit agreement between the Town and WIFA substantially in the form attached hereto and marked *Exhibit B* is hereby approved and the Town Manager is authorized and directed to complete such agreement and deliver the same to WIFA.

Section 2. To secure the payment of the WIFA Loan Agreement the Town hereby pledges all its net revenues of the System (the "*Net Revenues*") as more particularly stated in the WIFA Loan Agreement.

This pledge shall be a first lien upon such amounts of the Net Revenues sufficient to make all Loan Repayments (as defined in the WIFA Loan Agreement), and the Town agrees and covenants to make said payments from said Net Revenues, except to the extent it is permitted to, and chooses to, make such payments from other funds. The Town is and shall be absolutely and unconditionally obligated to pay all Loan Repayments from Net Revenues.

In addition, the Town agrees not to hereafter grant any lien or pledge of or upon the Net Revenues superior to the lien on the Net Revenues created by this resolution and the WIFA Loan Agreement. This pledge shall be a first lien upon all the net revenues sufficient to make the payments pursuant thereto.

The WIFA Loan Agreement Loan will not constitute an obligation of the Town for which the Town is obligated to levy or pledge any form of ad valorem taxation nor does the WIFA Loan Agreement constitute an indebtedness of the Town or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise.

Section 3. A Reserve Fund and a Replacement Reserve Fund shall be created as required in the WIFA Loan Agreement.

Section 4. After the WIFA Loan Agreement is executed and delivered by the Town this Resolution shall be and remain irrepealable until the principal and interest thereon shall have been fully paid, cancelled and discharged.

Section 5. The Mayor, the Clerk, any member of the Council, the Town Manager and any other officer of the Town are hereby ordered and directed to sign all

certificates, make all representations and do all things necessary to carry out the execution and delivery of the WIFA Loan Agreement and all documents, certificates, contracts, exhibits and other matter necessary for the full execution, delivery and consummation of the WIFA Loan Agreement.

Section 6. The payment of the engineering, legal and financial costs of the Project from the proceeds of the WIFA Loan is hereby authorized.

Section 7. All officers, agents, attorneys and employees of the Town are hereby ordered and directed to take all acts and do all things necessary to consummate the WIFA Loan Agreement.

Section 8. The Mayor and Council order that the Town's outstanding Water Reserve Bond Project of 1980, Series A (1980) (the "*Bond to be Redeemed*") be called for Redemption by a payment to the current owner of such Bond an amount of not to exceed $116,000, which amount is hereby appropriated from the Reserve Fund, created to secure the Bond to be Redeemed, to be used to pay and redeem such Bond prior to the execution and delivery of the WIFA Loan. After such redemption, any balance remaining in any fund created to pay or secure the Bond to be Redeemed shall be transferred to either or both the Debt Service Reserve Fund or the Replacement Reserve Fund created to secure the WIFA Loan, as determined by the Town Manager.

Section 9. Due to the need to construct the Project, the immediate operation of the provisions hereof is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this resolution will be in full force and effect from and after its passage by this Council and it is hereby except from the referendum provisions of the Constitution.

PASSED, ADOPTED AND APPROVED on August 6, 2009.

TOWN OF PAYSON, ARIZONA

_____
Mayor, Town of Payson

ATTEST:

_____
Clerk, Town of Payson

APPROVED AS TO FORM:

GUST ROSENFELD P.L.C.

_____

Special Counsel

Attachments:
Exhibit A – WIFA Loan Agreement
Exhibit B – Direct Debit Agreement

CERTIFICATION

I, Silvia Smith, the duly appointed and acting Town Clerk of the Town of Payson, Arizona, do hereby certify that the above and foregoing Resolution No. _____ was duly passed by the Mayor and Council of the Town of Payson, Arizona, at a regular meeting held on August 6, 2009 and the vote was ___ aye's, ____ nay's, ___ and ____ abstained, and ___ were absent and that the Mayor and ___ Council Members were present thereat.

DATED: August 6, 2009.

_____

Clerk, Town of Payson, Arizona