RESOLUTION NO. 2971

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING 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, IN ONE OR MORE SERIES, FROM THE SAID AUTHORITY TO THE TOWN IN AN AMOUNT NOT TO EXCEED $11,000,000.00 TO IMPROVE THE TOWN'S WATER SYSTEM AND TO PAY RELATED EXPENSES; 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; 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 made a loan to the Town to make improvements to the System pursuant to a Loan Agreement dated August 14, 2009 (the "2009 WIFA Loan Agreement"); and

WHEREAS, WIFA has made a loan to the Town to make improvements to the System pursuant to a Loan Agreement dated September 14, 2012 (the "2012 WIFA Loan Agreement"); and

WHEREAS, WIFA has made a loan to the Town to make improvements to the System pursuant to a Loan Agreement dated March 27, 2015 (the "2015 WIFA Loan Agreement"); and

WHEREAS, WIFA has made a loan to the Town to make improvements to the System pursuant to a Loan Agreement dated March 11, 2016 (together with the 2009 WIFA Loan Agreement, the 2012 WIFA Loan Agreement and the 2015 WIFA Loan Agreement, the "Prior WIFA Loan Agreements"); and

WHEREAS, WIFA has offered to make another loan, in one or more series (the "Third Cragin Reservoir Loan"), to the Town of not to exceed $11,000,000.00 to make improvements to the System and to pay all related expenses (the "Project") by entering into a Loan Agreement (the "Third Cragin Reservoir Loan Agreement") between the Town; and

WHEREAS, there has been presented to this Mayor and Council at the meeting at which this resolution was adopted (i) a draft of the Third Cragin Reservoir Loan Agreement, and (ii) a WIFA Direct Debit Agreement (the "Direct Debit Agreement"); and

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

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WHEREAS, the Third Cragin Reservoir Loan will be secured by a pledge of the net revenues of the System:

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

Section 1. That the Third Cragin Reservoir Loan Agreement between the Town and WIFA substantially in the form presented to this Mayor and Council, is approved and the Town Manager is ordered and directed to complete, execute and deliver the Third Cragin Reservoir Loan Agreement in substantially the form presented to this Mayor and Council with such insertions, deletions, modifications and changes as the Town Manager in her sole and exclusive discretion believes to be in the best interest of the Town, and the Clerk is authorized and directed to attest the Town Manager's signature thereon and to cause the same to be delivered to WIFA. The total amount that the Town may borrow pursuant to the Third Cragin Reservoir Loan Agreement shall not exceed $11,000,000.00 and the interest rate on the Third Cragin Reservoir Loan Agreement shall not exceed 3.75% per annum. The Direct Debit Agreement in substantially the form presented to this Mayor and Council is approved and authorized 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 Third Cragin Reservoir Loan Agreement the Town hereby pledges all its net revenues of the System ("Net Revenues") on a parity with the pledge thereof securing the Town's payment obligations under the Prior WIFA Loan Agreements, as more particularly stated in the Third Cragin Reservoir Loan Agreement.

Subject to the co-equal pledge securing payment of the Prior WIFA Loan Agreements, this pledge shall be a first lien upon such amounts of the Net Revenues sufficient to make all Loan Repayments (as defined in the Third Cragin Reservoir 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, unless such payments have previously been paid from other funds, pursuant to and described in this paragraph at the Town's sole option.

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 Third Cragin Reservoir Loan Agreement. This pledge shall be a first lien upon all the net revenues sufficient to make the payments pursuant thereto.

The Third Cragin Reservoir Loan Agreement 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 Third Cragin Reservoir 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 Third Cragin Reservoir Loan Agreement.

Section 4. After the Third Cragin Reservoir 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 Third Cragin Reservoir Loan Agreement and all documents, certificates, contracts, exhibits and other matter necessary for the full execution, delivery and consummation of the Third Cragin Reservoir Loan Agreement and the Third Cragin Reservoir Loan.

Section 6. The payment of the engineering, legal, construction, material and equipment acquisition, environmental studies, and financial costs of the Project from the proceeds of the Third Cragin Reservoir 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 Third Cragin Reservoir Loan Agreement and the Third Cragin Reservoir Loan.

Section 8. 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 exempt from the referendum provisions of the Constitution.

PASSED, ADOPTED AND APPROVED on October 20, 2016.

TOWN OF PAYSON, ARIZONA

_____

Mayor, Town of Payson

ATTEST:

_____

Clerk, Town of Payson

APPROVED AS TO FORM:

SQUIRE PATTON BOGGS (US) LLP

_____

Special Counsel

010-8271-3697/3

CERTIFICATION

I, _____, the duly appointed and acting Town Clerk of the Town of Payson, Arizona, do hereby certify that the above and foregoing Resolution No. 2971 was duly passed by the Mayor and Council of the Town of Payson, Arizona, at a regular meeting held on October 20, 2016 and the vote was ____ aye's, ____ nay's, and ____ abstained, and ____ were absent, and that the Mayor and ____ Council Members were present thereat.

DATED: October ___, 2016.

_____
Clerk, Town of Payson, Arizona