

ADOPTED BY THE
MAYOR AND COUNCIL
NOVEMBER 14, 2017

RESOLUTION NO. 17-3187

A RESOLUTION OF THE CITY COUNCIL OF LAKE HAVASU CITY, ARIZONA RELATING TO FINANCE; AUTHORIZING THE CITY TO BORROW UP TO \$13,000,000 FROM A BANK DOING BUSINESS IN THE STATE OF ARIZONA IN THE FORM OF A LOAN TO FINANCE THE PREPAYMENT OF THE CITY'S ARIZONA PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM PENSION EXPENDITURES FOR THE FISCAL YEARS 2018 AND 2019; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT SETTING FORTH THE TERMS OF THE LOAN AND PROVIDING FOR THE REPAYMENT THEREOF; PLEDGING THE CITY'S EXCISE TAX REVENUES AS SECURITY THEREFOR; AUTHORIZING THE EXECUTION OF ALL NECESSARY AGREEMENTS, CERTIFICATES AND OTHER DOCUMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of Lake Havasu City, Arizona (the "*City*") desires to adopt this resolution (this "*Authorizing Resolution*") to finance the prepayment of the City's Arizona Public Safety Personnel Retirement System pension expenditures for the fiscal years 2018 and 2019 (collectively, the "*Project*"); and

WHEREAS, the City Council has determined that the Project can be financed on advantageous terms by borrowing up to \$13,000,000 (the "*Loan*") from the Bank, subject to the conditions described herein, on substantially the terms and conditions set forth in the Financing Agreement, dated the date of the Loan (the "*Financing Agreement*"), in substantially the form set forth as Exhibit A hereto; and

WHEREAS, the City Council has engaged Stifel, Nicolaus & Company, Incorporated, to serve in the capacity of and be designated as the financial advisor, and Ballard Spahr LLP to serve in the capacity of and be designated as bond counsel, with respect to the transaction evidencing the Loan; and

WHEREAS, the Loan will be secured by amounts received under the Financing Agreement, pursuant to which the City will pledge all Excise Tax Revenues (as defined herein); and

WHEREAS, financing the costs of the Project pursuant to the Financing Agreement is in furtherance of the purposes of the City and in the public interest; and

WHEREAS, there have been placed on file with the Clerk of the City and presented to the Mayor and Council at this meeting the proposed form of the Financing Agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF LAKE HAVASU CITY:

Section 1: Definitions. For the purposes hereof, defined terms identified by initial capital letters herein have the respective meanings as follows:

“2008 GADA Loan” means the loan from the Greater Arizona Development Authority to the City pursuant to the Loan Repayment Agreement, dated as of April 22, 2008, of which \$1,260,000 remains outstanding.

“Authorizing Resolution” means this Resolution No. 17- XXXX, adopted by the Mayor and Council of the City on November 14, 2017.

“Bank” means a bank doing business in the State of Arizona selected by the Mayor, the City Manager or the Administrative Services Director of the City pursuant to this Authorizing Resolution from which the City will borrow the Loan.

“Excise Tax Revenues” means all revenues from the City’s sales and transaction privilege taxes.

“Loan” means the loan in the amount of up to \$13,000,000 from the Bank to the City pursuant to the Financing Agreement.

“Financing Agreement” means the Financing Agreement in substantially the form attached hereto as Exhibit A.

Section 2: The Mayor and Council hereby find and determine that it is in the best interest of the residents of the City to finance the Project and, for such purpose, to enter into and perform the Financing Agreement and other related agreements pursuant to which the City will borrow up to \$13,000,000 from the Bank to finance the Project and to pay all costs, legal and financial advisory fees and contingent costs of the City, including, without limitation, the payment of certain costs pursuant to the Loan, all in the furtherance of the purposes of the City and for the benefit of the residents of the City.

Section 3: The form, terms and provisions of the Financing Agreement, in substantially the form set forth as Exhibit A hereto, is hereby approved in all respects, and each of the Mayor, the City Manager and the Administrative Services Director of the City is authorized and empowered, for and on behalf of the City, to execute and deliver (and, to the extent necessary or appropriate, the City Clerk, or the Assistant City Clerk, if the City Clerk is not available, is authorized and empowered to attest) the Financing Agreement with such insertions therein, omissions therefrom and changes thereto, including changes, if any, required by the requirements of the Federal government, or the requirements of this Authorizing Resolution, as are approved by the officer or officers executing and delivering the Financing Agreement, on behalf of the City, such execution and delivery to evidence conclusively such approval; provided, however, that (i) the principal amortizations with respect to the Loan will

commence no earlier than August 1, 2018 and will end no later than August 1, 2019, and (ii) the stated interest rate on the Loan, after taking into account any fees and costs of issuance, will not exceed 2.95% per annum. In addition, each of the Mayor, the City Manager and the Administrative Services Director of the City is authorized and empowered to sign (and, to the extent necessary or appropriate, the City Clerk, or the Assistant City Clerk, if the City Clerk is not available, is authorized and empowered to attest) any other documents, agreements and certificates necessary or appropriate in connection with the Loan pursuant to the Financing Agreement and the financing of the Project.

Section 4: The appropriate City officials are hereby authorized and empowered to select and engage a Bank and take all other actions necessary or reasonably required by the Financing Agreement and any other agreements entered into in connection with the Loan and the financing of the Project, in order to carry out, give effect to and consummate the transactions contemplated herein and in the Financing Agreement, including, without limitation, the execution and delivery of closing and other documents, agreements and certificates reasonably required or appropriate to be delivered in connection therewith.

Section 5: The Loan and loan payments with respect thereto will be payable from and secured by Excise Tax Revenues; provided, however, that the City may, at its sole option, use other legally available moneys for payment of the loan payments to the Bank. The pledge of Excise Tax Revenues to secure the Loan is a first-lien senior pledge, subject only to, and on parity with, the 2008 GADA Loan, to the extent the 2008 GADA Loan remains outstanding, as more fully described in the Financing Agreement. The obligation of the City to make payments pursuant to the Financing Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of *ad valorem* property taxation nor does the obligation to make payments pursuant to the Financing Agreement constitute an indebtedness of the City 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 6: Following the execution and delivery of the Financing Agreement and receipt of the proceeds of the Loan contemplated thereby, this Authorizing Resolution will be and remain irrevocable until the Loan, including the interest thereon, and the obligations of the City pursuant to the Financing Agreement, have been fully paid, canceled, discharged and performed.

Section 7: If any section, paragraph, clause or provision of this Authorizing Resolution is for any reason held or determined to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision will not affect any of the remaining provisions hereof.

Section 8: The provisions of any ordinances and resolutions of the City, or parts thereof, inconsistent with the provisions of this Authorizing Resolution, as either may be hereafter supplemented or amended, are hereby waived to the extent of such inconsistency.

Section 9: The immediate operation of the provisions of this Authorizing Resolution being necessary for the preservation of the public peace, health, and safety of the City, an emergency is hereby declared to exist, and this Authorizing Resolution will be in full force and

effect from and after its passage by the Mayor and Council and any publication or posting required by law, and it is hereby exempt from any applicable referendum provisions.

(Signature Page Follows)

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of Lake Havasu City, Arizona on November 14, 2017.

Mark S. Nexsen, Mayor

ATTEST:

Kelly Williams, City Clerk

REVIEWED BY:

Charlie Cassens, City Manager

APPROVED AS TO FORM:

Kelly Garry, City Attorney

Michele Bax, Special Counsel

(Signature Page to Resolution)

EXHIBIT A

FORM OF FINANCING AGREEMENT