

RESOLUTION NO. 17
PARKWAY COMMUNITY FACILITIES DISTRICT NO. 1

A RESOLUTION OF THE DISTRICT BOARD OF THE PARKWAY COMMUNITY FACILITIES DISTRICT NO. 1, A COMMUNITY FACILITIES DISTRICT OF ARIZONA, PROVIDING FOR (A) APPLICATION OF AN ANNUAL COMPENSATING FEE AGAINST ANY PROPERTY WITHIN PCFD NO. 1 WHICH IS CLASSIFIED AS NON-TAXABLE FOR AD VALOREM TAX PURPOSES (IN RELATION TO THE PROPERTY'S DESIGNATED PARKING SPACES) AND APPLYING THE REVENUE FROM ANY SUCH FEES TOWARDS PAYMENT OF THE 2006 BONDS AND TOWARDS MAINTENANCE COSTS (PRO RATA), AND/OR (B) ANNUAL PAYMENT BY PCFD NO. 1 FROM ITS GENERAL FUNDS TOWARDS PAYMENT OF THE 2006 BONDS AND TOWARDS MAINTENANCE COSTS (PRO RATA); AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, beginning with Resolution No. 441 (May 14, 1992), the Town Council ("Council") of the Town of Prescott Valley ("Town") has had a policy of controlling any parking of motor vehicles within the SR 69 right-of-way in order to avoid obstructions and eye-sores and to benefit and encourage commercial business on both sides of the right-of-way; and

WHEREAS, on June 28, 2001, the Town Council approved an agreement with an engineering consultant to conduct a study to create a business corridor within the right-of-way; and

WHEREAS, on May 2, 2002, the Council directed Town staff to develop a plan for uniform parking enforcement within the right-of-way (including time limits on parallel parking on frontage roads and prohibition of all other parking); and

WHEREAS, on May 9, 2002, the Council adopted the Central Core Redevelopment Plan ("Parkway Plan") prepared by the consultant and a citizens' advisory committee. Said Parkway Plan anticipated developing the corridor over a 12-13 year period by constructing common parking areas and assigning spaces therein to adjoining businesses in order to reduce on-site parking needed for business expansion; and

WHEREAS, on June 13, 2002, the Council adopted Resolution No. 1100 prohibiting parking within the right-of-way except parallel parking on both sides of frontage roads between 6:00 a.m. and 11:00 p.m. (effective upon erection of signs); and

WHEREAS, on July 10, 2003, the Council adopted Ordinance No. 564 amending Town Code Article 13-24 "OFF-STREET PARKING REQUIREMENTS" to provide an Off-Site and Mixed Use Shared Parking Program for commercial areas; and

WHEREAS, on May 13, 2004, the Council adopted a Parkway Design Manual prepared by the engineering consultant and discussed concepts of adjoining businesses financing drive aisles, parking aisles, highway access, landscaping, storm water detention, paths, street furniture and lighting and the Town donating needed portions of right-of-way paying the costs for planning and engineering services; and

WHEREAS, on September 9, 2004, the Council adopted Resolution No. 1300 giving notice of its intent to form an improvement district per ARS §48-572 et seq. to finance construction of such improvements in an area southeast of the SR 69 right-of-way between Prescott East Highway and Valley View Drive, and an area northwest of the right-of-way between StoneRidge Drive and Prescott East Highway; and

WHEREAS, on November 18, 2004, after holding a public hearing, the Council tabled Resolution No. 1313 which would have formed the improvement district and ordered construction of the improvements (due to significant increases in worldwide construction costs and concerns expressed by affected property owners); and

WHEREAS, throughout 2005 Town staff (and engineering and financing consultants) met with the property owners to explore acceptable means of financing a revised list of improvements; and

WHEREAS, on January 19, 2006, a financing consultant presented the Council with a proposal to form a community facilities district (“CFD”) under ARS §48-701 et seq. which would sell ad valorem tax bonds and use the proceeds to construct the revised improvements. The CFD would also levy \$0.30 per \$100.00 secondary assessed value towards on-going maintenance costs. A \$3,425,000.00 bond was anticipated and projections for secondary assessed valuations were estimated at 10% from FY 2006/2007 to 2010/2011, 7.5% from FY 2011/2012 to 2015/2016, 4.5% from FY 2016/2017 to 2019/2020, and 3% afterwards. The ad valorem tax rate would average \$4.26 per \$100.00, resulting in a typical annual tax bill of \$2,662.63 based on property with \$250,000.00 full cash value; and

WHEREAS, after receiving a petition from the requisite number of property owners, on March 23, 2006 the Council adopted Resolution No. 1414 declaring its intent to form Parkway CFD No. 1 (“PCFD No. 1”) on 28.23 acres shown in Exhibit A (attached hereto and expressly made a part hereof) and setting a date and time for receiving written objections and holding a public hearing; and

WHEREAS, timely written objections were received from two property owners; and

WHEREAS, on April 27, 2006, after a public hearing, the Council adopted Resolution No. 1427 calling an election for property owners to decide whether to form PCFD No. 1, issue ad valorem tax bonds in an amount up to \$3,425,000.00, and agree to pay \$0.30 per \$100.00 annually for maintenance and operations; and

WHEREAS, the election was held on June 27, 2006 and 16 of 21 eligible properties were voted with 69% being in favor of all three propositions; and

WHEREAS, on June 29, 2006, the Town Council adopted Resolution No. 1446 canvassing the vote and ordering formation of PCFD No. 1; and

WHEREAS, on September 18, 2006, a Feasibility Report (“Report”) complying with ARS §48-715 was filed confirming that ad valorem taxes in PCFD No. 1 could potentially be unlimited in order to pay bonds issued, but projected secondary assessed valuations would be at 10% from FY 2006/2007 to 2010/2011, 7.5% from FY 2011/2012 to 2015/2016, 4.5% from FY 2016/2017 to 2019/2020, and 3% thereafter. It further estimated a tax rate between \$3.35 and \$7.52 per \$100.00 secondary assessed value (with an average rate of \$4.55), resulting in typical annual payments of \$2,786.88 for properties of \$250,000.00 full cash value; and

WHEREAS, on September 28, 2006, the new PCFD No. 1 Board (“Board”) adopted its Resolution No. 1 ratifying the Report, declaring its intent to construct the revised improvements, and authorizing sale of up to \$3,425,000.00 in ad valorem tax bonds; and

WHEREAS, Subsection 5(2) of Resolution No. 1 further committed the Board to take reasonable actions to cause the results contemplated by and set forth in the Report (including the consummation of the expected method of financing); and

WHEREAS, the same day the Board approved an intergovernmental agreement with the Town per ARS §§11-952 and 48-709(A)(2) (“IGA”) for an initial term through June 30, 2016 (automatically renewing for subsequent five-year terms unless timely canceled by either party) for the Town to provide PCFD No. 1 with a) design, bidding, contract administration, and inspection services needed for design and construction of the revised improvements, b) operation and maintenance of the improvements, and c) general operation and administration of PCFD No. 1 itself (including, but not be limited to, office administration, engineering services, legal services, accounting services, and management services); and

WHEREAS, on October 25, 2006, the Board issued a Final Limited Offering Memorandum (“FLOM”) whereby it sold \$3,425,000.00 in General Obligation Bonds, Series 2006 (“2006 Bonds”) with payments until July 15, 2031, a funded reserve of \$269,780.00, and funded debt service for the January 15, 2007 and July 15, 2007 payments; and

WHEREAS, in accordance with ARS §42-11104(C)(1) (and as warned in the FLOM), two parcels being used for a non-profit charter school and classified as taxable for ad valorem tax purposes at the time PCFD No. 1 was created were subsequently reclassified as non-taxable. These parcels represented approximately 10% of the original secondary assessed value against which tax rates would apply. Thus, actual amounts paid by other owners in PCFD No. 1 would have to increase by approximately the same percentage; and

WHEREAS, on February 12, 2007, the Town’s Management Services Director (“Director”) noted that secondary assessed value for property within PCFD No. 1 was reported by Yavapai County (“County”) to be \$2,955,997.00; and

WHEREAS, on June 21, 2007, after a public hearing, the Board adopted Resolution No. 4 approving a final budget with a tax rate of \$6.67 per \$100.00 (already higher than anticipated in the Report because of the reclassification of the school property); and

WHEREAS, additional parcels within PCFD No. 1 were subsequently reclassified as non-taxable (in one case reducing the secondary assessed value by approximately 6% and, in another, reducing the value by approximately 3%); and

WHEREAS, on February 8, 2008, the Director noted that secondary assessed value for property within PCFD No. 1 was reported by the County to be \$3,497,993.00 (an 18.34% increase); and

WHEREAS, on March 6, 2008, a meeting was held between and among County staff, Town staff, a PCFD No. 1 financial consultant, and a number of PCFD No. 1 property owners to address issues raised after the County initially issued tax notices at a rate of \$3.30 per \$100.00 then reissued notices at the \$6.67 rate when informed of its error; and

WHEREAS, on March 10, 2008, a letter from the project engineer closed out the construction project at a final cost of \$2,897,212.48 and (presumably) transferred the revised improvements (“Improvements”, shown in Exhibit B attached hereto and expressly made a part hereof) to the Town for operation and maintenance; and

WHEREAS, on April 16, 2008 (in response to the meeting with property owners), the PCFD No. 1 Manager (“Manager”) directed that the balance of 2006 Bond funds not used for construction (\$198,610.45) be immediately made available for FY 2007-2008 taxes. The 2006 Bond documents allowed an immediate transfer of balances to the Bond account (such a transfer not being required until October 15, 2009). The Manager directed transfer of \$77,120.85 to the County plus a total of \$29,577.49 to individual owners who had paid more than 40% of taxes due (so no owner paid more than 40%). This resulted in an effective tax rate of \$2.66 in FY 2007-2008; and

WHEREAS, on April 18, 2008, the County declined to take further action on the issues raised by the property owners; and

WHEREAS, on June 2, 2008, said property owners filed formal claims with the County, requesting a hearing before the Board of Supervisors (“Supervisors”) and asserting that the County had followed the wrong procedure for correcting the tax bill; and

WHEREAS, on June 26, 2008, after a public hearing, the Board adopted Resolution No. 6 approving a final budget that included an additional transfer of \$75,000.00 of unused construction funds and a tax rate of \$3.42 for FY 2008-2009; and

WHEREAS, on August 4, 2008, the Supervisors voted to deny the claims filed by the property owners; and

WHEREAS, on October 3, 2008, said property owners filed a lawsuit against PCFD No. 1, the Town, the County, and the State of Arizona in Tax Court (*Tri-Bar LLC, et al. v. Prescott Valley Parkway Community Facilities District No. 1, et al. TX2008-000413*) to appeal the Supervisors’ decision and allege that PCFD No. 1 and the Town had violated Arizona law when forming the CFD, constructing the Improvements, and setting the tax rate; and

WHEREAS, on February 12, 2009, the Director noted that secondary assessed value for property within PCFD No. 1 was reported by the County to now be \$3,027,519.00 (a 13.45% decrease that signaled the effects of the worldwide economic recession); and

WHEREAS, on April 3, 2009, the Tax Court ruled in favor of the Town and PCFD No. 1 on all counts (except to allow limited discovery re any costs, tax assessments, or fees that might have been involved for activities not related to bond repayment); and

WHEREAS, on June 25, 2009, after a public hearing (in accordance with its obligations under Subsection 6(g) of Resolution No. 1 and Subsection 10.01 of the Indenture...and in an effort to fulfill its commitment to take reasonable actions to cause the results contemplated by and set forth in the Report (i.e. consummate the expected method of financing) and respond to the precipitous drop in secondary assessed value of the property in PCFD No. 1), the Board adopted Resolution No. 8 approving a final budget that transferred the remaining \$48,040.37 in unused construction funds towards bond payments and set a tax rate of \$7.36 for FY 2009/2010; and

WHEREAS, on February 11, 2010, the Director noted that secondary assessed value for property within PCFD No. 1 was reported by the County to be \$2,872,241.00 (a further 5.13% decrease); and

WHEREAS, on March 11, 2010, the Tax Court entirely dismissed the lawsuit based on a stipulation by all parties (and an agreement that each would cover its own litigation costs); and

WHEREAS, on June 24, 2010, after a public hearing (in accordance with its obligations under Subsection 6(g) of Resolution No. 1 and Subsection 10.01 of the Indenture...and in an effort to fulfill its commitment to take reasonable actions to cause the results contemplated by and set forth in the Report (i.e. consummate the expected method of financing) and respond to the on-going drop in secondary assessed value of the property in PCFD No. 1), the Board adopted Resolution No. 10 approving a final budget with a tax rate of \$9.66 for FY 2010/2011; and

WHEREAS, on February 14, 2011, the Director noted that secondary assessed value for property within PCFD No. 1 was reported by the County to be \$2,381,200.00 (a further 17.10% decrease); and

WHEREAS, on Jun 22, 2011, after a public hearing (in accordance with its obligations under Subsection 6(g) of Resolution No. 1 and Subsection 10.01 of the Indenture...and in an effort to fulfill its commitment to take reasonable actions to cause the results contemplated by and set forth in the Report (i.e. consummate the expected method of financing) and respond to the continuing drop in secondary assessed value of the property in PCFD No. 1), the Board adopted Resolution No. 12 approving a final budget with a tax rate of \$11.40 for FY 2011/2012; and

WHEREAS, on July 15, 2011, a draw on the reserve became necessary in the amount of \$37,206.63 because actual property values were slightly less than the County had reported at budget time (reducing the reserve to \$232,573.37); and

WHEREAS, on February 13, 2012, the Director noted that secondary assessed value for property within PCFD No. 1 was reported by the County to be \$1,961,204.00 (a further 17.64% decrease); and

WHEREAS, on July 12, 2012, after a public hearing (in accordance with its obligations under Subsection 6(g) of Resolution No. 1 and Subsection 10.01 of the Indenture...and in an effort to fulfill its commitment to take reasonable actions to cause the results contemplated by and set forth in the Report (i.e. consummate the expected method of financing) and respond to the continuing drop in secondary assessed value of the property in PCFD No. 1), the Board adopted Resolution No. 14 approving a final budget with a tax rate of \$13.69 for FY 2012/2013; and

WHEREAS, on July 16, 2012, a draw on the reserve became necessary in the amount of \$2,164.07 because actual property values were slightly less than the County had reported at budget time (reducing the reserve to \$230,409.30); and

WHEREAS, Town staff became aware that the same non-profit charter school was purchasing an adjacent parcel which was currently classified as taxable, and that said parcel was expected to become classified in stages as non-taxable in the near term (resulting in a loss of approximately 3.5% of secondary assessed value against which the tax rate could be applied); and

WHEREAS, on February 8, 2013, the Director noted that the secondary assessed value for property within PCFD No. 1 was reported by the County to be \$1,649,035.00 (a further 15.92% decrease); and

WHEREAS, on July 11, 2013, after a public hearing (in accordance with its obligations under Subsection 6(g) of Resolution No. 1 and Subsection 10.01 of the Indenture...and in an effort to fulfill its commitment to take reasonable actions to cause the results contemplated by and set forth in the Report (i.e. consummate the expected method of financing) and respond to the on-going drop in secondary assessed value of the property in PCFD No. 1), the Board adopted Resolution No. 16 approving a final budget with a tax rate of \$16.24 for FY 2013/2014; and

WHEREAS, on July 15, 2013, a draw on the reserve became necessary in the amount of \$10,265.74 because actual property values were slightly less than the County had reported at budget time and because of non-payment of taxes by one or more property owners (reducing the reserve to \$220,143.56); and

WHEREAS, property owners in PCFD No. 1 have expressed increasing concern about the significant discrepancy between the annual ad valorem tax payments anticipated in the Report and the actual annual payments required from said owners; and

WHEREAS, said discrepancy has largely been caused by the reclassification of parcels in PCFD No. 1 to non-taxable status (the increase in tax rates otherwise being cancelled out by the drop in assessed values); and

WHEREAS, ARS §9-462.01(A)(4) authorizes Arizona municipalities to establish requirements for off-street parking; and

WHEREAS, Town Code Article 13-24 OFF-STREET PARKING REQUIREMENTS requires both residential and commercial users of property in the Town to provide minimum parking spaces on said property in order to relieve public streets of the burden of on-street parking; and

WHEREAS, said Article also anticipates the development of nearby parking facilities to provide the needed parking for commercial uses (including “shared” parking); and

WHEREAS, over time it has become acceptable as an economic development matter for municipalities nationwide to take steps to provide such off-street parking facilities for commercial businesses, particularly in congested downtown areas [8ALR 2nd 373]; and

WHEREAS, Arizona has provided its municipalities with various statutory options for providing such facilities, including (a) assessing benefited property owners (that do not already have adequate off-street parking) for construction through formation of improvement districts (with provision for some or all of the costs to be paid directly by the municipality from general funds) [ARS §§48-572(A)(8) and 48-583], (b) assessing or taxing benefited property owners for construction and maintenance through formation of improvement districts (with provision for some or all of the costs to be paid directly by the municipality from general funds) [ARS §§48-574 and 48-583], or (c) assessing, taxing or otherwise charging benefited property owners and users for construction and maintenance through formation of CFDs (with provision for some or all of the costs to be paid directly by the municipality from general funds) [ARS Title 48, Chapter 4, Article 6]; and

WHEREAS, providing such facilities for the benefit both of adjacent businesses (and their customers) and the public at-large has been recognized in Arizona as complying with the requirements of the Tax Clause (AZ Constitution Article 9, §1; “all taxes shall be levied and collected for public purposes only”) and the Gift Clause (AZ Constitution Article 9, §7; “[no] municipality...shall ever...make any donation...to any individual, association, or corporation...”) so long as the consideration, compared to the expenditure, is not so inequitable and unreasonable that it amounts to an abuse of discretion and a subsidy [*Turken v. Gordon*, 223 *Ariz.* 342 (2010)]; and

WHEREAS, the Town Council previously determined that the Improvements largely benefited adjacent businesses and, therefore, it created PCFD No. 1 to finance construction and (at least a portion of) maintenance of the Improvements through ad valorem taxes charged against said businesses; and

WHEREAS, in accordance with Town Code Article 13-24, Town staff has designated a certain number of the parking spaces created as part of the Improvements to each of the adjacent businesses based on square footage of the businesses and the potential for “shared” parking (for purposes of authorizing current uses as well as potential future uses) (“Designated Spaces” shown in Exhibit C attached hereto and expressly made a part hereof); but

WHEREAS, the Board has determined that the inequity of businesses classified as taxable for ad valorem tax purposes paying increasing amounts in annual taxes for the same Designated Spaces while businesses classified as non-taxable either have never paid or (at some point) have ceased paying annual taxes for Designated Spaces creates (a) a legal risk that the benefit of the Designated Spaces to the properties classified as taxable will no longer be equal to the payments made therefor, and (b) an economic risk that the businesses classified as taxable will no longer remain viable given their increase in operation costs (as compared to comparable businesses in the Town) and may ultimately be unable to make their annual payments towards the 2006 Bonds; and

WHEREAS, the Board has further determined that it must take action to address this on-going and increasing inequity in order to avoid such legal and economic risks and to fulfill its legal commitment to take reasonable actions to cause the results contemplated by and set forth in the Report (i.e. consummate the expected method of financing); and

WHEREAS, the Indenture provides in Article 7 for (among other things) various rights and remedies thereunder, and indicates at Subsection 7.07 that the rights and remedies conferred therein are not exclusive of other rights or remedies and that all available rights and remedies are cumulative (to the extent permitted by law). Said Indenture further provides that, except for certain rights or remedies available to holders of the 2006 Bonds, assertion or employment of any right or remedy thereunder “or otherwise” would not prevent concurrent assertion or employment of any other appropriate right or remedy; and

WHEREAS, ARS §§48-709(A)(6)&(10) and 48-717(7) authorize PCFD No. 1 to (a) establish, charge and collect user fees and charges for use of financed infrastructure, (b) enter into agreements with the municipality for the collection of fees and charges from landowners for infrastructure purposes, and (c) finance infrastructure from user, landowner and “other” fees and charges; and

WHEREAS, PCFD No. 1 is a special purpose district for purposes of Arizona Constitution Article IX, Section 19, a tax-levying public improvement district for the purposes of Article XIII, Section 7, and a municipal corporation for all purposes of ARS Title 35, Chapter 3, Articles 3, 3.1., 3.2, 4 and 5, and (except as otherwise provided in ARS §48-708(B)) is considered to be a municipal corporation and political subdivision of the State of Arizona, separate and apart from the Town; and

WHEREAS, to the extent the Improvements may have been transferred to the Town for maintenance purposes on March 10, 2008, the Town may transfer the same back to PCFD No. 1 per ARS §9-407(B) by Council action without complying with bid or election requirements of ARS §§9-402 and 9-403; and

WHEREAS, upon holding title to the Improvements PCFD No. 1 may (a) apply an annual compensating fee (“Fee”) against property within PCFD No. 1 which is classified as non-taxable for ad valorem tax purposes (in relation to its Designated Spaces) and apply the revenue from said Fee towards payment of the 2006 Bonds and towards maintenance costs, pro rata, and/or (b) provide PCFD No. 1 general funds on an annual basis towards payment of the 2006

Bonds and towards maintenance costs, pro rata, as a contribution for economic development purposes and/or as a provision of general services to the motoring public; and

WHEREAS, under the IGA (a) the Town shall provide PCFD No. 1 the funds needed for costs, expenses and expenditures of any kind or nature incurred in its operation, including (but not limited to) taxes, litigation awards and settlements, all insurance premiums, construction costs and any other charges, costs, liabilities and expenses, and (b) PCFD may direct the Town not to permit erection of any main building, alteration or enlargement of any existing building, or intensification of any use by a change of occupancy or addition of floor area, seating capacity, or seats unless the business involved is current in its payment of either PCFD No. 1 ad valorem taxes or the Fees (when classified as non-taxable for ad valorem tax purposes);

NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF THE PARKWAY COMMUNITY FACILITIES DISTRICT NO. 1, AS FOLLOWS:

1. At such time as the Town conveys the Improvements to PCFD No. 1, PCFD No. 1 is hereby authorized (in its complete and sole discretion) to (a) apply the Fee (as set forth herein) against property within PCFD No. 1 which is classified as non-taxable for ad valorem tax purposes (in relation to the property's Designated Spaces) and then apply the revenue from all said Fees towards payment of the 2006 Bonds and towards maintenance costs, pro rata, and/or (b) provide PCFD No. 1 general funds on an annual basis towards payment of the 2006 Bonds and towards maintenance costs, pro rata. The application of the Fee and/or the provision of general funds towards payment of 2006 Bonds and towards maintenance costs (pro rata) shall occur as a result of the annual PCFD No. 1 budget process as administered by the Manager and Director and approved by the Board (according to law).

2. This authorization shall continue until the 2006 Bonds (including any refinancing bonds related thereto (unless the documents underlying any such refinancing bonds expressly provide that no Fee is needed)) have been paid in full.

3. The amount of any Fee shall be established in each PCFD No. 1 fiscal year of application, as follows:

- a. For the 2006 Bond payments due on January 15 and July 15 of each coming fiscal year, obtain from the Trustee the anticipated total payment amount (prior to May 1)
- b. Deduct from said total payment amount any general funds budgeted to be provided by PCFD No. 1 towards the 2006 Bond payments during the fiscal year, and obtain the resulting amount
- c. For each coming fiscal year, obtain from the County the total secondary assessed valuation of all property within PCFD No. 1. In the event there is currently no secondary assessed valuation for property within PCFD No. 1 which is classified as non-taxable for ad valorem tax purposes, the Director shall use the most recent secondary assessed valuation available for that property

- d. Divide the total secondary assessed valuation into the resulting amount of 2006 Bonds Payments due for the entire fiscal year to obtain the amount due per dollar of secondary assessed valuation that fiscal year
- e. Multiply the amount due per dollar of secondary assessed valuation that fiscal year times the secondary assessed valuation for each particular property classified as non-taxable in order to obtain a subtotal for that property
- f. Multiply the identified secondary assessed valuation for the particular property classified as non-taxable times 0.003 to obtain the subtotal for that property
- g. Add the two subtotals to obtain the total Fee for each property classified as non-taxable
- h. Verify the calculation for the subtotal in Subsection 3(e) above by:
 - i. taking the total number of designated parking spaces in PCFD No. 1 and dividing that number into the anticipated total payment amount
 - ii. taking that result and multiplying it by the number of parking spaces designated for each property classified as non-taxable
 - iii. if the subtotal in Subsection 3(h)(ii) is more than 10% above or below the subtotal in Subsection 3(e), then the Director shall use the subtotal in Subsection 3(h)(ii) to establish the Fee for that property

4. The Director shall make a written demand for payment of the Fee to the owner(s) of the particular property classified as non-taxable (as such ownership is established by any current County records (or similar records) available to the Director) within 45 days after the final adoption of the PCFD No. 1 budget. Said demand shall indicate that the Fee is due and payable within 60 days after the date of the demand. In the event of non-payment, the Director shall pursue all collection options available in law or equity (including, but not limited to, directing the Town under the IGA not to permit erection of any main building, alteration or enlargement of any existing building, or intensification of any use by a change of occupancy or addition of floor area, seating capacity, or seats unless the business involved is current in its payment of the Fee).

5. The Director is hereby directed that the revenues from all Fees shall irrevocably be deposited into the 2006 Bonds Tax Account (per §5.02(A)(1)(a) of the Indenture), or into any related account in the case of refinancing bonds, upon receipt in order to reduce the amount of ad valorem taxes required to be levied by the Board on property within PCFD No. 1.

6. Nothing herein is intended to constitute in any fashion an amendment to or rescission of the Indenture or Board Resolution No. 1. Furthermore, nothing herein is intended to constitute in any fashion an amendment to or rescission of any commitment by PCFD No. 1 or the Trustee with regard to the 2006 Bonds. Specifically, nothing herein amends the covenants and commitments of PCFD No. 1 under Resolution No. 1. Rather, the provisions herein should be considered supplemental thereto.

7. In accordance with the IGA, the Town is hereby directed and authorized to not permit erection of any main building, alteration or enlargement of any existing building, or intensification of any use by a change of occupancy or addition of floor area, seating capacity, or seats unless the business involved is current in its payment of either annual ad valorem taxes due to PCFD No. 1 (based on the PCFD No. 1 levy) or the Fee (when said business is classified as non-taxable for ad valorem tax purposes). Notice of this direction and authorization shall be provided in accordance with Section 15 of the IGA.

Solely in relation to the directions and authorizations in this Resolution, PCFD No. 1 does hereby agree to indemnify the Town to the same extent of the Town's indemnification obligation in Section 16 of the IGA (to the extent it may do so by law).

Finally, in accordance with Subsection 6(h) of Board Resolution No. 1, nothing herein shall be construed as obligating the Town or as incurring a charge upon the general credit or any other credit or revenues of the Town, nor shall the breach of any implied agreement by the Town herein impose any charge upon the general credit or any other credit or revenues of the Town.

9. This Resolution shall be effective after its passage and approval according to law.

RESOLVED by the District Board of Parkway Community Facilities District No. 1 this 25th day of July, 2013.

Harvey C. Skoog
Chairman, District Board,
Parkway Community Facilities District No. 1

ATTEST:

Diane Russell
District Clerk, Parkway
Community Facilities District No. 1

APPROVED AS TO FORM:

Ivan Legler
District Counsel, Parkway
Community Facilities District No. 1

EXHIBIT A

Parkway Community Facilities District No. 1

EXHIBIT B

Revised Improvements

EXHIBIT C

Designated Parking Spaces