

CITY OF WILLCOX, COCHISE COUNTY, ARIZONA

RESOLUTION 2016-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A REFINANCING AGREEMENT FOR THE PURPOSE OF REFINANCING THE CITY'S OBLIGATIONS RELATING TO THE WILLCOX MUNICIPAL PROPERTY CORPORATION EXCISE TAX REVENUE (STREET) BONDS, SERIES 2006; AUTHORIZING THE EXECUTION AND DELIVERY OF AGREEMENTS IN CONNECTION THEREWITH; AUTHORIZING OTHER ACTIONS AND MATTERS IN CONNECTION THEREWITH; AND DECLARING AN EMERGENCY

WHEREAS, at the request of the City of Willcox, Arizona (the "City"), the Willcox Municipal Property Corporation (the "Corporation") issued its Excise Tax Revenue Bonds, Series 2006, in the original principal amount of \$3,300,000 (the "Bonds") pursuant to a Trust Indenture, dated as of March 1, 2006 (the "Indenture"), between the Corporation and U.S. Bank National Association, as trustee (the "Trustee"), to finance certain road improvements within the City, including the reconstruction of Arizona Avenue from Rex Allen Boulevard to Haskell Avenue, Austin Boulevard from Wood Street to Rex Allen Boulevard and Cochise Avenue from Rex Allen Boulevard to Scott Road (the "Project"); and

WHEREAS, the Bonds are payable from and secured by Installment Payments to be made by City pursuant to a Series 2006 Agreement, dated as of March 1, 2006 (the "2006 Agreement"), between the Corporation and City, from excise taxes and state-shared revenues of the City; and

WHEREAS, City has now determined that it will be beneficial to refinance its obligations under the 2006 Agreement in order to pay and redeem the \$1,380,000 outstanding principal amount of the Bonds and to pay associated costs by the execution and delivery of a Refinancing Agreement (the "Refinancing Agreement") between the City and the below-described Lender; and

WHEREAS, Stifel, Nicolaus & Company, Incorporated (the "Placement Agent") has submitted a proposal to place the Refinancing Agreement pursuant to a Placement Agent Agreement, to be dated the date of placement of the Refinancing Agreement (the "Placement Contract"), by and between the City and the Placement Agent, the Placement Agent not acting as a municipal advisor as defined in the "Registration of Municipal Advisors" rule promulgated by the United States Securities and Exchange Commission, and the Refinancing Agreement to be placed by the Placement Agent pursuant to the Strategic Alliance of Volume Expenditures (SAVE) Cooperative Response Proposal #C-007-1213; and

WHEREAS, the Placement Agent will solicit one or more proposals from financial institutions to accomplish such refinancing and following the receipt of such proposals, the Mayor or the Vice Mayor, upon advice from the City Manager or Finance Director of the City, will determine the financial institution or financial institutions (the "Lender") selected to enter

into the Refinancing Agreement with the City and meeting the requirements of this Resolution; and

WHEREAS, the City intends for City's payment obligations under the Refinancing Agreement authorized in this Resolution be secured from Excise Tax Revenues and State-Shared Revenues, each as defined in the Refinancing Agreement, as executed and delivered:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILLCOX, ARIZONA, as follows:

Section 1. Findings. The City Council finds that:

(a) It is in the best interest of the City to refinance the City's obligations under the 2006 Agreement by the execution and delivery of the Refinancing Agreement, which produces a schedule of Payments hereby found to be more favorable to the City.

(b) There has been prepared and placed on file with the City Clerk a proposed form of the Refinancing Agreement.

(c) The City has authority to execute and deliver the Refinancing Agreement and to perform the actions contemplated by such documents, including without limitation pledging the Excise Tax Revenues and State-Shared Revenues to payment of the Payments thereunder.

Section 2. Authorization to Approve, Sign and Deliver Agreements and Documents and Take Actions. The Mayor or the Vice Mayor of the City (each an "Authorized Officer") are each authorized and directed to sign and deliver in the name and on behalf of the City, and to cause the City to perform its obligations under the Refinancing Agreement, in an amount representing not more than \$1,386,000 aggregate principal amount, for the refinancing of the City's obligations under the 2006 Agreement and to pay costs associated with the execution and delivery of such document, and such other agreements, instruments and documents as are contemplated by those documents and by this Resolution (collectively, the "City Documents"), with such changes, additions and deletions as any Authorized Officer may approve or deem necessary, appropriate or advisable to carry out the purposes and intent of this Resolution, and to perform all other acts that may be necessary in connection with the transactions contemplated by the City Documents and by this Resolution. The Authorized Officers, and each of them acting alone, are authorized and directed, in the name and on behalf of the City, to take or cause to be taken any and all further actions and to sign and deliver, or cause to be signed and delivered, all such further agreements and such further documents, certificates and undertakings, and to incur all such fees and expenses, as in their judgment shall be necessary, appropriate or advisable to carry into effect the purposes and intent of this Resolution and the transactions contemplated by this Resolution.

Section 3. Terms and Provisions Applicable to the Refinancing Agreement. The interest component of Payments under the Refinancing Agreement shall be computed using a fixed tax-exempt rate of interest not exceeding one and sixty-five hundredths percent (1.65%) per annum (provided that, to the extent provided in the Refinancing Agreement, as executed and

delivered, for so long as there exists any default under the Refinancing Agreement such rate of interest shall be increased by not exceeding three percent (3.00% per annum), payable at the times provided in the Refinancing Agreement, as executed and delivered. The final Payment due under the Refinancing Agreement shall be not later than the final maturity date of the Bonds (July 1, 2021) and Payments under the Refinancing Agreement shall be pre-payable in whole or in part as provided in the Refinancing Agreement, as executed and delivered. The covenants and agreements contained in the Refinancing Agreement as to the pledge of and lien on the Excise Tax Revenues and State-Shared Revenues is hereby approved and confirmed.

Section 4. Placement Contract Approval; Authorization to Award Refinancing Agreement to Lender.

(a) The Placement Contract is hereby approved, and an Authorized Officer is hereby authorized and directed to sign and deliver in the name and on behalf of the City and to deliver to the Placement Agent, the Placement Contract, with such changes, additions and deletions as any Authorized Officer may approve or deem necessary, appropriate or advisable to carry out the purposes and intent of this Resolution, to be conclusively evidenced by the execution and delivery thereof.

(b) Upon receipt of proposals from financial institutions by the Placement Agent, an Authorized Officer, upon advice from the City Manager or the Finance Director of the City, is hereby authorized to determine the Lender selected to enter into the Refinancing Agreement with the City upon terms meeting the requirements of this Resolution.

Section 5. Deposit, Holding and Disposition of Proceeds Derived from the Agreements. The proceeds received by the City from the execution and delivery of the Refinancing Agreement shall be used to pay and redeem the \$1,380,000 outstanding principal amount of the Bonds and to pay costs associated with the execution and delivery of the Refinancing Agreement and the refinancing of City's obligations under the 2006 Agreement and the Bonds. Pending such use, the proceeds thereof shall be held by the Trustee in such depository trust or escrow accounts or otherwise held by the Trustee in accounts established in the Indenture for such purpose, as determined by the City Manager or the Finance Director of the City, and each of such officials is hereby authorized to select and engage depository trustees, fiduciaries and custodians for such purposes. An Authorized Officer is hereby authorized, empowered and directed, for and on behalf of the City, to execute and deliver any agreements and documents relating to the deposit, holding and disposition of such proceeds.

Section 6. Security Interest. The City Council hereby authorizes the Authorized Officer to grant a security interest in the Excise Tax Revenues and State-Shared Revenues as security for performance of the Refinancing Agreement.

Section 7. General Ratification and Approval. All actions of the officers, employees, and agents of the City that are in conformity with the purposes and intent of this Resolution and in furtherance of the execution and delivery of the City Documents as contemplated by this Resolution and the documents referred to in this Resolution, whether previously or hereafter taken, are hereby ratified, confirmed and approved. The officers, employees and agents of the

City are hereby authorized and directed to do all such acts and things and to sign, acknowledge and deliver all such documents on behalf of the City as may be deemed necessary or desirable to carry out the terms and intent of this Resolution and of any of the documents referred to in this Resolution.

Section 8. Tax Matters. Any Authorized Officer is authorized to (a) make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of and in the name of the City with respect to the Refinancing Agreement as the City is permitted to make or give under the federal income tax laws, including, without limitation, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the interest component of Payments under the Refinancing Agreement or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments of penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments; (b) take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the interest component of Payments under the Refinancing Agreement; and (c) give one or more appropriate certificates, for inclusion in the transcript of proceedings for the City Documents, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the financing represented by the Refinancing Agreement, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the interest component of the Payments under the Refinancing Agreement.

Section 9. Designation of Qualified Tax-Exempt Obligations. The City hereby designates the Refinancing Agreement as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended. The City covenants not to so designate tax-exempt obligations in calendar year 2016 in an aggregate amount of more than \$10 million. The City does not reasonably expect to issue more than \$10 million of tax-exempt obligations during calendar year 2016.

Section 10. Effective Date and Declaration of Emergency. It is necessary to utilize an emergency clause with this Resolution to make the authorization for execution and delivery of the Refinancing Agreement effective immediately, thereby committing the Lender to the interest rates reflected in the interest component of Payments under in the Refinancing Agreement, transferring the market risk of changes in interest rate levels from the City to the Lender and permitting execution and delivery of the Refinancing Agreement to occur as soon as is possible.

The immediate operation of the provisions of this Resolution is necessary for the preservation of the public peace, health and safety of the City, an emergency is hereby declared to exist, and this Resolution is enacted as an emergency measure and will be in full force and effect after its passage, adoption and approval by the City Council and it is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

**PASSED, ADOPTED AND APPROVED BY THE MAYOR AND CITY COUNCIL
OF THE CITY OF WILLCOX, ARIZONA, this 21st day of January, 2016.**

APPROVED/EXECUTED:

/s/ Robert A. Irvin
ROBERT A. IRVIN, Mayor

ATTEST:

/s/ Virginia A. Mefford
VIRGINIA A. MEFFORD, City Clerk

APPROVED AS TO FORM:

/s/ Timothy E. Pickrell
Timothy E. Pickrell, Bond Counsel
SQUIRE PATTON BOGGS (US) LLP

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