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**NOTICE OF PUBLIC MEETING  
THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA  
BOARD OF DIRECTORS**

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA, BOARD OF DIRECTORS**, and to the general public, that **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA, BOARD OF DIRECTORS** will hold a meeting open to the public on **Tuesday, November 20, 2018 at 8:30 A.M.** located at **Calvin C. Goode Municipal Building, 251 W. Washington Street, 9th Floor, Conference Room 910, Phoenix, Arizona.**

One or more board members may participate via teleconference.

The agenda for the meeting is as follows:

**Call to Order**

1. **Reissuance of Education Facility Revenue and Refunding Bonds (KIPP Tech Valley Charter School Project), Series 2016.** Presentation, discussion, and possible action for approval of the reissuance of Education Facility Revenue and Refunding Bonds (KIPP Tech Valley Charter School Project), Series 2016, originally issued in the amount of \$12,000,000, and a First Supplemental Financing Agreement related thereto.
2. **Call to the Public.** Comments will be limited to two minutes per person.

**Adjournment**

For reasonable accommodations, please call Lydia Lee at Voice/602-534-9655 or TTY: use 7-1-1, as early as possible to coordinate needed arrangements.

Date Posted: **November 19, 2018**

# Item 1

## MEMORANDUM

TO: BOARD OF DIRECTORS, THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF PHOENIX, ARIZONA

FROM: KUTAK ROCK LLP

DATE: NOVEMBER 20, 2018

RE: REISSUANCE OF EDUCATION FACILITY REVENUE AND REFUNDING  
BONDS (KIPP TECH VALLEY CHARTER SCHOOL PROJECT), SERIES  
2016

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On September 16, 2016, The Industrial Development Authority of the City of Phoenix, Arizona (the “Authority”) issued its Education Facility Revenue and Refunding Bonds (KIPP Tech Valley Charter School Project), Series 2016 (the “Bonds”) and loaned the proceeds from the sale of the Bonds to KIPP Tech Valley Charter School (the “Borrower”). The Bonds were purchased by Citizens Funding Corp (the “Bond Owner”) and the Borrower used the proceeds of the Bonds to refund an outstanding issue of 2012 Bonds and finance the construction of a new charter school project.

As drafted in 2016, the Financing Agreement references the Bond form with respect to the interest rate on the Bonds and the rate is not otherwise addressed in the Financing Agreement. Upon review of the Bond form, it provides for an increase of the Bonds’ interest rate in the event the maximum federal corporate tax rate ever decreases. On the date of issuance of the Bonds, the maximum federal corporate tax rate was 35%, and no increase in the Bonds’ interest rate was anticipated as a result of a federal corporate tax rate change. However, on January 1, 2018, the newly adopted Tax Cuts and Jobs Act reduced the maximum federal corporate tax rate from 35% to 21%. Consequently, this change in law resulted in an increase in the Bonds’ interest rate as provided for in the Bonds.

The Bond Owner and the Borrower have reviewed the Financing Agreement and the Bonds in light of the reduced corporate tax rate and the Bond Owner has decided to waive its right to an increased interest rate (which it was entitled to as of January 1, 2018), and maintain the rate as originally provided for in the Bond form without taking into account changes resulting from the adoption of the Tax Cuts and Jobs Act. The Bond Owner’s waiver of its right to an increased rate results in a “**reissuance**” of the Bonds under federal tax law, and because the interest rate is detailed exclusively in the Bond form, it requires the Authority to issue a new bond (as opposed to simply entering into an amendment to the Financing Agreement). While the Bond Owner is, at this time, waiving its right to an increased rate as a result of the Tax Cuts and Jobs Act, the Bond

Owner wishes to retain its right to future interest rate increases in the event of any future, but currently unanticipated, decrease in the maximum federal corporate tax rate.

In order to accomplish this waiver, and at the request of the Borrower and the Bond Owner, we have prepared a First Supplemental Financing Agreement (the “Supplement”) so that the new bond can be issued. However, a new bond may only be issued if authorized and approved by the Authority, therefore, a Resolution contemplating same has been submitted to the Authority this day. The proposed Resolution, if adopted, authorizes and approves the reissuance of the Bonds, execution of the Supplement and all necessary action in connection therewith. As bond counsel, we have also prepared a bring-down tax-certificate and I.R.S. Form 8038 for filing in connection with the reissuance.

We would further note for your information, regarding the issuance of industrial development authority bonds, Arizona Revised Statutes Section 35-721(b) states that, “The proceedings under which [] bonds are to be issued shall require the approval of the governing body [the Phoenix City Council] of each issuance of bonds.” In this instance, we read this statute as likewise pertaining to the reissuance of the Bonds (as the Authority is actually issuing a new bond, not merely effectuating a technical reissuance). Therefore, we have recommended to staff that, upon adoption of the Resolution authorizing the reissuance, the proceedings be submitted for approval of the Phoenix City Council at its December 12, 2018 meeting.

M.X.C.

## **RESOLUTION NO. 2018-11**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL FINANCING AGREEMENT AND THE REISSUANCE OF ITS EDUCATION FACILITY REVENUE AND REFUNDING BONDS (KIPP TECH VALLEY CHARTER SCHOOL PROJECT), SERIES 2016, IN AN AGGREGATE PRINCIPAL AMOUNT OF \$12,000,000; APPROVING THE TERMS OF SAME AND RELATED DOCUMENTS TO BE EXECUTED BY THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE REISSUANCE OF THE BONDS; AND AUTHORIZING OTHER ACTIONS NECESSARY IN CONNECTION WITH THE REISSUANCE OF BONDS.**

**WHEREAS**, The Industrial Development Authority of the City of Phoenix, Arizona (the “Issuer”), a nonprofit corporation designated a political subdivision of the State of Arizona (the “State”), incorporated with the approval of the City of Phoenix, Arizona (the “City”), pursuant to the provisions of the Constitution of the State and under Title 35, Chapter 5, Arizona Revised Statutes, as amended (the “Act”), is authorized and empowered, among other things (a) to issue its bonds to pay costs of a “project” (as defined in Section 35-701 of the Act); (b) to make secured or unsecured loans from the proceeds of the sale of its bonds to provide for financing and/or refinancing the cost of acquiring, constructing, improving, equipping or operating one or more projects and to pledge all or any part of the revenues and receipts to be received by the Issuer from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Issuer in order to secure the payment of the principal or redemption price of and interest on such bonds; (c) to enter into contracts and execute any agreements or instruments and do any other act necessary or appropriate to carry out its purposes; and (d) to enact this Resolution and to enter into a First Supplemental Financing Agreement (as defined herein) and to reissue the Bonds (as defined herein), upon the terms and conditions provided herein and therein; and

**WHEREAS**, KIPP Tech Valley Charter School (the “Borrower”), a not-for-profit education corporation organized and existing under the laws of the State of New York and designated as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), previously requested that the Issuer issue its education revenue bonds for the purpose of assisting the Borrower in financing the costs to (a) refund certain bonds (b) finance its education facilities located in the state of New York, (c) fund any required reserve funds, (c) pay capitalized interest on the Bonds, if any, and (d) pay certain expenses relating to issuance of the Bonds; and

**WHEREAS**, the Act specifically provides that the Issuer may exercise its powers, including the power to issue bonds, to provide financing or refinancing of “projects” located in

whole or in part outside the State, provided the Board of Directors has determined the exercise of such powers will provide a benefit within the State; and

**WHEREAS**, in furtherance of the purposes of the Act, the Issuer previously issued its Education Facility Revenue and Refunding Bonds (KIPP Tech Valley Charter School Project), Series 2016 (the “Bonds”), in an aggregate principal amount of \$12,000,000, pursuant to a Financing Agreement dated as of September 1, 2016 (the “Original Financing Agreement”), among the Issuer, the Borrower, Citizens Bank, National Association, as disbursing agent (the “Disbursing Agent”), and Citizens Funding Corp., as bond purchaser (the “Bond Purchaser”), and found that the making of the loan of the proceeds of the Bonds to the Borrower provided a benefit within the State and helped fulfill the Issuer’s mission to provide community and economic benefits to City residents through bond financing and other community investments; and

**WHEREAS**, the Borrower has requested that the Original Financing Agreement be amended by that First Supplemental Financing Agreement (“First Supplemental Financing Agreement”) by and among the Borrower, the Issuer, the Bond Purchaser and Disbursing Agent to effectuate a one-time wavier of an increase in interest rate on the Bonds and reissue the Bonds; and

**WHEREAS**, there have been placed on file with the Issuer prior to this meeting the proposed forms of the First Supplemental Financing Agreement and the Bonds (as proposed to be reissued);

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of The Industrial Development Authority of the City of Phoenix, Arizona, as follows:

**Section 1.** The Board hereby finds and determines that the foregoing recitals are true and correct and the reissuance of the Bonds and authorization and execution of the First Supplemental Financing Agreement are in the interest of the Issuer and the public and the making of the loan of the Bond proceeds to the Borrower continues to provide a benefit within the State.

**Section 2.** The Board hereby finds and determines that the Original Financing Agreement be amended to allow the one time wavier of an increase in interest rate on the Bonds and reissuance of the Bonds; provided that 100% of the Bondowners (as defined in the Original Financing Agreement) consent to the First Supplemental Financing Agreement and reissuance of the Bonds.

**Section 3.** The Bonds remain payable solely from the property held and receipts and revenues received by or on behalf of the Issuer pursuant to the Original Financing Agreement, as supplemented by the First Supplemental Financing Agreement. Nothing contained in (a) this Resolution, (b) the aforementioned documents, (c) the Bonds, or (d) any other agreement, certificate, document, or instrument executed in connection with the issuance or reissuance of any of the Bonds shall be construed as obligating the Issuer (except as a special limited obligation to the extent provided in such documents or instruments) or obligating the City of Phoenix, Arizona (the “City”), or the State to pay the principal of or premium, if any, or interest on the Bonds, or as incurring a charge upon the general credit of the Issuer, the City or the State,

nor shall the breach of any agreement contemplated by this Resolution, the documents, or any other instrument or documents executed in connection herewith or therewith impose any charge upon the general credit of the Issuer, the City or the State. The Issuer has no taxing power.

**Section 4.** The First Supplemental Financing Agreement and the Bonds, in substantially the forms placed on file with the Issuer, are hereby approved. Any member of the Board is hereby authorized and directed, for and on behalf of the Issuer, to execute and deliver the First Supplemental Financing Agreement and the Bonds in substantially said forms with such changes and insertions therein as such member, with the advice of counsel to the Issuer, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 5.** Any member of the Board and other appropriate officers, employees, agents and Chief Executive Officer of the Issuer are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Issuer, to execute and deliver any and all documents and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which the Issuer has approved in this Resolution.

**Section 6.** All resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed, and this Resolution shall be in immediate effect from and after its adoption.

**Section 7.** Any provisions of any bylaws, orders, procedural pamphlets and resolutions of the Issuer inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as repealing any bylaw, order, procedural pamphlet or resolution or any part thereof.

**Section 8.** The Chief Executive Officer of the Issuer, the members of the Board of Directors of the Issuer and any director, officer, official, employee or agent of the Issuer shall not be subject to any personal liability or accountability by reason of the reissuance of the Bonds. The liability of the Issuer with respect to any document executed in connection with the transactions contemplated hereby, shall be limited as provided in the Act and such documents.

**Section 9.** If any section, paragraph, clause, or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

**Section 10.** It is found and determined that all formal actions of the Issuer and its Board concerning and relating to the adoption of this Resolution were adopted in an open meeting and that all deliberations that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements of the State and the Issuer.

**Section 11.** All actions (not inconsistent with the provisions of this Resolution) heretofore taken by or at the direction of the Issuer and its directors, officers, counsel, advisors, agents or its Chief Executive Officer, including but not limited to the engagement of Kutak Rock LLP, as counsel to the Issuer, directed toward the reissuance of the Bonds, are hereby approved and ratified.

**Section 12.** Notice of Arizona Revised Statutes Section 38-511 is hereby given. The provisions of that statute by this reference are incorporated herein to the extent of applicability to matters contained herein under the laws of the State.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]



ADOPTED AND APPROVED this 20<sup>th</sup> day of November, 2018.

THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA

By: \_\_\_\_\_  
Juan Salgado, Chief Executive Officer

## Item 2

# CALL TO THE PUBLIC