

ORDINANCE NO. 2019-1690

AN ORDINANCE OF THE MAYOR AND COUNCIL OF CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A FIRST PURCHASE AGREEMENT, A FIRST TRUST AGREEMENT, AN ESCROW TRUST AGREEMENT AND OTHER NECESSARY AGREEMENTS, INSTRUMENTS AND DOCUMENTS; APPROVING THE EXECUTION AND DELIVERY BY CITY OF PRESCOTT MUNICIPAL PROPERTY CORPORATION OF A SECOND AMENDMENT TO THIRD SUPPLEMENT TO TRUST INDENTURE; APPROVING THE SALE AND EXECUTION AND DELIVERY OF PLEDGED REVENUE REFUNDING OBLIGATIONS, SERIES 2019, EVIDENCING ALL THE INTERESTS OF THE OWNER THEREOF IN THE PURCHASE AGREEMENT; ADOPTING POST-ISSUANCE TAX COMPLIANCE PROCEDURES IN CONNECTION WITH ISSUANCE OF OBLIGATIONS OF THE CITY; DELEGATING AUTHORITY TO THE BUDGET AND FINANCE DIRECTOR OF THE CITY TO DETERMINE CERTAIN MATTERS AND TERMS WITH RESPECT TO THE FOREGOING; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS ORDINANCE AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor and Council of the City of Prescott, Arizona (the “City”), have determined to refinance all or a portion of the payments due pursuant to (i) the Series 2010 City Lease, dated as of February 1, 2010 (the “2010 City Lease”), to the City of Prescott Municipal Property Corporation (the “Corporation”), with respect to financing improvements within and serving the area known as the State Route 89A/Granite Dells Parkway Traffic Interchange, including the construction and installation of certain street improvements, storm drain facilities, water and sanitary sewer facilities, landscape, lighting, irrigation, and related improvements and appurtenances (collectively, the “2010 Projects”), and (ii) the Series 2011 City Lease, dated as of May 1, 2011 (the “2011 City Lease” and, together with the 2010 City Lease, the “City Leases”), to the Corporation, with respect to financing improvements to Williamson Valley Road and the acquisition of certain golf carts (together with the 2010 Projects, the “Refinanced Projects”), by entering into a First Purchase Agreement, to be dated as of the first day of the month of the dated date of the hereinafter described Obligations established as provided herein (the “Purchase Agreement”), with U.S. Bank National Association, as trustee (the “Trustee”), in its separate capacity as “Seller”; and

WHEREAS, the payments due from the City pursuant to the 2010 City Lease secure certain payments due with respect to the Taxable Revenue Bonds, Series 2010 (Qualified Build America Bonds – Direct Pay) of the Corporation (the “2010 Bonds”), and the payments due from the City pursuant to the 2011 City Lease secure certain payments due with respect to the Revenue Bond, Series 2011 of the Corporation (the “2011 Bonds” and, together with the 2010 Bonds, the “Bonds”), the payments themselves due pursuant to the City Leases being secured by certain excise taxes authorized by the Mayor and Council of the City; and

WHEREAS, the 2011 Bonds (and certain parity obligations heretofore issued) have been and will be secured by a Trust Indenture, dated as of December 1, 2004 (the “Original Indenture”), as supplemented, including by a Third Supplement to Trust Indenture, dated as of

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May 1, 2011, as amended by a First Amendment, dated as of July 1, 2014, to Third Supplement to Trust Indenture (as so amended, the “Indenture Supplement”), from the Corporation to the Trustee; and

WHEREAS, all of the 2011 Bonds were purchased by Compass Mortgage Corporation (the “2011 Purchaser”), and the 2011 Purchaser will agree for all purposes of Article IX of the Original Indenture to allow the Indenture Supplement to be amended by a Second Amendment, to be dated as of the first day of the month of the dated date of the Obligations (the “Supplement Amendment”), between the Corporation and the Trustee, to provide that, notwithstanding provisions of the Indenture Supplement to the contrary, the 2011 Bonds will be subject to redemption on any date on or after the dated date of the Supplement Amendment; 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 City in this matter, 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 City; and

WHEREAS, in connection with the Purchase Agreement, the Mayor and Council of the City have deemed it necessary and desirable to provide for the sale and execution and delivery of pledged revenue refunding obligations, as provided for by this Ordinance (the “Obligations”), pursuant to the First Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations (the “Trust Agreement”), between the Trustee and the City, evidencing all the interests of the owner of the Obligations in payments to be made pursuant to the Purchase Agreement; and

WHEREAS, the payments represented by the Obligations will be secured by amounts received under the Purchase Agreement pursuant to which the City will pledge revenues from the Excise Taxes and the State Shared Revenues (as such terms are defined in the Trust Agreement), which are the same revenues authorized for purposes of the City Leases; and

WHEREAS, the Mayor and Council of the City has determined that the Obligations should be placed by RBC Capital Markets, LLC (the “Placement Agent”), pursuant to a Placement Agent Agreement, in substantially the form presented at the meeting at which this Resolution was adopted, to be dated the date of placement of the Obligations (the “Placement Contract”), by and between the City and the Placement Agent; and

WHEREAS, pursuant to the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (the “Regulations”), issuers of obligations, the interest on which is intended to be excludable from the gross income of the owners thereof for federal income tax purposes (the “Tax-Exempt Obligations”), are required to establish policies and procedures to ensure compliance with the applicable provisions of the Code and the Regulations; and

WHEREAS, the Mayor and Council of the City hereby determine that procedures should be adopted in order to ensure that Tax-Exempt Obligations issued by the City comply with the provisions of the Code and the Regulations (the “Procedures”); and

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WHEREAS, there have been presented to the Mayor and Council of the City at the meeting at which this Ordinance is being adopted: (1) the proposed form of the Purchase Agreement; (2) the proposed form of the Trust Agreement; (3) the proposed form of an Escrow Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations (the "Escrow Trust Agreement"), with U.S. Bank National Association, as escrow trustee (the "Escrow Trustee"), for the establishment, if necessary, of an escrow to pay principal of and interest on the Bonds and to refund the Bonds; (4) the proposed form of the Supplement Amendment; (5) the proposed form of the Placement Contract; and (6) the proposed form of the Procedures; and

WHEREAS, refinancing the costs of the Refinanced Projects pursuant to the Purchase Agreement is in furtherance of the purposes of the City and in the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, ARIZONA, THAT:

Section 1. (a) The execution and delivery of the Obligations by the Trustee is approved.

(b) The Budget and Finance Director of the City is authorized to determine on behalf of the City the series name and designation of the Obligations; the date the Obligations are to be sold to the 2019 Purchaser (as defined herein); the date the Obligations are to be dated; the dates on which interest on the Obligations is to be payable and the interest rates per annum the Obligations are to bear; the dates the Obligations are to mature, but not later than July 1, 2031, the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; the provisions for redemption of the Bonds (including the method of redemption and the amounts and dates of redemption thereof); and the terms upon which the Obligations are to be sold (including determinations of price and original issue discount and premium); provided, however, that the foregoing determinations shall result in present value savings, net of all costs, with respect to refinancing the Bonds, of at least three percent (3.00%).

(c) The form and other terms of the Obligations, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are approved.

(d) The Procedures are hereby adopted to establish policies and procedures related to the purposes set forth in the Recitals hereto. The right to use discretion as necessary and appropriate to make exceptions or request additional provisions with respect to the Procedures as may be determined is hereby reserved. The right to change the Procedures from time to time, without notice, is also reserved.

Section 2. The Obligations are to be sold to Compass Mortgage Corporation, or such other affiliate of BBVA Compass or BBVA USA as shall be determined by the Budget and Finance Director of the City (the "2019 Purchaser"), pursuant to the terms of the Placement Contract as such terms are to be determined as provided hereinabove.

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Section 3. (a) The forms, terms and provisions of the Purchase Agreement, the Trust Agreement, the Escrow Trust Agreement and the Placement Contract, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meeting of the Mayor and Council of the City at which this Ordinance is being adopted, are approved, with such final provisions, insertions, deletions and changes as determined as provided hereinabove and shall be approved by the Mayor of the City, any other member of the Council, and, in the case of the Placement Contract, the Manager or the Budget and Finance Director of the City, the execution of each such document being conclusive evidence of such approval, and the Mayor of the City or any other member of the Council and, in the case of the Placement Contract, the Manager or the Finance and Budget Director of the City, and the Clerk of the City, where applicable, are authorized and directed, for and on behalf of the City, to execute and deliver and attest or approve the Purchase Agreement, the Trust Agreement, the Escrow Trust Agreement and the Placement Contract and to take all action to carry out and comply with the terms of such documents.

(b) The form, terms and provisions of the Supplement Amendment, in substantially the form of such document presented at the meeting of the Mayor and Council of the City at which this Ordinance is being adopted, is approved, with such final provisions, insertions, deletions and changes as shall be approved by the President or Vice President of the Corporation, the execution of such document being conclusive evidence of such approval, and the President or Vice President and Secretary of the Corporation are hereby authorized and directed, for and on behalf of the Corporation, to execute and deliver and attest, respectively, the Supplement Amendment as well as any other documents necessary in connection therewith. (Section 5 of the Resolution of the Board of Directors of the Corporation adopted on April 12, 2011, provides that the officers of the Corporation shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated thereby, including without limitation, the execution and delivery of the closing and other documents required to be delivered in connection with the sale and delivery of the 2011 Bonds. Execution and delivery of the Supplement Amendment is deemed one of those actions, and no further action of such Board is required.)

Section 4. The Trustee (including in its capacity as Seller) and the Escrow Trustee are requested to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement, the Trust Agreement, the Escrow Trust Agreement and the Supplement Amendment and the sale and execution and delivery of the Obligations and the refunding of the Bonds and are further authorized and directed to take such action as may be reasonable for the administration of the trusts so held by them.

Section 5. The City hereby requests the Corporation to take any and all action necessary in connection herewith and covenants that it shall do all things necessary to assist the Corporation and the Trustee with respect to the Supplement Amendment.

Section 6. The covenants and agreements contained the Purchase Agreement as to the pledge of and the lien on revenues from the Excise Taxes and the State Shared Revenues and the restriction on the issuance of further parity obligations secured by revenues from the Excise Taxes and the State Shared Revenues are approved and confirmed.

Section 7. The Budget and Finance Director and other officers of the City, on behalf of the City, are authorized and directed, without further order of the Mayor and Council of the City, to do all such acts and things and to execute and deliver all such certificates, proceedings, agreements and other documents as may be necessary or convenient to be executed and delivered on behalf of the City (including entering into any agreements for administrative or procedural requirements requested by the 2019 Purchaser), to evidence compliance with, or further the purposes of, all the terms and conditions of this Ordinance and as may be necessary to carry out the terms and intent of this Ordinance.

Section 8. All actions of the officers and agents of the City which conform to the purposes and intent of this Ordinance and which further the sale and execution and delivery of the Obligations as contemplated by this Ordinance, whether heretofore or hereafter taken, are ratified, confirmed and approved.

Section 9. If any section, paragraph, clause or phrase of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Ordinance. All orders, resolutions and ordinances 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, resolution or ordinance or any part thereof.

Section 10. The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety of the City for the reason that the Obligations authorized herein must be sold immediately to secure the best, available economic terms therefor; an emergency is, therefor, declared to exist, and this Ordinance is enacted as an emergency and shall be in full force and effect immediately upon its passage by the Mayor and Council of the City, as required by law, and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona and the Charter of the City. After any of the Obligations are delivered by the Trustee to the Underwriter and upon receipt of payment therefor, this Ordinance shall be and remain irrevocable until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

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PASSED, APPROVED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, this 8th day of October 2019.

.....  
Greg Mengarelli, Mayor

ATTEST:

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Maureen Scott, City Clerk

APPROVED AS TO FORM:

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Matthew Podracky, Interim City Attorney

CERTIFICATION

I hereby certify that the foregoing Ordinance No. 2019-1690 was duly passed and adopted by the Mayor and Council of the City of Prescott, Arizona, at a regular meeting held on the 8th day of October 2019, and the vote was ..... ayes and ..... nays.

.....  
City Clerk