

RESOLUTION NO. 2024-38

ENTERTAINMENT CENTER COMMUNITY FACILITIES DISTRICT

A RESOLUTION OF THE DISTRICT BOARD OF THE ENTERTAINMENT CENTER COMMUNITY FACILITIES DISTRICT, A COMMUNITY FACILITIES DISTRICT OF ARIZONA, APPROVING A FINAL BUDGET FOR FISCAL YEAR 2024-2025 PURSUANT TO ARS §48-716 FOR THE OPERATION AND MAINTENANCE EXPENSES OF THE DISTRICT, THE COSTS OF REVENUE BONDS ISSUED BY THE DISTRICT TO ACQUIRE CERTAIN ASSETS (INCLUDING THE PRESCOTT VALLEY EVENTS CENTER), AND THE AMOUNT OF ALL OTHER EXPENDITURES FOR MUNICIPAL SERVICES RELATED TO THE OPERATION OF THE EVENTS CENTER TO BE PAID FROM REVENUES FROM AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF PRESCOTT VALLEY; PROVIDING 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; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, in April 2004, representatives of Global Entertainment Company (“GEC”) began discussing with local business leaders and Town officials a proposal to locate a multi-purpose convention and events center of approximately 5,000 seats in the downtown area (“Center”) to accommodate conventions and trade shows, professional sporting events, concerts, public assembly and meeting events, and other activities; and

WHEREAS, a 2.81-acre site was identified within 34 acres owned by the Fain family, all of which would be added to 64 acres previously set apart in a development agreement as a downtown project area (together “Project Area”); and

WHEREAS, on February 24, 2005 (after considering a feasibility study and taking public input), the Town Council authorized staff to enter into negotiations for another development agreement that would set forth Town involvement in this new project; and

WHEREAS, on May 6, 2005, the Town Council (“Council”) approved the other development agreement with Fain, GEC, and a new entity formed by Fain and GEC, the Prescott Valley Events Center, LLC (“PVEC”) that formalized the Town’s involvement. PVEC (with GEC assistance) would design and construct the Center. PVEC (through GEC) would then operate the Center. The Town would assist PVEC and GEC in obtaining financing by making available on specified conditions certain one-time fees, certain ongoing transaction privilege taxes (“TPTs”) out of specified areas (including the Project Area), and certain other fees. This development agreement was subsequently amended on October 6, 2005; and

WHEREAS, PVEC and GEC obtained financing through a \$35,000,000 taxable bond issued by the Industrial Development Authority of Yavapai County, Arizona, with PVEC as borrower (“Taxable Bonds”) and GEC used the proceeds to construct the Center (completed in October 2006); and

WHEREAS, on December 21, 2006, the Council formed the Entertainment Center Community Facilities District (“ECCFD”) per Arizona Revised Statutes §48-701 et seq. (see Exhibit “A” attached hereto and expressly made a part hereof), Sitting as the new ECCFD Board (“Board”), it then accepted title to the Center and its underlying land from PVEC, with PVEC retaining a possibility of reverter (“Reversion”). The Board also approved a long-term lease with PVEC for Center operations based on a separate management agreement between PVEC and GEC (“Center Lease”). Finally, the Council and Board approved an intergovernmental agreement per ARS §§11-952 and 48-709(A)(2) for the Town to provide ECCFD with operation and administration (including funding) (“IGA”); and

WHEREAS, on September 20, 2007, the trustee for the Taxable Bonds (“Trustee”) sent the Town an invoice for \$1,171,677.90 to make the October 1, 2007 debt service payment. The Town had not previously been given notice of Center revenue shortfalls and, although some revenues under the two development agreements had been collected, the Town had not included the contingent payments in its Fiscal Year 2007-08 budget and was not prepared to make that payment to the Trustee. This resulted in the Trustee making the payment from the debt service reserve fund; and

WHEREAS, in September 2009 the Trustee, the majority bondholder and certain other bondholders sued under federal and state securities law the parties involved with issuing the Taxable Bonds (including GEC and PVEC). Though the Town began making payments under the two development agreements starting with the April 1, 2008 bond payment (and made catch-up payments through April 1, 2010 to account for not having made the October 1, 2007 payment), the Town was also named in the litigation. The litigation resulted in the Trustee diverting the Town’s payments under the two development agreements to litigation costs rather than to debt service payments on the Taxable Bonds, eventually resulting in total withdrawal of the bond rating on the Taxable Bonds; and

WHEREAS, over a 4-year period, the parties conducted extensive discovery, filed and argued numerous pre-trial motions, obtained various pre-trial judgments and prepared for trial. In the end, the judge entered pre-trial judgments in favor of the Town on all claims against it. On September 15, 2014, the judge approved a settlement outline involving, among others, Fain, the Town, the Trustee and the majority bondholder. Among other provisions, the Town would continue making payments under the two development agreements over their remaining term (even if the Center closed during that term), certain revenues would be redirected from bond payments to Center operation, Fain would work to keep the Center open, and the Trustee and majority bondholder would not raise legal issues if Fain eventually obtained Town approval to put a residential apartment complex in the Project Area (instead of commercial developments that would pay TPTs toward debt service on the Taxable Bonds), nor would they raise issues if the Town applied a 2% surcharge against rents from such a complex, which would also be applied directly to the Center. The Council ratified the “Settlement Agreement” on October 16, 2014; and

WHEREAS, GEC filed for Chapter 7 bankruptcy in Nevada Federal Court on October 30, 2014. This bankruptcy resulted in PVEC being reorganized to include only two new Fain entities and for the Center to be operated by one of those entities; and

WHEREAS, on April 8, 2015, Town representatives met with representatives of the reorganized PVEC to begin discussions about keeping the Center open and the potential for PVEC to file its own bankruptcy petition to, among other things, remove its obligations as borrower under the Taxable Bonds; and

WHEREAS, on August 14, 2015, PVEC filed for Chapter 11 bankruptcy in Arizona Federal Court. This filing was followed on December 1, 2015 by the two Fain entities that made up PVEC filing their own individual Chapter 11 bankruptcy petitions. These filings were administratively consolidated into a single bankruptcy proceeding ("Bankruptcy"); and

WHEREAS, in March 2016 it was learned that the majority bondholder had sold at a substantial loss its interest in the \$28,000,000 of the Taxable Bonds it held. The new majority bondholder, Lapis Advisers, LP ("Lapis"), reportedly had purchased these Taxable Bonds for approximately \$12,000,000. Shortly afterwards, Lapis approached the Town with terms under which Lapis would consider approving a Bankruptcy Plan designed to cancel existing obligations under the Taxable Bonds. Notwithstanding the Town's original position that it would not issue municipal bonds or be responsible for the Center (other than to form an entity that would hold title for accommodation purposes), Lapis proposed that the Town (or ECCFD) issue \$16,000,000 of new tax-exempt municipal bonds bearing 4% interest over 20 years with a 10-year call ("Tax-Exempt Bonds") that might be exchanged under the Bankruptcy Plan for the Taxable Bonds. Based on requirements for tax-exemption, this was later clarified to have the Tax-Exempt Bonds become an asset of the Bankruptcy estate in order to acquire the Reversion and the personal property owned by PVEC to operate the Center, to obtain assignment of all operation agreements (including any contract with a professional manager), to obtain rescission of the Center Lease, and to obtain any other related assets (collectively "Acquired Assets"); and

WHEREAS, over the ensuing year, the outlines of a Bankruptcy Plan emerged where (1) the two development agreements would be rescinded (thus removing obligations for PVEC to finance, lease, and operate the Center and for the Town to make ongoing payments of TPTs or other payments); (2) the requirements for Fain to continue operating the Center and for the Town to continue making payments under the two development agreements (or apply any surcharge on new residential development in the Project Area towards the Center) under the Settlement Agreement would be rescinded; (3) ECCFD would issue the Tax-Exempt Bonds registered in the name of PVEC (all obligations and documents related to the Taxable Bonds being rescinded and debt service being secured by payments unrelated to Center operation, with the Town providing ECCFD with the needed amounts per an amendment to the IGA); (4) as an asset of the Bankruptcy estate the Tax-Exempt bonds would be distributed to Lapis and the other bondholders and ECCFD would acquire the Acquired Assets (including the Center and any agreement with a professional operator) with PVEC no longer being involved in Center operations; (5) PVEC would no longer be involved in Center operations; (6) the Center's liquor license would be transferred to ECCFD for a one-time payment into the Bankruptcy Plan by the Town of \$75,000; (7) the current parking agreement between PVEC and Fain would be assigned to ECCFD, then amended to (a) give ECCFD a non-exclusive license in Lots 9, 12, 13 and 14 (1,391 parking spaces) for the Center on event dates (and employee parking on all dates). But, if Fain later needed some of the spaces for other uses it would only be required to provide a total of 1,000 spaces in the areas. The balance would come from Main Street and the Civic Center

parking lots, (b) require ECCFD to pay Fain quarterly a license fee for ticketed events in the total amount of \$70,000 a year (or \$2.10 per ticket sold, whichever is greater)...increased 3% a year. ECCFD would also pay Fain quarterly a license fee for non-ticketed events (e.g. gun shows and home & garden shows but not voting, public meetings, or Town-sponsored events) of \$500 per event day. If Fain must pay any taxes (besides income taxes) that amount must also be paid by ECCFD. Fain may also use the Center at no charge for up to 50 hours a year (excluding unloading and loading time) for private and charitable events. And, Fain may use box seats in No. 318 for a fixed annual fee of \$5,000 a year, (c) require ECCFD to pay all insurance, maintenance, and repair relating to parking areas for which the license is granted, and (d) have Fain convey to ECCFD at no charge (on an “as-is” basis) title to the parking areas (Fee Simple Subject to Condition Subsequent...subject to a right of entry any time), or Fee Simple Determinable (with a possibility of reverter if the parking agreement ever terminated or 20 years after the effective date of the Bankruptcy Plan). ECCFD would then lease the parking areas back to Fain for 20 years at \$1 yearly rent. Fain could then use the parking areas for other uses that don’t conflict with Center uses. Fain could also substitute any of listed areas with other areas so long as Fain ensured 1,000 spaces for the Center. If so, ECCFD would convey the area back to Fain and accept title to the new area under the terms of the agreement. Fain could assign the agreement (and its reversion rights) to new owners of portions of parking areas. If the Center closed for longer than 6 months at any time, Fain could terminate the agreement. And, the agreement would be renegotiated at end of 20 years; (8) ECCFD would operate the Center going forward based on the assigned management agreement with a professional manager (“Management Agreement”) that would require ECCFD to pay any budgeted subsidy needed in case of event revenue shortfalls; (9) the Town would pay to PVEC (or a Bankruptcy Plan trustee), a total of \$3,000,000 over 20 years (or the term of the Tax-Exempt Bonds, whichever is greater) to implement the Bankruptcy Plan; and (10) the Bankruptcy Plan would recognize certain previous and current Fain claims and payments involving the Center for reimbursement over time; and

WHEREAS, a Bankruptcy Plan as set forth above was submitted by PVEC to the Bankruptcy Court on June 2, 2017. If the Plan is tentatively approved by the Bankruptcy Court at the Court’s scheduled hearing on July 12, 2017, the Plan will be sent out to creditors for a vote. At or after that time, the Council and Board would be asked to consider whether to formally approve the Plan and authorize their respective representatives to vote in favor of it. Actions to amend the current IGA in order for the Town to provide necessary revenues to ECCFD, and for ECCFD to tentatively authorize issuance of the new bonds (contingent on Plan confirmation by the Court) would also be in order; and

WHEREAS, in the event this Bankruptcy Plan (or a substantially similar Plan) is ultimately approved by the creditors and the Bankruptcy Court (and the other actions described above have been taken), then the obligations described therein for ECCFD will need to have been budgeted for in accordance with ARS §48-716; and

WHEREAS, by Resolution No. 2024-37, dated May 23, 2024, the ECCFD Board adopted a tentative budget for Fiscal Year 2024-2025 and set a public hearing date of June 27, 2024, to consider the same; and

WHEREAS, at the conclusion of the public hearing, the ECCFD Board voted to adopt the final budget for Fiscal Year 2024-2025 by this Resolution No. 2024-38;

NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF THE ENTERTAINMENT CENTER COMMUNITY FACILITIES DISTRICT, AS FOLLOWS:

1. That that certain proposed budget prepared by the ECCFD Treasurer for Fiscal Year 2024-2025, attached hereto and expressly made a part hereof as Exhibit “B”, is hereby approved.

2. 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.

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

RESOLVED by the District Board of the Entertainment Center Community Facilities District this 27th day of June 2024.

Kell Palguta, Chairman, District Board
Entertainment Center Community Facilities District

ATTEST:

Fatima Fernandez, District Clerk
Entertainment Center Community Facilities District

APPROVED AS TO FORM:

Ivan Legler, Legal Counsel
Entertainment Center Community Facilities District