

RESOLUTION NO. (R)15-66

RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT, A TRUST AGREEMENT, A PLACEMENT AGENT AGREEMENT AND AN OBLIGATION PURCHASE AGREEMENT; APPROVING THE SALE, EXECUTION AND DELIVERY OF EXCISE TAX REVENUE REFUNDING OBLIGATIONS, SERIES 2015, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN AN AGREEMENT BETWEEN THE TOWN OF ORO 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 Oro Valley, Arizona (the “Town”) has outstanding its Excise Tax Revenue Obligations, Series 2005 (the “Series 2005 Obligations”); and

WHEREAS, the Series 2005 Obligations were executed and delivered by the Town pursuant to a Trust Agreement dated as of September 1, 2005, by and between the Town and The Bank of New York Trust Company, N.A., to finance the acquisition of certain real property and the construction and installation of improvements thereto; and

WHEREAS, the Town now desires to refinance and prepay certain payments due relating to the Series 2005 Obligations and to defease the outstanding portion of the Series 2005 Obligations (the “Obligations Being Refunded”) in advance of maturity through the issuance of not to exceed \$3,825,000 Excise Tax Revenue Refunding Obligations, Series 2015, to be dated no earlier than November 1, 2015 (the “Obligations”). The Obligations will be issued pursuant to a Trust Agreement, dated no earlier than November 1, 2015 (the “Trust Agreement”) between a trustee to be selected by the Town Manager or his designee or the Finance Director 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 November 1, 2015 (the “Agreement”), between the Trustee and the Town; and

WHEREAS, the proceeds of the Obligations will be deposited with the Trustee and used to prepay and defease the Obligations Being Refunded in advance of maturity, and to pay the delivery costs of the Obligations; and

WHEREAS, Stifel, Nicolaus & Company, Incorporated, acting in accordance with the Strategic Alliance of Volume Expenditures (SAVE) Cooperative Response Proposal #C-007-1213, will serve as placement agent (the “Placement Agent”) with respect to the Obligations and the Town will enter into a Placement Agent Agreement with the Placement Agent (the “Placement Agreement”) in substantially the form now on file with the Town; and

WHEREAS, with the aid of the Placement Agent, the Town will receive a proposal for the purchase of the Obligations from one or more financial institutions and the Finance Director, 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 Finance Director, 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 Finance Director; 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;
- (iii) the proposal to purchase the Obligations in the form of an Obligation Purchase Agreement; and
- (iv) the Placement Agreement.

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

Section 1. Determination of Need. It is hereby found and determined that prepaying and defeasing the Obligations Being Refunded in advance of maturity pursuant to the terms of the Agreement, the Trust Agreement, the Placement 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, as hereinafter described, by the Trustee. The Obligations shall be executed in the aggregate principal amount of not to exceed \$3,825,000. 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 January 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 interest cost of the Obligations exceed 3.00%. The Obligations shall mature on July 1 in any or all of the years no earlier than 2016 and no later than 2025.

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 Finance Director is each authorized to approve the final interest rates, maturity dates, maturity amounts, 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, the Placement 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 Finance Director, the execution of such document being conclusive evidence of such approval. The Mayor, any Council Member, the Town Manager or Finance Director and the Town Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Agreement, the Trust Agreement, the Placement 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 Finance Director 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 Placement 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, fines, bed and rental taxes 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 generated by the Town from development impact fees will not be deemed Excise Taxes for purposes of the Agreement and 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. Pursuant to Ordinance No. (O)14-17, the Town imposed an additional 0.5% transaction privilege tax to fund the needs of the Town's Community and Recreation Center. The revenues generated by the additional 0.5% transaction privilege tax will not be deemed Excise Taxes for purposes of the Agreement and Trust 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 otherwise. The pledge will be on a parity with certain outstanding pledges of such Excise Taxes as described in the Trust Agreement.

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, Placement 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 or her designee, and Finance Director, or his 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 Finance Director, 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 prepayment and defeasance of the Obligations Being Refunded in advance of maturity, 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. 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 Oro Valley, Arizona, this 21st day of October, 2015.

TOWN OF ORO VALLEY

Dr. Satish I. Hiremath, Mayor

ATTEST:

Julie K. Bower, Town Clerk

APPROVED AS TO FORM:

GUST ROSENFELD P.L.C.

Special Counsel

I hereby certify that the above and foregoing Resolution No. (R)15-66 was duly passed by the Mayor and Town Council of the Town of Oro Valley, Arizona, at a regular meeting held on October 21, 2015, and that a quorum was present thereat.

Julie K. Bower, Town Clerk