

RESOLUTION NO. 1757

RESOLUTION OF MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, A MUNICIPAL CORPORATION OF ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS TO GROUND LEASES, A SERIES 2011 TOWN LEASE, A BOND PURCHASE CONTRACT AND A CONTINUING DISCLOSURE UNDERTAKING; APPROVING THE EXECUTION AND DELIVERY BY TOWN OF PRESCOTT VALLEY MUNICIPAL PROPERTY CORPORATION OF SUCH FIRST AMENDMENT TO SERIES 2003 GROUND LEASE, SUCH TOWN LEASE, SUCH BOND PURCHASE CONTRACT, A SERIES 2011 SUPPLEMENTAL TRUST INDENTURE, AN ESCROW TRUST AGREEMENT AND CERTAIN OTHER DOCUMENTS; APPROVING THE ISSUANCE OF NOT TO EXCEED \$31,000,000 AGGREGATE PRINCIPAL AMOUNT OF CERTAIN TOWN OF PRESCOTT VALLEY MUNICIPAL PROPERTY CORPORATION MUNICIPAL FACILITIES REVENUE REFUNDING BONDS, SERIES 2011; APPROVING AN OFFICIAL STATEMENT RELATING TO SUCH BONDS; DELEGATING TO THE MANAGER AND THE MANAGEMENT SERVICES DIRECTOR OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, THE AUTHORITY TO DETERMINE VARIOUS TERMS WITH RESPECT TO SUCH BONDS AND CERTAIN MATTERS RELATING TO CERTAIN BONDS TO BE REFUNDED WITH THE PROCEEDS OF THE SALE THEREOF; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS FOR THE PAYMENT THEREOF 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 THIS RESOLUTION AND DECLARING THIS RESOLUTION TO BE AN EMERGENCY PURSUANT TO SECTION 19-142(B), ARIZONA REVISED STATUTES, AS AMENDED, AND SECTION 2-05-060, PRESCOTT VALLEY TOWN CODE

WHEREAS, the Town of Prescott Valley Municipal Property Corporation (the "Corporation") was formed to transact any or all lawful business for which nonprofit corporations may be incorporated under the laws of the State of Arizona, including, without limiting the generality of the foregoing, any civic or charitable purpose such as financing the cost of acquiring, constructing and equipping of facilities for use by and for leasing to the Town of Prescott Valley, Arizona (the "Town"); and

WHEREAS, the Mayor and Common Council of the Town heretofore determined that it would be beneficial to the citizens of the Town to provide for the acquisition, construction and equipping of (i) a police operations building (the "Police Operations Project") and (ii) a town hall building and library (the "Town Hall Project"); and

WHEREAS, the Corporation, at the request of the Mayor and Common Council of the Town, heretofore issued (i) its \$4,140,000 aggregate principal amount of Municipal Facilities Revenue Bonds, Series 1995, dated as of January 1, 1995, pursuant to a Trust Indenture, dated as of January 1, 1995 (the "Indenture"), from the Corporation to U.S. Bank National Association, as successor to First Trust of Arizona, National Association (formerly Bank of America Arizona), as trustee (the "Trustee"), none of which remain outstanding and (ii) to finance the Police Operations Project, its \$1,775,000 aggregate principal amount of Municipal Facilities Revenue Bonds, Series 1995-B, dated as of June 1, 1995 (the "Series 1995-B Bonds"), pursuant to a Series 1995-B Supplemental Trust Indenture, dated as of June 1, 1995 (the "Series 1995-B Supplemental Indenture"), from the Corporation to the Trustee, none of which remain outstanding; and

WHEREAS, the Corporation, at the request of the Mayor and Common Council of the Town to finance the Town Hall Project, also heretofore issued its \$7,825,000 aggregate principal amount of Municipal Facilities Revenue Bonds, Series 1997, dated as of October 1, 1997 (the "Series 1997 Bonds"), pursuant to a Series 1997 Supplemental Trust Indenture, dated as of October 1, 1997 (the "Series 1997 Supplemental Indenture"), from the Corporation to the Trustee, none of which remain outstanding; and

WHEREAS, the Mayor and Common Council of the Town further determined that it would be beneficial to the citizens of the Town to provide for certain road and related improvements (the "Roads Project"); and

WHEREAS, the Corporation, at the request of the Mayor and Common Council of the Town to finance the Roads Project, issued its \$17,895,000 aggregate principal amount of Municipal Facilities Revenue Bonds, Series 2003, dated as of January 1, 2003 (the "First Series 2003 Bonds"), pursuant to a Series 2003 Supplemental Trust Indenture, dated as of January 1, 2003, from the Corporation to the Trustee, of which \$14,830,000 principal amount remains outstanding; and

WHEREAS, the Mayor and Common Council of the Town then determined that it would be beneficial to its citizens to provide for certain water system improvements (the "First Water System Project"); and

WHEREAS, the Corporation, at the request of the Mayor and Common Council of the Town to finance the First Water Systems Project, issued its \$4,580,000 aggregate principal amount of Municipal Facilities Revenue Bonds, Second Series 2003, dated as of September 1, 2003 (the "Second Series 2003 Bonds"), pursuant to a Second Series 2003 Supplemental Indenture, dated as of September 1, 2003, from the Corporation to the Trustee, none of which remain outstanding; and

WHEREAS, the Mayor and Common Council of the Town then determined that it would be beneficial to its citizens to refinance

certain portions of the Series 1995-B Bonds and of the Series 1997 Bonds (the "2004 Refunding"); and

WHEREAS, the Corporation, at the request of the Mayor and Common Council of the Town to finance the costs of the 2004 Refunding, issued its \$6,420,000 aggregate principal amount of Town of Prescott Valley Municipal Property Corporation Municipal Facilities Revenue Refunding Bonds, Series 2004, dated as of March 1, 2004 (the "First Series 2004 Bonds"), pursuant to a Series 2004 Supplemental Trust Indenture, dated as of March 1, 2004, from the Corporation to the Trustee, of which \$4,690,000 principal amount remain outstanding; and

WHEREAS, the Mayor and Common Council of the Town then determined that it would be beneficial to its citizens to provide for the acquisition of certain contractual rights to water pursuant to an intergovernmental agreement between the Town and the City of Prescott, Arizona (the "Second Water System Project"); and

WHEREAS, the Corporation, at the request of the Mayor and Common Council of the Town to finance the Second Water System Project, issued its \$14,300,000 aggregate principal amount of Municipal Facilities Revenue Bonds, Second Series 2004, dated as of December 1, 2004 (the "Second Series 2004 Bonds"), pursuant to a Second Series 2004 Supplemental Indenture, dated as of December 1, 2004, from the Corporation to the Trustee, of which \$11,045,000 principal amount remain outstanding; and

WHEREAS, the Mayor and Common Council of the Town have now determined that, under certain circumstances described herein, it will be beneficial to the citizens of the Town to refinance all or any portion of the First Series 2003 Bonds, the First Series 2004 Bonds and the Second Series 2004 Bonds remaining outstanding (the "Refunding"); and

WHEREAS, the Board of Directors of the Corporation desires to assist the Town in financing the Refunding; and

WHEREAS, in order to finance the costs of the Refunding, the Board of Directors of the Corporation and the Mayor and Common Council of the Town deem it necessary and desirable for the Corporation to issue certain of its Town of Prescott Valley Municipal Property Corporation Municipal Facilities Revenue Refunding Bonds, Series 2011 (the "Bonds"); and

WHEREAS, in connection with the issuance of the Bonds, the Corporation and the Town must enter into (i) Amendments to Ground Leases, to be dated as of the first day of the month of the dated date of the Bonds (collectively, the "Ground Lease Amendment"), pursuant to which the Town, with respect to the Series 2003 Ground Lease, dated as of January 1, 2003 (the "Series 2003 Ground Lease"), by and between the Town and the Corporation, encumbers the "Demised Premises" described therein (the "Demised Premises") and (ii) the Series 2011 Town Lease, to be designated as the series town lease of the calendar

year in which it is delivered and dated as of the first day of the month of the dated date of the Bonds (the "Town Lease"), pursuant to which (A) the Corporation accepts the encumbrance of the Demised Premises and (B) the Town, as agent for the Corporation, agrees to provide for the Refunding; and

WHEREAS, in connection with the issuance of the First Series 2003 Bonds, the Corporation and the Town entered into the Series 2003 Ground Lease and a Series 2003 Town Lease, dated as of January 1, 2003 (the "First Series 2003 Town Lease"); and

WHEREAS, the First Series 2003 Bonds remaining outstanding after the Refunding will be payable solely from the revenues received by the Corporation from the Town pursuant to the First Series 2003 Town Lease; and

WHEREAS, in connection with the issuance of the First Series 2004 Bonds, the Corporation and the Town entered into a Series 2004 Town Lease, dated as of March 1, 2004 (the "First Series 2004 Town Lease"); and

WHEREAS, the First Series 2004 Bonds remaining outstanding after the Refunding will be payable solely from the revenues received by the Corporation from the Town pursuant to the First Series 2004 Town Lease; and

WHEREAS, in connection with the issuance of the Second Series 2004 Bonds, the Corporation and the Town entered into a Second Series 2004 Town Lease, dated as of December 1, 2004 (the "Second Series 2004 Town Lease"); and

WHEREAS, the Second Series 2004 Bonds remaining outstanding after the Refunding will be payable solely from the revenues received by the Corporation from the Town pursuant to the Second Series 2004 Town Lease; and

WHEREAS, the Bonds shall be secured by the Indenture, as further supplemented by a Supplemental Trust Indenture, to be designated as the series supplemental indenture of the calendar year in which it is delivered and dated as of the first day of the month of the dated date of the Bonds (the "Supplemental Indenture"), from the Corporation to the Trustee; and

WHEREAS, the Bonds shall be secured by the Town Lease pursuant to which the Town shall pledge certain excise and franchise taxes as security for the payment of rental payments coming due thereunder and, on a parity therewith, under the Series 1997 Town Lease, the First Series 2003 Town Lease, the First Series 2004 Town Lease and the Second Series 2004 Town Lease; and

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the assistance it renders the Town in

financing the Refunding, and no part of the net earnings of the Corporation, if any, shall ever inure to the benefit of any person, firm or corporation, except the Town; and

WHEREAS, there have been placed on file with the Clerk of the Town and presented at the meeting at which this Resolution was adopted (1) the proposed form of the Ground Lease Amendment, (2) the proposed form of the Supplemental Indenture, (3) the proposed form of the Town Lease, (4) the proposed form of the Escrow Trust Agreement, to be dated as of the first day of the month of the dated date of the Bonds (the "Escrow Trust Agreement"), by and between the Corporation and U.S. Bank National Association, as escrow trustee, to provide for the disposition of amounts to be applied to accomplish the Refunding, (5) the proposed form of the Bond Purchase Agreement, to be dated the date of sale of the Bonds (the "Purchase Contract"), by and among the Town, the Corporation and Stone & Youngberg LLC (the "Purchaser") for the purchase of the Bonds, (6) the proposed form of a Continuing Disclosure Undertaking, to be dated the date of delivery of the Bonds (the "Undertaking"), of the Town necessary for purposes of Securities and Exchange Commission Rule 15c2-12 and (7) the proposed form of the Preliminary Official Statement, to be dated the date of the mailing thereof (the "Preliminary Official Statement"), relating to the Bonds, and which, with certain additions thereto, shall constitute the Official Statement, to be dated the date of the sale of the Bonds (the "Official Statement"), relating to the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, THAT:

Section 1. The Mayor and Common Council of the Town hereby find and determine that the financing of the costs of the Refunding and the issuance of the Bonds pursuant to the terms of the Town Lease and the Supplemental Indenture is in furtherance of the purposes of the Town and in the public interest.

Section 2. The forms, terms and provisions of the Ground Lease Amendment, the Town Lease, the Undertaking and the Purchase Contract in the forms of such documents (including the exhibits thereto) presented at the meeting at which this Resolution was adopted are hereby approved with such insertions, omissions and changes as shall be approved by the Mayor of the Town (including as a result of determinations to what extent the Refunding is to be undertaken as hereinafter described), the execution of such documents being conclusive evidence of such approval, and the Mayor and Clerk of the Town are hereby authorized and directed, for and on behalf of the Town, to sign and attest the Ground Lease Amendment, the Town Lease, the Undertaking and the Purchase Contract as well as any and all other documents necessary in connection with the foregoing.

Section 3. The form, terms and provisions of the Supplemental Indenture and the Escrow Trust Agreement in the form of such documents (including exhibits thereto) presented at the meeting at which this Resolution was adopted are also hereby approved with such

insertions, omissions and changes as shall be approved by the President of the Corporation (including as a result of determinations to what extent the Refunding is to be undertaken as hereinafter described), the execution of such documents (as well as the Ground Lease Amendment, the Town Lease and the Purchase Contract) being conclusive evidence of such approval, and the President and Secretary of the Corporation are hereby authorized and directed, for and on behalf of the Corporation, to sign and attest the Ground Lease Amendment, the Town Lease, the Supplemental Indenture, the Escrow Trust Agreement and the Purchase Contract as well as any and all other documents necessary in connection therewith to provide for the issuance of the Bonds including any financial guaranty or related agreement necessary with respect to credit enhancement for the Bonds and any standard form of agreement with a securities depository to provide for a book-entry system for the Bonds.

Section 4. (A) The Preliminary Official Statement, and the distribution and use thereof in connection with the sale of the Bonds, in substantially the form presented at the meeting at which this Resolution was adopted, with such changes as are approved by the Manager of the Town, is hereby approved. The preparation of the Official Statement is hereby approved; the Manager and the Management Services Director of the Town are authorized and directed to approve, on behalf of the Town, the Official Statement which is, by his execution thereof, approved for use in connection with the offering and sale of the Bonds and the execution of the Official Statement by the Mayor of the Town is hereby authorized and approved and shall be conclusively deemed to evidence the approval of the status, form and contents thereof.

(B) (i) The Town shall comply with and carry out all the provisions of the Undertaking.

(ii) This Subsection shall constitute a contract between the Town and certain owners of the Bonds as described in the Undertaking.

(iii) In the event of a failure of the Town to comply with the provisions of this Subsection, such owners of the Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Town to comply with its obligations under this Subsection. A default under this Subsection shall not be deemed an event of default for other purposes of this Resolution or the Town Lease, and the sole remedy under this Subsection in the event of any failure of the Town to comply with this Subsection shall be an action to compel performance.

Section 5. The Town hereby requests the Corporation to take any and all action necessary in connection with the issuance and sale of the Bonds and in connection with the Refunding and covenants that it shall do all things necessary to assist the Corporation therein.

Section 6. (A) The Town hereby approves the issuance and delivery of the Bonds by the Corporation as a series of special obligation bonds to be designated "Town of Prescott Valley Municipal Property Corporation Municipal Facilities Revenue Refunding Bonds, Series 2011." The Bonds shall be issued in fully registered form only and shall bear interest from their date and shall mature and be payable as provided in the Supplemental Indenture. The Bonds shall be sold in accordance with the terms of the Purchase Contract. The Manager and the Management Services Director of the Town are hereby authorized to determine on behalf of the Corporation the date the Bonds are to be offered for sale but only if on such date the same shall result in a present value debt service savings, net of all costs associated with the issuance of the Bonds of not less than two percent (2%) of the principal amount of the bonds being refunded pursuant to the Refunding, as well as the sale price and other sales terms of the Bonds; the total aggregate principal amount of the Bonds which are to be sold (but not to exceed \$31,000,000); the date the Bonds are to be dated; the interest rate to be borne by the Bonds and dates on which interest on the Bonds is to be payable (provided, however, that the yield on the Bonds calculated for federal income tax purposes shall not exceed four and three-quarters percent (4.75%) per annum); the dates the Bonds are to mature (but only in the years 2012 through 2027), the principal amounts to mature on such dates and the provisions for the redemption of the Bonds in advance of such dates; the maturity dates and principal amounts for bonds being refunded pursuant to the Refunding and the determinations of exercise of redemption provisions with respect to such bonds and the provisions pursuant to which the Bonds are to be credit enhanced (including determinations with respect to bond insurance and required reserve funds). It is hereby authorized that all necessary actions to accommodate the Refunding, including providing for the making of all necessary changes to all related documents, be taken.

(B) The form, terms and provisions of the Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Supplemental Indenture and are hereby approved.

Section 7. The Town hereby requests the Corporation to sell the Bonds to the Purchaser in accordance with the terms of the Purchase Contract as finally completed and at the price and other terms specified therein, determined as provided herein.

Section 8. (A) For the payment of the principal of, premium, if any, and interest on the Bonds and amounts due and owing with respect to appropriate costs pursuant to any provision for credit enhancement for the Bonds, if any (the "Policy Costs"), the Town shall pay and transfer to the Trustee the rental payments provided for in Article I of the Town Lease and the other amounts required to be paid by the Town pursuant to the provisions of the Town Lease.

(B) To secure the payment of the rental payments provided for in Article I of the Town Lease and the other amounts

required to be paid by the Town pursuant to the provisions of the Town Lease, the Town hereby pledges for the payment of the rental payments thereunder all excise, transaction (sales) privilege, franchise and income taxes which it now collects, which it may collect in the future, or which are allocated or apportioned to the Town by the State of Arizona, any political subdivision thereof, or any other governmental unit or agency, EXCEPT the share of the Town of any excise and franchise taxes which by State of Arizona law, rule or regulation must be expended for other purposes, such as the motor vehicle fuel tax (collectively, the "Excise Taxes"). This pledge, together with any pledge made or to be made pursuant to the Town Lease, shall be a first lien upon the Excise Taxes as will be sufficient to make the rental payments pursuant thereto each month, and the Town shall make said rental payments from receipts from the Excise Taxes, except to the extent that it chooses to make such payments from other funds pursuant to the Town Lease. To the extent permitted by law, the Excise Taxes shall be retained and maintained so that the amount of all such Excise Taxes received within and for the next preceding fiscal year, shall be equal to (i) at least two (2) times the total of rental payments payable thereunder in any current fiscal year other than as such rental payments relate to the amount necessary to repay the Policy Costs, if any, then due and owing and (ii) at least one (1) times the obligations of the Corporation with respect to repayment of the Policy Costs then due and owing, if any. If such receipts for any such preceding fiscal year shall not equal two (2) times the rental payment requirements of any current fiscal year, or if at any time it appears that the current receipts will not be sufficient to meet the rental payment requirements thereunder, the Town shall either impose new excise and franchise taxes or shall increase the rates for the Excise Taxes currently imposed in order that (i) the current receipts will be sufficient to meet all current rental payment requirements thereunder and (ii) the current year's receipts will be reasonably calculated to attain the level as required above for the succeeding fiscal year's rental payment requirements.

(C) So long as any of the First Series 2003 Bonds, the First Series 2004 Bonds, the Second Series 2004 Bonds or the Bonds remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, the Town shall not further encumber the Excise Taxes on a basis equal to the first lien pledge unless the Excise Taxes collected in the next preceding fiscal year shall have amounted to (i) at least two and one-half (2½) times the highest combined interest and principal requirements for any succeeding twelve (12) months' period for all First Series 2003 Bonds, First Series 2004 Bonds, Second Series 2004 Bonds and Bonds then outstanding and any parity bonds or other obligations so proposed to be secured by a pledge of the Excise Taxes and (ii) at least one (1) times the obligations of the Corporation with respect to repayment of the Policy Costs then due and owing, if any.

(D) The obligation of the Town to make the rental payments provided for in Article I of the Town Lease and to make other payments due under the Town Lease is limited to payment from the

Excise Taxes, and the obligations of the Town under the Town Lease shall not constitute nor give rise to a general obligation of the Town or any claim against its ad valorem taxing powers, or constitute an indebtedness within the meaning of any statutory or constitutional debt limitation applicable to the Town.

Section 9. After any of the Bonds are delivered by the Trustee to the Purchaser thereof upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Bonds and the interest thereon shall have been fully paid, cancelled and discharged.

Section 10. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. All orders and 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 order or resolution or any part thereof.

Section 12. The immediate operation of this Resolution is necessary for the economic completion of the refinancing of the projects which are the subject of the transactions relating to the sale and issuance of the Bonds and the resulting preservation of the public health and welfare and an emergency is hereby declared to exist. This Resolution shall be in full force and effect from and after its passage, adoption and approval by the Mayor and Common Council of the Town, as required by law, and is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona pursuant to Section 19-142(B), Arizona Revised Statutes, as amended, and Section 2-05-060, Prescott Valley Town Code.

PASSED AND ADOPTED this 14th day of July, 2011.

.....
Harvey Skoog, Mayor, Town of Prescott
Valley, Arizona

ATTEST:

.....
Diane Russell, Town Clerk, Town of
Prescott Valley, Arizona

APPROVED AS TO FORM:

.....
Ivan Legler, Town Attorney, Town
of Prescott Valley, Arizona