

RESOLUTION NO. 2023-98

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA FROM ITS DRINKING WATER REVOLVING FUND PROGRAM; DELEGATING THE DETERMINATION OF CERTAIN MATTERS RELATING THERETO TO THE CHIEF FINANCIAL OFFICER 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 LOAN AGREEMENT AND THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, the City of Peoria, Arizona (the “City”), has heretofore applied to the Water Infrastructure Finance of Arizona (the “Authority”), for a loan (the “Loan”) from the Authority’s Drinking Water Revolving Fund Program (the “Program”) to provide funds for (i) a new wellfield that will include five new groundwater wells and approximately 13,500 linear feet of new water pipeline, and (ii) the payment of the City’s proportionate share of expenses of administering the Program and any bonds issued by the Authority with respect thereto (collectively, the “Project”); and

WHEREAS, the terms and conditions under which the Loan will be made and the obligations of the City with respect to the Loan will be set forth in a loan agreement to be executed and delivered by the City and the Authority (the “Loan Agreement”); and

WHEREAS, the Loan and the loan repayments payable by the City pursuant to the Loan Agreement (the “Loan Repayments”) will be secured by a pledge of the net revenues of the complete sewer and waterworks plant and system of the City (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 Agreement, whereby the City will borrow not to exceed \$35,500,000 from the Authority; and

WHEREAS, the Loan shall be repaid before or on twenty-one (21) years from the date of the execution and delivery of the Loan Agreement and shall bear interest at a rate not to exceed seven percent (7%) 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 form of the Loan Agreement;

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PEORIA AS FOLLOWS:

Section 1. The form, terms and provisions of the Loan Agreement, in the form of such document (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 application of the City to the Authority or the requirements of the federal government or the Authority, as shall be approved by the Chief Financial Officer of the City, the execution of such document being conclusive evidence of such approval, and the Mayor, any other member of the Council of the City, the Chief Financial Officer of the City and the Clerk of the City are hereby authorized and directed, as applicable, for and on behalf of the City, to execute and attest and deliver, respectively, the Loan Agreement.

Section 2. For the payment of the principal of and interest on the Loan, the City shall pay the Loan Repayments provided for in the Loan Agreement. The City shall also pay all other amounts required to be paid by the City pursuant to the provisions of the Loan Agreement.

Section 3. The obligation of the City to pay the Loan Repayments provided for in the Loan Agreement as well as to make the other payments provided for in the Loan Agreement is limited to payment from the Source of Repayment which is pledged therefor pursuant to the Loan Agreement, and the obligations of the City pursuant to the Loan Agreement shall not constitute or give rise to a general obligation of the City or any claim against its *ad valorem* property 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 Loan Agreement 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 Council of the City hereby declares 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 Loan Agreement 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 ordinances, 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 ordinance or 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 Loan Agreement 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 Loan Agreement in order to make it a legal, valid and binding obligation of the City will at the time of delivery of the Loan Agreement 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 Loan Agreement.

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 peace, health and safety of the residents and citizens of the City for the reason that the execution and delivery at the earliest possible date of the Loan Agreement is urgently needed to attempt to secure the lowest possible interest cost to the City at the earliest possible time; an emergency is, therefore, declared to exist, and this Resolution is enacted as an emergency measure and shall be in full force and effect immediately upon its 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 the laws of the State of Arizona.

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

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PASSED AND ADOPTED on August 15, 2023.

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Mayor, City of Peoria, Arizona

ATTEST:

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City Clerk, City of Peoria, Arizona

APPROVED AS TO FORM:

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City Attorney, City of Peoria, Arizona

CERTIFICATION

I hereby certify that the foregoing Resolution No. 2023-98 was duly passed and adopted by the Mayor and Council of the City of Peoria, Arizona, at a meeting held on the 15th day of August 2023, and the vote was ... ayes and ... nays and that the Mayor and ... Councilmembers were present thereat.

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City Clerk, City of Peoria, Arizona