

RESOLUTION NO. 13
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, APPROVING A TENTATIVE BUDGET FOR FISCAL YEAR 2012-2013 PURSUANT TO ARS §48-716; SETTING A PUBLIC HEARING DATE ON SAID TENTATIVE BUDGET; FILING STATEMENTS AND ESTIMATES OF THE OPERATION AND MAINTENANCE EXPENSES OF THE DISTRICT, AND THE AMOUNT OF ALL OTHER EXPENDITURES FOR PUBLIC INFRASTRUCTURE AND ENHANCED MUNICIPAL SERVICES PROPOSED TO BE PAID FROM THE TAX LEVY AND OF THE AMOUNT TO BE RAISED TO PAY GENERAL OBLIGATION BONDS OF THE DISTRICT, ALL OF WHICH SHALL BE PROVIDED FOR BY THE LEVY AND COLLECTION OF AD VALOREM TAXES ON THE ASSESSED VALUE OF ALL THE REAL AND PERSONAL PROPERTY IN THE DISTRICT; PROVIDING FOR NOTICE OF FILING THE STATEMENTS AND ESTIMATES, AND NOTICE OF A PUBLIC HEARING ON THE PORTIONS OF THE STATEMENTS AND ESTIMATES NOT RELATING TO DEBT SERVICE ON GENERAL OBLIGATION BONDS; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, on April 27, 2006, the Common Council of the Town of Prescott Valley ("Town") adopted Resolution No. 1427 creating within Section 22, T14N, R1W G&SRB&M of the Town, the Parkway Community Facilities District No. 1 ("PCFD No. 1"), a community facilities district in accordance with ARS §48-701 et seq. (see Exhibit "A" attached hereto and expressly made a part hereof); and

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

WHEREAS, a primary purpose for creating PCFD No. 1 was to finance construction and maintenance of certain public improvements along State Route 69 and adjacent to certain commercial property, through assessment of ad valorem taxes on said property; and

WHEREAS, in accordance with ARS §§48-719 and 48-723, a special election was held on June 27, 2006 wherein the qualified electors of PCFD No.1 voted to issue general obligation bonds in the maximum amount of three million four hundred twenty-five thousand dollars (\$3,425,000) to cover costs of constructing the public improvements, and to levy and collect an annual ad valorem tax at a rate not to exceed thirty cents (30¢) per one hundred dollars (\$100) of assessed valuation for PCFD No. 1 operation and maintenance expenses; and

WHEREAS, by Resolution No. 1 (dated September 28, 2006) the PCFD No. 1 Board authorized the sale of up to \$3,425,000 aggregate principal amount of general obligation bonds, Series 2006 (“2006 Bonds”) to fund the public improvements (including a reserve fund); and

WHEREAS, on October 25, 2006, the PCFD No. 1 Board approved the sale of \$3,425,000 in 2006 Bonds; and

WHEREAS, on October 3, 2008, certain owners of property in PCFD No. 1 filed a Complaint and Notice of Appeal in the Arizona Tax Court related to a ruling on June 2, 2008 by the Yavapai County Board of Supervisors about certain ad valorem tax issues (*Tri-Bar LLC, et al. v. Prescott Valley Parkway Community Facilities District No. 1, et al. TX2008-000413*). The County had mistakenly applied a tax rate less than the six dollars and sixty-seven cents (\$6.67) per \$100 which had actually been assessed by the PCFD No. 1 Board. When it adjusted the rate, the property owners asserted that it used an incorrect procedure. An arrangement by the PCFD No. 1 Manager to apply excess construction funds to reduce the FY 2007-2008 tax bill to around three dollars and thirty cents (\$3.30) per \$100 (said funds would otherwise have been applied the following tax year to reduce the tax levy) was unavailing. The property owners also sought a Declaratory Judgment that PCFD No. 1 had been illegally formed, that misrepresentations had been made to induce the owners to approve the public improvements, that the improvements were improperly implemented and constructed, that the tax rate applied to PCFD No. 1 was improperly calculated, and that individual taxpayers in PCFD No. 1 had been discriminated against in the application of taxes. Counsel for the Town and PCFD No. 1 moved for summary judgment and the Court granted the motion on April 3, 2009 (allowing plaintiffs to conduct discovery about any PCFD No. 1 costs, tax assessments, or fees for activities that did not involve repayment of bonds). After some attempts by plaintiffs to turn this exception into a broad discovery opportunity were thwarted, they eventually agreed to dismiss their Complaint and Appeal in return for all parties paying their own costs. This was accomplished by Court order dated March 11, 2010; and

WHEREAS, a steady decline in assessed valuations of the commercial property within PCFD No. 1 (due to the worldwide recession) and unexpected occupation of properties by entities that are exempt for ad valorem tax purposes (e.g. schools, churches, and other non-profit organizations) have required the PCFD No. 1 Board to increase the tax rate to levels much higher than anticipated when PCFD No. 1 was formed. The rate for FY 2011-2012 was approximately eleven dollars and forty cents (\$11.40) per \$100; and

WHEREAS, despite the efforts of the PCFD No. 1 Board to apply tax rates sufficient to make bond payments when due, in August 2011 a Reporting of Material Event occurred because tax collections were insufficient to pay the full amount of the July 15, 2011 payment, resulting in an unscheduled draw against the reserve fund in the amount of \$37,206.63; and

WHEREAS, going forward it is understood that the PCFD No. 1 Board will make decisions about PCFD No. 1 tax rates based on assessed values and occupancies, availability of any reserve, and any other monies that may become available to apply towards payment of the 2006 Bonds; and

WHEREAS, in accordance with ARS §§48-716 and 48-723, the PCFD No. 1 Treasurer has now submitted to the PCFD No. 1 Board a proposed budget for Fiscal Year 2012-2013 which includes statements and estimates of the operation and maintenance expenses of PCFD No. 1, and the amount of all other expenditures for public infrastructure and enhanced municipal services proposed to be paid from the tax levy and of the amount to be raised to pay PCFD No. 1 general obligation bonds, all of which shall be provided for by the levy and collection of ad valorem taxes on the assessed value of all the real and personal property within PCFD No. 1; and

WHEREAS, the PCFD No. 1 Board desires to approve said Tentative Budget for Fiscal Year 2012-2013, to publish notice of having filed the required statements and estimates, and to set a date (and publish a notice thereof) for a public hearing to receive comment on the Tentative Budget and, particularly, on the portions of the statements and estimates not relating to debt service on general obligation bonds; and

WHEREAS, after said public hearing (and on or before October 1), the PCFD No. 1 Board expects to adopt a Final Budget by resolution; and

WHEREAS, on or before the third Monday in August, the PCFD No. 1 Board also expects to order the fixing, levying and assessment of required ad valorem taxes and to cause certified copies of the order to be delivered to the Yavapai County Board of Supervisors and the Arizona Department of Revenue;

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

1. That that certain proposed budget prepared by the PCFD No. 1 Treasurer for Fiscal Year 2012-2013, attached hereto and expressly made a part hereof as Exhibit "B", is hereby tentatively approved.

2. That the statements and estimates of the operation and maintenance expenses and the amount of all other expenditures for public infrastructure and enhanced municipal services proposed to be paid from the tax levy and of the amount to be raised to pay PCFD No. 1 general obligation bonds in Fiscal Year 2012-2013, are hereby filed on forms of the Auditor General in accordance with ARS §§42-17101(3) and 48-723(C), and are attached hereto and expressly made a part hereof as Exhibit "C".

3. That a public hearing date of July 12, 2012, beginning at or after 5:25 p.m. in the Auditorium of the Prescott Valley Public Library at 7401 East Civic Circle, Prescott Valley, Arizona, is hereby set to consider said Tentative Budget (including, but expressly not limited to, consideration of those portions of the statements and estimates not relating to debt service on PCFD No. 1 general obligation bonds), and said notice (attached hereto and expressly made a part hereof as Exhibit "D") shall be published once in the Daily Courier no later than ten (10) days prior to said hearing date.

4. That if any provision in this Resolution is held invalid by a Court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

5. That this Resolution shall be effective after its passage and approval according to law.

RESOLVED by the District Board of the Parkway Community Facilities District No. 1 this 24th day of May 2012.

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"

PCFD No. 1 Map and Legal Description

EXHIBIT "B"

FY 2012-2013 PCFD No. 1 Budget

EXHIBIT "C"

PCFD No. 1 Statements and Estimates on Auditor General Forms

EXHIBIT "D"

PCFD No. 1 Published Notice