

RESOLUTION NO. 16-001

RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT, A TRUST AGREEMENT AND AN OBLIGATION PURCHASE AGREEMENT; APPROVING THE SALE, EXECUTION AND DELIVERY OF EXCISE TAX REVENUE OBLIGATIONS, SERIES 2016 (BANK QUALIFIED) IN ONE OR MORE SERIES, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN AN AGREEMENT BETWEEN THE TOWN OF PARADISE VALLEY, ARIZONA AND A TRUSTEE; AUTHORIZING AND RATIFYING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND DECLARING AN EMERGENCY.

WHEREAS, the Town of Paradise Valley, Arizona (the "Town") desires to finance the acquisition, construction, installation and equipping of certain capital facilities, street, sidewalk and stormwater improvements, and other projects of the Town as described on Exhibit A hereto (collectively, the "Project") through the execution and delivery in one or more series of not to exceed \$7,900,000 Excise Tax Revenue Obligations, Series 2016 (Bank Qualified) (the "Obligations").

WHEREAS, The Obligations will be issued pursuant to a Trust Agreement, dated no earlier than February 1, 2016 (the "Trust Agreement") between a trustee to be selected by the Town Manager or his designee or the Director of Administration and Government Affairs or her designee (the "Trustee") and the Town, evidencing a proportionate interest of the owners of the Obligations in payments made by the Town pursuant to an Agreement, dated no earlier than February 1, 2016 (the "Agreement"), between the Trustee and the Town; and

WHEREAS, Wedbush Securities Inc., will serve as the Town's municipal advisor (the "Municipal Advisor") with respect to the Obligations; and

WHEREAS, with the aid of the Municipal Advisor, the Town will receive a proposal for the purchase of the Obligations from one or more financial institutions and the Director of Administration and Government Affairs, or her designee, may award the Obligations for purchase to one or more financial institutions (the "Original Purchaser") on such terms that are consistent with this resolution and such other terms as may hereafter be approved by the Director of Administration and Government Affairs, or her designee; and

WHEREAS, by this resolution the Town will approve an Obligation Purchase Agreement in substantially the form now on file and order the Obligation Purchase Agreement to be completed with the final terms of the Obligations and entered into between the Town and the Original Purchaser when the final terms have been determined for the sale of the Obligations to the Original Purchaser (as completed, the "Obligation Purchase Agreement"); and

WHEREAS, the Original Purchaser will execute an investor letter in form and substance satisfactory to the Director of Administration and Government Affairs; and

WHEREAS, The Town desires to established a special and separate fund to be designated the Town of Paradise Valley, Arizona, Excise Tax Fund for the receipt of the Town's Excise Taxes, and the Town shall pay the payments due under the Agreement from such Excise Tax Fund; and

WHEREAS, the Town Clerk has presented to the Mayor and Town Council of the Town (the "Council") at this meeting the proposed forms of:

- (i) the Agreement;
- (ii) the Trust Agreement; and
- (iii) the proposal to purchase the Obligations in the form of an Obligation Purchase Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA, THAT:

Section 1. Determination of Need. It is hereby found and determined that the financing of the Project pursuant to the terms of the Agreement, the Trust Agreement and the Obligation Purchase Agreement is in the best interest of and in furtherance of the purposes of the Town and in the public interest.

Section 2. Terms of Obligations. The Town hereby approves the execution and delivery of the Obligations in one or more series, as hereinafter described, by the Trustee. The Obligations shall be executed in the aggregate principal amount of not to exceed \$7,900,000. The Obligations shall be in the denomination of \$1,000 of principal amount or any integral multiples thereof, shall be dated the date of their initial execution and delivery, and shall bear interest from such date payable on January 1 and July 1 of each year, commencing July 1, 2016, and shall be fully registered without coupons as provided in the Trust Agreement. The Obligations shall bear interest at the rates per annum set forth in the Obligation Purchase Agreement but in no event shall the average net tax-exempt interest cost of the Obligations exceed 2.50%. The final form of the Obligation Purchase Agreement, as approved by the Town in accordance herewith, may include provisions for a default interest rate. Any such default interest rate on the Obligations shall not exceed 5.00%. The Obligations shall mature on January 1 in any or all of the years no earlier than 2017 and no later than 2024.

The forms, terms, interest rates, maturity dates, maturity amounts and provisions of the Obligations and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement.

The Obligations may not be transferred unless (i) to a transferee that is a Qualified Investor and provides the Trustee with a completed Certificate of Qualified Investor and (ii) the Qualified Investor agrees to comply with all applicable federal and state securities laws. For the purposes of the Obligations, "Qualified Investor" means a qualified institutional buyer, as such term is defined in Rule 144A of the Securities Act of 1933, as amended, or an accredited investor

(excluding natural persons) as defined in Rule 501 of Regulation D of the United States Securities and Exchange Commission, who executes the Certificate of Qualified Investor.

Section 3. Authorize Final Approval. The Mayor, any Council Member, the Town Manager or Director of Administration and Government Affairs is each authorized to approve the final interest rates, maturity dates, maturity amounts, series designation, purchase price and redemption provisions and cause the same to be set forth in the documents. The form, terms and provisions of the Agreement, the Trust Agreement and the Obligation Purchase Agreement in substantially the form of such documents (including the 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 Council Member, the Town Manager or Director of Administration and Government Affairs, the execution of such document being conclusive evidence of such approval. The Mayor, any Council Member, the Town Manager or Director of Administration and Government Affairs and the Town Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Agreement, the Trust Agreement and the Obligation Purchase Agreement and to take all action to carry out and comply with the terms of such documents.

Section 4. Selection of Trustee; Trustee Action. The Town Manager or his designee or the Director of Administration and Government Affairs or her designee shall select a bank or trust company to act as Trustee. The Town hereby requests the Trustee so selected to take any and all action necessary in connection with the execution and delivery of the Agreement, the Trust Agreement, the Obligation Purchase Agreement and the sale, execution and delivery of the Obligations.

Section 5. Pledge of Excise Taxes. Pursuant to the Agreement and the Trust Agreement, the Town shall pledge all 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 Town or contributed, allocated and paid over to the Town and not earmarked by the contributor for a contrary or inconsistent purpose ("Excise Taxes") to the payments and other amounts to come due under the Agreement and the Trust Agreement. Revenues received by the Town from vehicle license taxes charged by the State of Arizona will not be deemed Excise Taxes for purposes of the Agreement and the Trust Agreement. The Town may impose taxes for restricted purposes, the revenues from which will not be Excise Taxes hereunder and will not be pledged to the payment of the amounts dues pursuant to the Purchase Agreement and Trust Agreement. Revenues received by the Town from fines and forfeitures, permit fees, utility use and miscellaneous fees and interest earnings on Town funds will not be deemed Excise Taxes for purposes of the Agreement or Trust Agreement. Unless specifically pledged by the Town to be on a basis senior to, or on a parity with, the pledge described in the Town's resolution authorizing the execution and delivery of the Obligations, the Town's pledge of, and first lien on, its Excise Taxes is superior to, and shall have a priority over, any other pledge, agreement or financial policy of the Town. The pledge will be on a parity with certain outstanding pledges of such Excise Taxes as described in the Trust Agreement. Revenues generated by the Town from building permits and development impact fees will not be deemed Excise Taxes for purposes of the Trust Agreement or the Agreement. The Town's obligation to make any payments under the Agreement or the Trust Agreement does not constitute an obligation of the Town or the State of Arizona, or any of its political subdivisions, for which the Town 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 Agreement or the Trust Agreement constitute an indebtedness of the Town or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or the Arizona Revised Statutes with respect to debt limits. For purposes of the Constitution of the State of Arizona expenditure limitations, the Obligations and the Agreement are lawful long-term obligations, and therefore the proceeds of the Obligations received by the Town and the Payments made by the Town in accordance with the Agreement do not constitute local revenues.

Section 6. Town to Maintain Coverage of Two Times Debt Service.

Pursuant to the Agreement, the Town 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 the next preceding fiscal year of Town, shall be equal to at least two (2) times the Annual Debt Service Requirement (as defined in the Trust Agreement) payable under the Agreement, and under any Outstanding Parity Obligations (as defined in the Trust Agreement), for the current Bond Year (as defined in the Trust Agreement). The Town will further covenant and agree that if such receipts for any such fiscal year shall not equal at least two (2) times such Annual Debt Service Requirement for such Bond Year, or if at any time it appears that the current fiscal year's receipts will not be sufficient to meet the current Bond Year's actual Annual Debt Service Requirement, the Town 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 the current Bond Year's Annual Debt Service Requirement and (ii) the then current fiscal year's receipts will be equal to at least two (2) times the next succeeding Bond Year's Annual Debt Service Requirement.

Section 7. Resolution Irrepealable.

After any of the 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 Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

Section 8. Ratification of Prior Actions; Execution of Documents and

Other Proceedings. All actions of the officers and agents of the Town which conform to the purposes and intent of this resolution and which further the sale, execution and delivery of the Obligations as contemplated by this resolution and the Trust Agreement, Agreement and Obligation Purchase Agreement whether heretofore or hereafter taken are hereby ratified, confirmed and approved.

The Mayor and the Town Clerk and the officers of the Town, on behalf of the Town, and the Trustee 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 Town, to evidence compliance with, or further the purposes of, all the terms and conditions of this resolution.

The Council hereby authorizes the Town Manager, or his designee, and Director of Administration and Government Affairs, or her designee, to represent and act for the Town in all matters pertaining to the Town's tax-exempt obligations, as may be necessary to comply, on a continuing basis, with the Internal Revenue Service, Securities and Exchange Commission and

other governmental entities requests, reporting requirements and post issuance compliance policies and matters.

Section 9. Qualified Tax-Exempt Obligations. In the event the Obligations qualify as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), the Mayor and the Director of Administration and Government Affairs, or their designees, are each hereby authorized and directed, without further order of the Council, to execute and deliver a certification as part of the closing certificates, that it is reasonably anticipated that the aggregate amount of qualified tax-exempt obligations (as defined in Section 265(b)(3)(B) of the Code) which will be issued for or by the Town in the current calendar year will not exceed \$10,000,000.

Section 10. 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 11. Waiver of Inconsistency. 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 12. Timely Delivery. The immediate need for the proceeds of the Obligations to satisfy the Town’s obligations regarding timely payment of the payments due under the Agreement, the exigencies of the municipal bond market, and the need for an early closing to secure the most favorable interest rates on the Obligations require that the Obligations be issued and delivered as soon as possible.

Section 13. Creation of Excise Tax Payment Fund. Commencing as of the date of this Resolution, the Town's Director of Administration and Government Affairs shall create a separate and special fund to be designated the "Town of Paradise Valley, Arizona, Excise Tax Fund" (the "*Excise Tax Fund*"). The Excise Tax Fund shall be used for receipt of all revenues from any applicable source of the Town's Excise Taxes. Monies in the Excise Tax Fund shall be kept separate and apart from, and shall not be commingled with, any other monies of the Town.

In no event shall Excise Taxes receipts be first commingled with other Town monies in the Town's general fund. After receipt of Excise Taxes into the Excise Tax Fund, the Director of Administration and Government Affairs is hereby authorized and directed, without further review, approval or action of the Council, to transfer funds out of the Excise Tax Fund (i) first, to the payments in the amounts and at the times specified in the Agreement and any Parity Obligations (as defined in the Trust Agreement) heretofore or hereafter issued and then outstanding, and (ii) second, to the Town's general fund or any other lawful use or purpose of the Town, but only to the extent that, taking into account the reasonably anticipated receipts during the succeeding six month period, Excise Taxes received by the Town will be sufficient to pay any payments or debt service coming due under the Obligations and any Parity Obligations.

Section 14. Emergency. Therefore, the immediate effectiveness of this resolution is necessary for the preservation of the peace, health and safety of the Town, an emergency is declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Paradise Valley, Arizona, this 14th day of January, 2016.

Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

GUST ROSENFELD P.L.C.

Special Counsel

I hereby certify that the above and foregoing Resolution No. _____ was duly passed by the Mayor and Town Council of the Town of Paradise Valley, Arizona, at a regular meeting held on January 14, 2016, and that a quorum was present thereat.

Duncan Miller, Town Clerk