

RESOLUTION NO. 2024-46

SOUTHSIDE COMMUNITY FACILITIES DISTRICT NO. 1

A RESOLUTION OF THE DISTRICT BOARD OF THE SOUTHSIDE COMMUNITY FACILITIES DISTRICT NO. 1, A COMMUNITY FACILITIES DISTRICT OF ARIZONA, APPROVING A FINAL BUDGET FOR FISCAL YEAR 2024-2025 PURSUANT TO ARS §48-716; FOR THE EXPENSES OF THE DISTRICT TO BE REPAID THROUGH SPECIAL ASSESSMENTS AGAINST PROPERTY OWNERS WITHIN THE DISTRICT, AND THE AMOUNT OF ALL OTHER OPERATION EXPENDITURES PROPOSED TO BE PAID FROM THE ASSESSMENT BOND REVENUES AND OTHER SOURCES; 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, on March 23, 2006, the Council of the Town of Prescott Valley (“Town”) approved Resolution No. 1417 declaring its intention to form the Southside Community Facilities District (“SCFD”) No. 1 within Sections 27, 28 and 34, R1E, T14N, and Section 3, R1E, T13N, G&SRM, in accordance with ARS §48-701 et seq. (see Exhibit “A” attached hereto and expressly made a part hereof), based on a General Plan filed with the Town Clerk and a petition signed by the owners of substantially more than twenty-five percent (25%) of land area within SCFD No. 1; and

WHEREAS, after a public hearing, the Town Council adopted Resolution No. 1425 on April 27, 2006, calling an election for June 27, 2006 by the registered voters and landowners within SCFD No. 1, asking whether to a) form SCFD No. 1, b) issue bonds and levy ad valorem taxes therefor, and c) levy ad valorem taxes for operation and maintenance expenses; and

WHEREAS, at the election, a majority of the votes equal to the number of acres cast by qualified electors and a majority of the votes cast by qualified electors were in favor of each proposition, and the Town Council approved Resolution No. 1447 on June 29, 2006 ordering formation of SCFD No. 1 and indicating (among other things) that SCFD No. 1 would be governed by a Board comprised of the Mayor and Common Council acting “ex officio”; and

WHEREAS, soon after formation of SCFD No. 1, discussions with property owners within SCFD No. 1 led to re-evaluation of the proposal to issue bonds based on ad valorem taxes and a conclusion that a fixed assessment was preferable to an annual levy that would have the potential to change as secondary assessments were adjusted; and

WHEREAS, on October 11, 2007, the SCFD No. 1 Board approved Resolution No. 1 which, among other things, declared the Board's intention to improve property located within SCFD No. 1 by constructing sanitary sewer mains and water distribution mains (“Improvements”) financed through an assessment levied on said property and sale of assessment bonds; and

WHEREAS, at the same meeting the SCFD No. 1 Board approved Resolution No. 2 establishing interim procedures for SCFD No. 1 and approving an Intergovernmental Agreement (“IGA”) with the Town whereby the Town would (a) pay certain SCFD No. 1 expenses in anticipation of SCFD No. 1 selling bonds and reimbursing the expenses from bond proceeds, (b) providing for ongoing operation of SCFD No. 1, and (c) making a contribution towards upsizing the Improvements in anticipation of (i) possible future annexation of a portion of the Prescott Country Club, and (ii) connection to nearby commercial properties located outside of SCFD No. 1; and

WHEREAS, on November 8, 2007, the SCFD No. 1 Board held a public hearing on a Feasibility Report related to the Improvements, and then approved Resolution No. 3 adopting the Feasibility Report and ordering construction of the Improvements; and

WHEREAS, on November 29, 2007, the SCFD No. 1 Board approved Resolution No. 5 adopting a development agreement with the Town and Willow Lake Partnership by which SCFD No. 1 would arrange for construction of an extension of the Improvements to the Willow Lake Partnership property, the Town would ensure payment towards that extension (separate from any assessments of SCFD No. 1 owners), and Willow Lake Partnership would reimburse the Town for any such payments; and

WHEREAS, on December 20, 2007, the SCFD No. 1 Board approved Resolution No. 6 adopting a development agreement with the Town and Lynx Creek Villages, LLC and Chino Dental, LLC by which SCFD No. 1 would arrange for construction of a portion of the Improvements on and for the benefit of the Lynx Creek Villages, LLC and Chino Dental, LLC property, the Town would ensure payment towards said construction (separate from any assessments of SCFD No.1 owners), and Lynx Creek Villages, LLC and Chino Dental, LLC would reimburse the Town for such payments; and

WHEREAS, on January 10, 2008, the SCFD No. 1 Board approved Resolution No. 4 adopting a construction contract for the Improvements based on the low bid of \$1,988,571.50; and

WHEREAS, on February 14, 2008, the SCFD No. 1 Board adopted Resolution No. 7 which, among other things, approved an Assessment Diagram and Method of Assessment provided by the SCFD No. 1 Engineer, and authorized assessment bonds up to \$3,500,000 aggregate principal amount to cover assessments not paid in cash by SCFD No. 1 property owners during the 30-day cash collection period; and

WHEREAS, a Limited Offering Memorandum was subsequently approved for issuing \$3,025,000 in SCFD No. 1 assessment bonds. The proceeds were then used to construct the improvements and to create a reserve fund. After the improvements were completed, the SCFD No. 1 Board adopted Resolution No. 12 setting a December 3, 2009 hearing to recapitulate the assessment. After statutory notice, the hearing was held and Resolution No. 13 was adopted recapitulating the assessment and providing for cash reimbursements/assessment payment reductions based on surplus funds; and

WHEREAS, because of reduced values for undeveloped commercial property (as a result of the worldwide economic recession), in 2010 one or more parcel owners indicated they would not make their annual assessment payments. One such owner attempted to sell the parcel as a whole or in parts, but was unsuccessful. On July 13, 2010, the Dissemination Agent filed a Reporting of Material Event indicating that an unscheduled draw had been made on the \$267,587.50 reserve fund in the amount of \$33,515.14 in order to make the July 1, 2010 bond payment. On January 7, 2011, a Reporting of Material Event was filed indicating that an additional draw had been made in the amount of \$18,442.50 for the January 1, 2011 payment. On July 18, 2011, a Reporting of Material Event was filed indicating that a draw had been made in the amount of \$35,725.78 for the July 1, 2011 payment. On January 18, 2012, a Reporting of Material Event was filed indicating that a draw had been made in the amount of \$20,982.62 for the January 1, 2012 payment. On July 3, 2012, a Reporting of Material Event was filed indicating that a draw had been made in the amount of \$34,390.28 for the July 1, 2012 payment. On June 18, 2013, a Reporting of Material Event was filed indicating that a draw had been made in the amount of \$19,964.66 for the January 1, 2013 payment. And, on July 1, 2013, a Reporting of Material Event was filed indicating that a draw had been made in the amount of \$34,375.57 for the July 1, 2013 payment; and

WHEREAS, partial defeasance of bonds in approximate amounts of \$55,000 in 2010 and \$418,000 in 2012 had resulted in credits against the reserve fund which (in addition to the unscheduled draws) reduced the reserve to \$13,211.41; and

WHEREAS, ARS §48-721(B) provides that assessments are first liens on the property assessed (subject only to general property taxes and prior special assessments). In the event of non-payment, collection procedures set forth in ARS §§48-601 through 48-607 (including sale by auction of property for the total amount of the assessment) apply as nearly as practicable. However, neither SCFD No. 1 nor the Town is required to purchase said property at the sale if there is no other purchaser. In this case, the particular property had been placed at auction in March 2011, March 2012 and March 2013, but there had been no purchaser; and

WHEREAS, anticipating that draws on the reserve fund to make bond payments would likely continue to the extent any current owners did not make assessment payments, delinquent assessments were not sold at auction, subsequent purchasers did not bring delinquent assessments up to date, or other funds did not become available for bond payment, on July 25, 2013 the SCFD No. 1 Board adopted Resolution No. 22 authorizing its Manager to strike off to SCFD No. 1 any property for which there is no purchaser at auction. The Manager could determine whether to pay the full assessment amount or just the payment then due (so that the property could be auctioned again the next year if needed). This authorization extended back to the March 2013 auction. Necessary funds would come from the Town through its intergovernmental agreement with SCFD No. 1. If property subject to the resulting liens were ever sold at auction, the proceeds would be used to pay help pay off the bonds and eventually reimburse the Town; and

WHEREAS, in accordance with Resolution No. 22, the unpaid assessments from the March 2013 sale (and the previous sales) were struck off to SCFD No. 1 and a payment made by the District in the amount of \$171,672.14; and

WHEREAS, on or about February 27, 2014, a certificate of partial sale was issued to SCFD No. 1 based on said payment; and

WHEREAS, as a result of said payment there were ample funds to make the full January 1, 2014 bond payment without a further draw on the reserve fund; and

WHEREAS, the particular property was again placed at auction on March 25, 2014, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$59,137.69; and

WHEREAS, the particular property was again placed at auction on March 23, 2015, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$57,819.05; and

WHEREAS, on December 17, 2015, the SCFD No. 1 Board approved defeasance of \$124,000 in par value of said assessment bonds as of January 1, 2016 (including application of \$12,955.77 in debt service reserve fund credits related to Girdner Properties, LP's assessment on parcel #402-14-002V). Due to the previous draws on the reserve fund, no funds were available for the Girdner Properties, LP's defeasance. Therefore, the rest of the payoff amount was covered by the monies advanced by SCFD No. 1; and

WHEREAS, the particular property was again placed at auction on March 28, 2016, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$56,934.94; and

WHEREAS, on August 24, 2016, SCFD No. 1 was served with a complaint filed in Yavapai County Superior Court dated August 11, 2016 (P1300CV201600610) seeking to foreclose on ad valorem tax certificates that had been purchased for 2009-2014 (and, thus, foreclose the assessment lien and SCFD No. 1's liens based on having struck off the unpaid assessments to itself). By letter dated September 6, 2016 to counsel for the complainant, SCFD No. 1 explained that Arizona statutes provide that foreclosure of ad valorem tax liens does not foreclose the assessment liens. [ARS §§42-18204(D) and 48-603(C)] Thus, the complainant was asked to voluntarily dismiss the action as to SCFD No. 1. After discussion between counsel, the entire action was dismissed without prejudice on October 6, 2016; and

WHEREAS, this effort by an investor to obtain the Polland property through tax foreclosure pointed out that any new owners would be required to catch up the arrearage in assessment/bond payments and make timely payments twice a year thereafter as billed. The May 1, 2016 non-payment of \$39,453.96 made that arrearage \$385,017.78. And, the November 1, 2016 non-payment of \$18,010.19 added to that arrearage. At that point, the pay-off amount for the entire SCFD No. 1 lien on the Polland property was \$924,866.44. Per ARS §48-603(D), SCFD No. 1 would be able to apply for a Superintendent's deed for the Polland property once the redemption period had run. Unless the entire remaining assessment/bond payment was made by SCFD No. 1 at some point prior, that redemption period would run approximately 12 months after July 1, 2032; and

WHEREAS, the Polland property was again placed at auction on March 27, 2017, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$58,484.66; and

WHEREAS, the Polland property was again placed at auction on March 26, 2018, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$58,128.16; and

WHEREAS, the Polland property was again placed at auction on April 1, 2019, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$56,798.00; and

WHEREAS, the Polland property was again placed at auction on March 23, 2020, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$56,206.26; and

WHEREAS, the Polland property was again placed at auction on March 23, 2021, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$58,473.72; and

WHEREAS, the Polland property was again placed at auction on March 22, 2022, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$58,000.43; and

WHEREAS, the Polland property was again placed at auction on March 21, 2023, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$58,792.54; and

WHEREAS, the Polland property was again placed at auction on March 19, 2024, but there was no purchaser; and

WHEREAS, in accordance with Resolution No. 22 the SCFD No. 1 Manager determined to pay just the payment then due (so that the property could be auctioned again the following year if needed). The payment made was \$57,882.71; and

WHEREAS, by Resolution No. 2024-45 (dated May 23, 2024), the SCFD No. 1 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 SCFD No. 1 Board voted to adopt the final budget for Fiscal Year 2024-2025 by this Resolution No. 2024-46;

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

1. That that certain proposed budget prepared by the SCFD No. 1 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 Southside Community Facilities District No. 1 this 27th day of June 2024.

Kell Palguta, Chairman, District Board
Southside Community Facilities District No. 1

ATTEST:

Fatima Fernandez, District Clerk
Southside Community Facilities District No. 1

APPROVED AS TO FORM:

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