

**RESOLUTION NO. 2011.30**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT, A CONTINUING DISCLOSURE AGREEMENT, AND AN OBLIGATION PURCHASE CONTRACT; APPROVING AN OFFICIAL STATEMENT; APPROVING THE ISSUANCE AND SALE OF EXCISE TAX REVENUE OBLIGATIONS, SERIES 2011, IN ONE OR TWO SERIES; EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN THE PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION OF AN OBLIGATION PURCHASE AGREEMENT; AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.**

**WHEREAS**, the City of Tempe, Arizona (the "City") received an allocation of the total national bond volume cap for Qualified Energy Conservation Bonds ("Volume Cap") in the amount of \$1,852,098.52 to issue qualified energy conservation bonds as tax credit bonds ("QECB - Tax Credit") under Section 54D of the Internal Revenue Code of 1986, as amended, (the "Code") and the American Recovery and Reinvestment Act of 2009 ("ARRA") to finance certain qualified conservation purposes described in Section 54D(f) of the Code; and

**WHEREAS**, the Hiring Incentives to Restore Employment Act ("the "HIRE Act") authorizes the City to issue qualified energy conservation bonds as specified tax credit bonds ("QECB – Direct Payment") instead of QECB – Tax Credit whereby the City would receive a subsidy from the United States of America to offset a portion of the interest costs of the QECB – Direct Payment; and

**WHEREAS**, the City received an additional allocation of Volume Cap in the amount of \$5,448,000 from the Arizona Department of Commerce to issue QECB – Direct Payment under Section 54D of the Code to finance certain qualified conservation purposes described in Section 54D(f) of the Code; and

**WHEREAS**, the City desires to finance qualified conservation purpose - capital expenditures incurred for the purpose of reducing energy consumption in publicly-owned buildings by at least 20 percent pursuant to Section 54D(f)(1)(A)(i) of the Code (the "QECB Project"); and

**WHEREAS**, the City desires to finance the water and wastewater improvements and a portion of the City's energy retrofit program (the "Tax-Exempt Project"), and the QECB Project, through the execution and delivery of not to exceed \$49,300,000 Excise Tax Revenue Obligations, Series 2011, comprised of one or two series of obligations that may include: (i) Excise Tax Revenue Obligations, Tax-Exempt Series 2011A (the "Series 2011A Tax-Exempt Obligations") and (ii) Excise Tax Revenue Obligations, Taxable Series 2011B (Qualified Energy Conservation Bonds – Direct Pay) (the "Series 2011B Taxable Obligations" and together with the Series 2011A Tax-Exempt Obligations, the "2011 Obligations"), which will be dated the date of

their initial delivery, but no earlier than June 1, 2011, by the Bank of New York Mellon Trust Company, N.A., as Trustee (the "Trustee") pursuant to a Trust Agreement, dated no earlier than June 1, 2011 (the "Trust Agreement") between the Trustee and the City, and evidence a proportionate interest of the owners thereof in a Purchase Agreement, dated no earlier than June 1, 2011 (the "Purchase Agreement"), between the Trustee and the City; and

**WHEREAS**, a proposal in the form of an Obligation Purchase Contract (the "Obligation Purchase Contract") will be received from RBC Capital Markets, LLC (the "Original Purchaser") for the purchase of the 2011 Obligations; and

**WHEREAS**, proposed forms of the following documents have been filed with the City Clerk for this meeting:

- (i) the proposed form of the Purchase Agreement;
- (ii) the proposed form of the Trust Agreement;
- (iii) the proposed form of the Obligation Purchase Contract;
- (iv) the proposed form of the Continuing Disclosure Certificate (the "Continuing Disclosure Certificate") and
- (v) the proposed form of a preliminary form of the Official Statement relating to the 2011 Obligations (the "Preliminary Official Statement").

**WHEREAS**, if the Mayor or Finance and Technology Director determine it to be in the best interests of the City, and if, and to the extent, a portion of the 2011 Obligations meet the requirements therefore under the Code, a portion of the 2011 Obligations, designated as the Series 2011B Taxable Obligations, may be qualified and sold as Qualified Energy Conservation Bonds under the ARRA and the HIRE Act; and

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, THAT:**

**Section 1. Project Financing.** It is hereby found and determined that the financing of the Tax-Exempt Project and the QECB Project at fixed interest rates pursuant to the terms of the Purchase Agreement, the Trust Agreement and the Obligation Purchase Contract is in the best interest of and in furtherance of the purposes of the City and in the public interest.

**Section 2. Approval and Terms.** The City hereby approves the execution and delivery of the 2011 Obligations, as hereinafter described, by the Trustee. The 2011 Obligations shall be executed in the aggregate principal amount of not to exceed \$49,300,000 comprised of one or two series that may include: (i) Series 2011A Tax-Exempt Obligations to finance the Tax-Exempt Project and (ii) Series 2011B Taxable Obligations to finance the QECB Project. The 2011 Obligations shall be in the denomination of \$5,000 or any integral multiples thereof, shall be dated their date of delivery, or such later date as may be set forth in the Trust Agreement, and shall bear interest from such date payable on the dates provided in the Trust

Agreement, and shall be fully registered without coupons as provided in the Trust Agreement. The 2011 Obligations shall bear interest at the rates per annum set forth in the Trust Agreement and the Obligation Purchase Contract and shall mature on July 1 in some or all of the years 2012 through and including 2031. The yield on the 2011 Obligations for federal tax purposes shall not exceed 6.00% per annum, if the City decides it to be in the best interest of the City to issue a portion of the 2011 Obligations as Series 2011B Taxable Obligations, and the yield on the Series 2011B Taxable Obligations shall not exceed 6.00% per annum after deducting all refundable credit payments to be received by the City by the United States pursuant to Section 6431 of the Code.

The forms, series designation, terms, interest rates, dated date, interest payment dates, maturity dates, maturity amounts, optional, mandatory, extraordinary optional and extraordinary special redemption provisions, if any, and other provisions of the 2011 Obligations and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement.

**Section 3. Award.** The 2011 Obligations are hereby awarded to the Original Purchaser pursuant to the Obligation Purchase Contract.

**Section 4. Approval of Documents.** The Mayor, any member of the City Council and the Finance and Technology Director is authorized and directed to determine and approve the interest rates, dated dates, interest payment dates, maturity dates, maturity amounts, purchase price, optional, mandatory, extraordinary optional and extraordinary special redemption provisions, if any, and any provisions necessary in connection with the purchase of credit enhancement pursuant to Section 5 hereof, and cause the same to be set forth in the documents. The form, terms and provisions of the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract and the Continuing Disclosure Certificate, in substantially the form of such documents (including the 2011 Obligations and other exhibits thereto) presented at this meeting are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor, any member of the City Council and the Finance and Technology Director the execution of each such document being conclusive evidence of such approval, and the Mayor, any member of the City Council and the Finance and Technology Director and the Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract and the Continuing Disclosure Certificate and to take all action to carry out and comply with the terms of such documents.

**Section 5. Obligation Insurance.** The Mayor, any member of the City Council, the Finance and Technology Director and Clerk are hereby authorized and directed to purchase municipal bond insurance, surety bonds or other credit enhancement as may be deemed appropriate and beneficial, to pay or cause to be paid all premiums attendant thereto and to enter into any obligations or agreements on behalf of the City to repay amounts paid thereon by the providers thereof.

**Section 6. Official Statement.** The Preliminary Official Statement is deemed “final” for all purposes of Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934, and is hereby authorized and approved in substantially the form presented

at this meeting, and the distribution of the Preliminary Official Statement is hereby authorized and approved. The City will cause a final official statement (the "Official Statement") in substantially the form of the Preliminary Official Statement to be prepared and distributed with the 2011 Obligations upon initial issuance. The Mayor, any member of the City Council and the Finance and Technology Director of the City is authorized to approve, execute and deliver the Official Statement on behalf of the City and the execution by such officer shall be deemed conclusive evidence of such approval. The City authorizes the use by the Original Purchaser of copies of the Preliminary Official Statement and the Official Statement in connection with the public offering and sale of the 2011 Obligations.

**Section 7. Trustee.** The City hereby requests the Trustee to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement, the Trust Agreement, the Obligation Purchase Contract, and the execution, delivery and sale of the 2011 Obligations and further authorizes and directs the Trustee and any trustees for any obligations on a parity with the 2011 Obligations to enter into such agreements as may be reasonable for the administration of the trusts so held.

**Section 8. Pledge of Excise Taxes.** Pursuant to the Purchase Agreement and the Trust Agreement, the City shall pledge its unrestricted excise, transaction, franchise, privilege and business taxes, State-shared sales and income taxes, fees for licenses and permits and State revenue-sharing, now or hereafter validly imposed by the City or contributed, allocated and paid over to the City and not earmarked by the contributor for a contrary or inconsistent purpose (the "Excise Taxes") to the amounts to come due under the Purchase Agreement and the Trust Agreement. The "Excise Taxes" include, without limitation, all fines and forfeitures but do not include the excise tax revenues collected and paid over to the City under the City's (a) 0.50% transaction privilege (sales) and use tax approved by the voters of the City on September 10, 1996, the use of which is restricted to improvement and operation of the public transit system of the City, (b) 0.10% transaction privilege (sales) and use tax approved by the voters of the City on May 16, 2000, the use of which is restricted to a performing arts center in the City, (c) 1.00% increase in the transient lodging tax on hotels approved by the voters of the City on September 10, 2002, the use of which is restricted to fund programs of the Tempe Convention and Visitor's Bureau or (d) any other similar tax restricted as to its use. The City's obligation to make the payments under the Purchase Agreement or the Trust Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of ad valorem property taxation nor does the obligation to make any payments under the Purchase Agreement or the Trust Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise. The pledge of Excise Taxes is on a parity with the existing pledges of Excise Taxes as described in the Trust Agreement.

**Section 9. Continuation of Excise Tax; Rate Covenant.** Pursuant to the Purchase Agreement, the City will covenant and agree that the Excise Taxes which it presently imposes will continue to be imposed in each fiscal year so that the amount of Excise Taxes, all within and for such fiscal year, shall be equal to at least three (3) times the total of the debt service payable under the Purchase Agreement and the Existing Parity Obligations and the

Additional Parity Obligations (as such terms are defined in the Trust Agreement). The City will further covenant and agree that if such receipts for any such fiscal year shall not equal three (3) times such debt service for such fiscal year, or if at any time it appears that the current fiscal year's receipts will not be sufficient to meet such fiscal year's actual debt service, the City will either impose new Excise Taxes or will increase the rates of such taxes currently imposed in order that (i) the current fiscal year's receipts will be sufficient to meet such fiscal year's debt service requirement, and (ii) the next succeeding fiscal year's receipts will be equal to at least three (3) times the next succeeding fiscal year's debt service requirement. For the purpose of this pledge, debt service will be determined as set forth in the Purchase Agreement.

**Section 10. Election Under the American Recovery and Reinvestment Act of 2009 and the Hiring Incentives to Restore Employment Act.** If the Mayor or the Finance and Technology Director determine it to be in the best interests of the City, and if, and to the extent, a portion of the 2011 Obligations meet the requirements therefore under the Code, a portion of the 2011 Obligations designated as the Series 2011B Taxable Obligations, may be qualified and sold as Qualified Energy Conservation Bonds, with the federal tax credits paid directly to the City, and the Mayor, Finance and Technology Director and all other officers and agents of the City are authorized to take any action, make any modification of the documents, enter into any agreements, make any election or certifications, modify the designated name of the Series 2011B Taxable Obligations and pay any costs necessary to provide for, or facilitate the execution and delivery of the Series 2011B Taxable Obligations in such manner, and to comply with the requirements of the Code and the terms of the Series 2011B Taxable Obligations and any agreement related thereto. Additionally, if practicable, necessary and appropriate, the Mayor, the Clerk, Finance and Technology Director and the other officers and agents of the City on behalf of the City may take all actions necessary to amend any and all documents related to the Existing Parity Obligations pursuant to the requirements thereof with respect to the determination thereunder of debt service on the Series 2011B Taxable Obligations issued as Qualified Energy Conservation Bonds.

**Section 11. Resolution Irrepealable.** After any of the 2011 Obligations are delivered by the Trustee to the Original Purchaser thereof upon receipt of payment therefor, this resolution shall be and remain irrepealable until the 2011 Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

**Section 12. Execution of Documents.** The Mayor, the Clerk, the Finance and Technology Director and the other officers of the City, on behalf of the City, are each hereby authorized and directed, without further order of the Council, to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this resolution and the consummation of the transactions contemplated by the Preliminary Official Statement.

**Section 13. Ratification of Actions.** All actions of the officers and agents of the City which conform to the purposes and intent of this resolution and which further the issuance and sale of the 2011 Obligations as contemplated by this resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of

the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this resolution.

**Section 14.** **Severability.** If any section, paragraph, clause or phrase of this resolution 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 resolution.

**Section 15. Waiver.** 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.

**PASSED AND ADOPTED by the Mayor and Council of the City of Tempe, Arizona, this 5th day of May, 2011.**

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**Mayor**

**ATTEST:**

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**City Clerk**

**APPROVED AS TO FORM:**

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**Bond Counsel**