



COUNTY ADMINISTRATOR  
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TO: Jeff Irwin, Chair  
Ways & Means Committee

THROUGH: Robert E. Guenzel  
County Administrator

FROM: Catherine McClary  
Treasurer

DATE: April 5, 2006

SUBJECT: Delinquent Tax Borrowing Resolution

**BOARD ACTION REQUESTED:**

It is requested that the Board of Commissioners adopt the 2006 Borrowing Resolution for the 2005 delinquent taxes, as prepared by the County's Bond Counsel, Paul Wyzgoski of Dickinson Wright, PLLC. The 2006 Borrowing Resolution for the 2005 delinquent taxes is substantively the same resolution passed by the Board last year.

**BACKGROUND:**

Act No. 206, Michigan Public Acts of 1893, The General Property Tax Act, was written to provide the civic infrastructure for state, county, and local governments by promoting fiscal stability in tax collections. This State law authorizes County Treasurers to act as a central collection point for all real property taxes from all local governments and taxing jurisdictions that become delinquent. This State law allows the County to borrow the amount of the delinquent taxes in order to have cash to pay the delinquent taxes to the taxing jurisdictions. The borrowing is a General Obligation Limited Tax Note. This State law requires the County Treasurer act as the Agent for the County in connection with all transactions relating to the borrowing and the issuance of delinquent tax Notes.

The Notes will be used to pay taxing jurisdictions within the County their proportionate shares of real property taxes returned delinquent to the County Treasurer. The Notes are secured primarily by a pledge of all delinquent taxes, plus

the interest and property tax administration fees collected (once the expenses of borrowing have been paid). The Notes will be delivered with the unqualified approving opinion of the bond counsel. Delivery of the Notes will be arranged for prior to June 30, 2006. The notes will be rated by Nationally Recognized Statistical Rating Organization. All prior years Notes carried the highest rating possible for delinquent tax Notes ( F1+ , A1+, etc.).

### **DISCUSSION:**

This Borrowing Resolution promotes fiscal stability for Washtenaw County. It allows the County, and each taxing jurisdiction within the County, to receive its full operating millage for the current year, even if some property taxes remain unpaid. This means that County and local governments can provide the necessary public services already budgeted within their taxing levy. The taxing jurisdictions include County government and the County General Fund, all cities, villages, and townships, school districts, libraries, parks authorities, drainage districts, and State Education Tax. After issuing the delinquent tax Notes, the Treasurer reimburses the taxing jurisdictions for all unpaid real property taxes, penalties, and interest charged by the local unit.

The taxing jurisdictions turn over their uncollected, or delinquent, real property taxes from the July (summer) and December (winter) tax levies to the County Treasurer on the following March 1. After the delinquent taxes are turned over on March 1, the County Treasurer audits the tax rolls of all taxing jurisdictions within the County in a process called "settlement" and then assumes the responsibility for delinquent tax collection. In Washtenaw County, there are 28 units of government and 80 different taxing jurisdictions having authority to levy and requiring settlement which is undertaken during March through June. The Notes are repaid as the County Treasurer collects the delinquent taxes, typically within two (2) years.

The Board has issued borrowing resolutions since the early 1970's when the County established its delinquent tax revolving fund. According to State law, in counties with a delinquent tax revolving fund where the County does not issue Notes, if the delinquent taxes are not paid to the taxing jurisdictions within ten (10) days after settlement, the County shall pay interest on the unpaid delinquent taxes at the rate of 12% per annum. Without this Borrowing Resolution, the County Treasurer would have to self-fund the delinquent tax obligation with the County delinquent tax revolving fund and potentially pay interest to the taxing jurisdictions as described above.

Although the amount of taxes turned delinquent will vary year to year, the amount in recent years has been increasing each year due to Michigan's poor economy. The amount delinquent for 2005 has increased to more than \$20 million dollars. The Notes will be issued in an aggregate principal amount not to exceed \$ 25,000,000.

### **IMPACT ON HUMAN RESOURCES:**

None

**IMPACT ON BUDGET:**

Sixty seven percent of the County General Fund in 2006 is real property tax revenues (\$65 million annually). In excess of \$3 million dollars of General Fund money was delinquent and uncollected on March 1, 2006; County government relies on this Borrowing Resolution for its essential operations. Other departments and funds within County government that rely on this borrowing include Parks & Recreation, Drains, and Public Works. All of these taxing jurisdictions are reimbursed at the time of Note issuance, assuring the County's revenue stream.

**IMPACT ON INDIRECT COSTS:**

None

**IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:**

All of the units of government within Washtenaw County rely on this Borrowing Resolution for the operation of their essential activities. The State relies on distribution from the Notes to finance the State Education Fund. This is a primary way the County establishes and promotes good relationships with its local units of government and other public officials, one of the goals established by the Board of Commissioners in conjunction with the Community of Interest Civic Infrastructure.

**CONFORMITY TO COUNTY POLICIES:**

This action conforms with County policies and procedures.

**ATTACHMENTS/APPENDICES:**

Resolution

RESOLUTION TO BORROW AGAINST  
ANTICIPATED DELINQUENT 2005 REAL PROPERTY TAXES

At a regular meeting of the Board of Commissioners of the County of Washtenaw, State of Michigan, held at Ann Arbor, Michigan, on the \_\_\_\_ day of \_\_\_\_\_, 2006.

PRESENT:

\_\_\_\_\_  
\_\_\_\_\_

ABSENT:

\_\_\_\_\_

\_\_\_\_\_ offered the following resolution and moved its adoption. The motion was seconded by \_\_\_\_\_.

WHEREAS, the Board of Commissioners of the County of Washtenaw (the "County") has heretofore adopted a resolution establishing the Washtenaw County Delinquent Tax Revolving Fund (the "Fund") pursuant to Section 87b of Act No. 206, Public Acts of Michigan, 1893, as amended ("Act 206"); and

WHEREAS, the purpose of the Fund is to allow the Washtenaw County Treasurer (the "County Treasurer") to pay from the Fund any or all delinquent real property taxes that are due and payable to the County and any school district, intermediate school district, community college district, city, township, special

assessment district, the State of Michigan or any other political unit for which delinquent tax payments are due; and

WHEREAS, it is hereby determined to be necessary for the County to borrow money and issue its notes for the purposes authorized by Act 206, particularly Sections 87c, 87d and 87g thereof; and

WHEREAS, it is estimated that the total amount of unpaid 2005 delinquent real property taxes (the "delinquent taxes") outstanding on March 1, 2006, will be approximately \$20,000,000, exclusive of interest, fees and penalties.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Washtenaw, State of Michigan, as follows:

Authorization of Borrowing

Pursuant to and in accordance with the provisions of Act 206, Public Acts of Michigan, 1893, as amended, and especially Sections 87c, 87d and 87g thereof, the County shall borrow the sum of not to exceed twenty-five million Dollars (\$25,000,000) and issue its notes (the "notes") therefore for the purpose of continuing the Fund for the 2005 tax year. The exact amount to be borrowed shall not exceed the amount of delinquent taxes outstanding on March 1, 2006, exclusive of interest, fees and penalties. The County Treasurer shall designate the exact amount to be borrowed after the amount of the 2005 delinquent taxes outstanding on March 1, 2006, or the portion of the 2005 delinquent taxes against which the County shall borrow, has been determined.

## Note Details

Pursuant to provisions of applicable law and an order of the County Treasurer, which order is hereby authorized, the notes may be issued in one or more series; shall be known as "General Obligation Limited Tax Notes, Series 2006"; shall be in fully registered form in denominations not exceeding the aggregate principal amounts for each maturity of the notes; shall be sold for not less than 98% of the face amount of the notes; shall bear interest at fixed or variable rates not to exceed the maximum interest rate permitted by applicable law; shall be dated, payable as to interest and in principal amounts, be subject to redemption in whole or in part prior to maturity, including any redemption premiums, and be subject to renewal, at such times and in such amounts, all as shall be designated in the order of the County Treasurer. Notes or portions of notes called for redemption shall not bear interest after the redemption date, provided funds are on hand with the note registrar and paying agent to redeem the same. Notice of redemption shall be given in the manner prescribed by the County Treasurer. If any notes of any series are to bear interest at a variable rate or rates, the County Treasurer is hereby further authorized to establish by order, and in accordance with law, a means by which interest on such notes may be set, reset or calculated prior to maturity, provided that such rate or rates shall at no time be in excess of the maximum interest rate permitted by applicable law. Such rates may be established by reference to the minimum rate that would be necessary to sell the notes at par; by a formula that is determined with respect to an index or indices of municipal obligations, reported prices or yields on obligations of the United States or the prime rate or rates of a bank or banks selected by the County Treasurer; or by any other method selected by the County Treasurer.

### Payment of Principal and Interest

The principal of and interest on the notes shall be payable in lawful money of the United States from such funds and accounts as provided herein. Principal shall be payable upon presentation and surrender of the notes to the note registrar and paying agent when and as the same shall become due, whether at maturity or earlier redemption. Interest shall be paid to the owner shown as the registered owner on the registration books at the close of business on such date prior to the date such interest payment is due, as is provided in the order of the County Treasurer. Interest on the notes shall be paid when due by check or draft drawn upon and mailed by the note registrar and paying agent to the registered owner at the registered address.

### Note Registrar and Paying Agent

The County Treasurer shall designate, and may enter into an agreement with, a note registrar and paying agent for each series of notes that shall be the County Treasurer or a bank or trust company that is qualified to act in such capacity under the laws of the United States of America or the State of Michigan. The County Treasurer may from time to time designate a similarly qualified successor note registrar and paying agent.

### Disposition of Note Proceeds

The proceeds of the sale of the notes shall be deposited into a separate account in the Fund (the "2006 Account") and shall be used to continue the Fund. The County Treasurer shall pay therefrom and from unpledged funds in the Fund, uncommitted funds in the County General Fund and/or any other legally available funds, if the notes are sold at a discount, the full amount of the delinquent tax roll

against which the County has borrowed, delivered as uncollected by any tax collector in the County and that is outstanding and unpaid on or after March 1, 2006, in accordance with the provisions of Act 206.

#### 2006 Collection Account

There is hereby established as part of the Fund an account (hereby designated the "2006 Collection Account") into which account the County Treasurer shall place delinquent taxes against which the County has borrowed, and interest thereon, collected on and after March 1, 2006, all County property tax administration fees on such delinquent taxes, after expenses of issuance of the notes have been paid, and any amounts received by the County Treasurer from the County and any taxing unit within the County, because of the uncollectibility of such delinquent taxes. The foregoing are hereby established as funds pledged to note repayment.

#### Note Reserve Fund

There is hereby authorized to be established by the County Treasurer a note reserve fund for the notes (the "2006 Note Reserve Fund") if the County Treasurer deems it to be reasonably required as a reserve and advisable in selling the notes at public or private sale. The County Treasurer is authorized to deposit in the 2006 Note Reserve Fund from proceeds of the sale of the notes, unpledged moneys in the Fund, uncommitted funds in the County General Fund and/or any other legally available funds, an amount not exceeding ten percent (10%) of the face amount of the notes.

### Security for Payment of Notes

All of the moneys in the 2006 Collection Account and the 2006 Note Reserve Fund, if established, and all interest earned thereon, are hereby pledged equally and ratably as to each series to the payment of the principal of and interest on the notes and shall be used solely for that purpose until such principal and interest have been paid in full. When moneys in the 2006 Note Reserve Fund, if established, are sufficient to pay the outstanding principal of the notes and the interest accrued thereon, such moneys may be used to retire the notes.

### Additional Security

Each series of notes, in addition, shall be a general obligation of the County, secured by its full faith and credit, which shall include the County's limited tax obligation, within applicable constitutional and statutory limits, and its general funds. The County budget shall provide that if the pledged delinquent taxes and any other pledged amounts are not collected in sufficient amounts to meet the payments of principal and interest due on each series of notes, the County, before paying any other budgeted amounts, will promptly advance from its general funds sufficient moneys to pay that principal and interest. The County shall not have the power to impose taxes for payment of the notes in excess of constitutional or statutory limitations. If moneys in the 2006 Collection Account and the 2006 Note Reserve Fund, if established, are not sufficient to pay the principal of and interest on the notes, when due, the County shall pay the same in accordance with this section, and may thereafter reimburse itself from the delinquent taxes collected.

### Release of Pledge of 2006 Collection Account

Upon the investment of moneys in the 2006 Collection Account in direct non-callable obligations of the United States of America in amounts and with maturities that are sufficient to pay in full the principal of and interest on the notes when due, any moneys in the 2006 Collection Account thereafter remaining may be released from such pledge created pursuant to Section 8 hereof and may be used to pay any or all delinquent real property taxes that are due the County and any school district, intermediate school district, community college district, city, township, special assessment district, the State of Michigan or any other political unit to which delinquent tax payments are due for any other year or for any other purpose permitted by law.

### Sale of Notes

The County Treasurer is hereby authorized to offer the notes at public or private sale as determined by order of the County Treasurer and to do all things necessary to effectuate the sale, delivery, transfer and exchange of the notes in accordance with the provisions of this resolution. Notes of one series may be offered for sale and sold separately from notes of another series. If the notes are to be sold publicly, sealed proposals for the purchase of the notes shall be received by the County Treasurer for such public sale to be held at such time as shall be determined by the County Treasurer and notice thereof shall be published in accordance with law, once in *The Bond Buyer* or the *Detroit Legal News*, both of which are hereby designated as being a publication printed in the English language and circulated in this State that carries as a part of its regular service, notices of sale of municipal bonds. Such notice shall be in the form prescribed by the County Treasurer.

The County Treasurer is hereby authorized to cause the preparation of an official statement for the notes for the purpose of enabling compliance with SEC Rule 15c2-12 (the "Rule") and to do all other things necessary to enable compliance with the Rule. After the award of the notes, the County will provide copies of a final official statement (as defined in paragraph (e)(3) of the Rule) on a timely basis and in reasonable quantity as requested by the successful bidder or bidders to enable such successful bidder or bidders to comply with paragraph (b)(4) of the Rule and the rules of the Municipal Securities Rulemaking Board.

#### Continuing Disclosure

The County Treasurer is hereby authorized to execute and deliver in the name and on behalf of the County (i) a certificate of the County to comply with the requirements for a continuing disclosure undertaking of the County pursuant to subsection (b)(5) or (d)(2) of the Rule, as applicable, and (ii) amendments to such certificate from time to time in accordance with the terms of such certificate (the certificate and any amendments thereto are collectively referred to herein as the "Continuing Disclosure Certificate"). The County hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. The remedies for any failure of the County to comply with and carry out the provisions of the Continuing Disclosure Certificate shall be as set forth therein.

#### Execution and Delivery of Notes

The County Treasurer is hereby authorized and directed to execute the notes for the County by manual or facsimile signature and the County Treasurer shall cause the County seal or a facsimile thereof to be impressed or imprinted on the notes. Unless the County Treasurer shall specify otherwise in writing, fully registered

notes shall be authenticated by the manual signature of the note registrar and paying agent. After the notes have been executed and authenticated, if applicable, for delivery to the original purchaser thereof, the County Treasurer shall deliver the notes to the purchaser or purchasers thereof upon receipt of the purchase price. Additional notes bearing the manual or facsimile signature of the County Treasurer and upon which the seal of the County or a facsimile thereof is impressed or imprinted may be delivered to the note registrar and paying agent for authentication, if applicable, and delivery in connection with the exchange or transfer of fully registered notes. The note registrar and paying agent shall indicate on each note that it authenticates the date of its authentication. The financial advisor for the notes shall be Municipal Financial Consultants Incorporated. The notes shall be delivered with the approving legal opinion of Dickinson Wright PLLC, attorneys of Detroit, Michigan.

#### Exchange and Transfer of Fully Registered Notes

Any fully registered note, upon surrender thereof to the note registrar and paying agent with a written instrument of transfer satisfactory to the note registrar and paying agent duly executed by the registered owner or his or her duly authorized attorney, at the option of the registered owner thereof, may be exchanged for notes of any other authorized denominations of the same aggregate principal amount and maturity date and bearing the same rate of interest as the surrendered note.

Each note shall be transferable only upon the books of the County, which shall be kept for that purpose by the note registrar and paying agent, upon surrender of such note together with a written instrument of transfer satisfactory to the note

registrar and paying agent duly executed by the registered owner or his or her duly authorized attorney.

Upon the exchange or transfer of any note, the note registrar and paying agent on behalf of the County shall cancel the surrendered note and shall authenticate, if applicable, and deliver to the transferee a new note or notes of any authorized denomination of the same aggregate principal amount and maturity date and bearing the same rate of interest as the surrendered note. If, at the time the note registrar and paying agent authenticates, if applicable, and delivers a new note pursuant to this section, payment of interest on the notes is in default, the note registrar and paying agent shall endorse upon the new note the following: "Payment of interest on this note is in default. The last date to which interest has been paid is [place date]."

The County and the note registrar and paying agent may deem and treat the person in whose name any note shall be registered upon the books of the County as the absolute owner of such note, whether such note shall be overdue or not, for the purpose of receiving payment of the principal of and interest on such note and for all other purposes, and all payments made to any such registered owner, or upon his or her order, in accordance with the provisions of Section 3 hereof shall be valid and effectual to satisfy and discharge the liability upon such note to the extent of the sum or sums so paid, and neither the County nor the note registrar and paying agent shall be affected by any notice to the contrary. The County agrees to indemnify and save the note registrar and paying agent harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, acting in good faith and without negligence hereunder, in so treating such registered owner.

For every exchange or transfer of notes, the County or the note registrar and paying agent may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer.

The note registrar and paying agent shall not be required to transfer or exchange notes or portions of notes that have been selected for redemption.

#### Book Entry System

At the option of the County Treasurer and notwithstanding any provisions of this resolution to the contrary, the County Treasurer is hereby authorized to enter into an agreement with a custodian or trustee for the purpose of establishing a "book entry" system for registration of notes to be fully registered. Pursuant to provisions of such agreement, the notes may be registered in the name of the custodian or trustee for the benefit of other persons or entities. Such agreement shall provide for the keeping of accurate records and prompt transfer of funds by the custodian or trustee on behalf of such persons or entities. The agreement may provide for the issuance by the custodian or trustee of certificates evidencing beneficial ownership of the notes by such persons or entities. For the purpose of payment of the principal of and interest on the notes, the County may deem payment of such principal and interest, whether overdue or not, to the custodian or trustee as payment to the absolute owner of such note. Pursuant to provisions of such agreement, the book entry system for the notes may be used for registration of all or a portion of the notes and such system may be discontinued at

any time by the County. The note registrar and paying agent for the notes may act as custodian or trustee for such purposes.

#### Issuance Expenses

Expenses incurred in connection with the issuance of the notes, including without limitation any premiums for any insurance obtained for the notes, note rating agency fees, travel and printing expenses, fees for agreements for lines of credit, letters of credit, commitments to purchase the notes, remarketing agreements, reimbursement agreements, purchase or sales agreements or commitments, or agreements to provide security to assure timely payment of the notes, fees for the setting of interest rates on the notes and bond counsel, financial advisor, paying agent and registrar fees, all of which are hereby authorized, shall be paid by the County Treasurer from County property tax administration fees on the delinquent taxes, from any other moneys in the Fund not pledged to the repayment of notes and general funds of the County that are hereby authorized to be expended for that purpose.

#### Replacement of Notes

Upon receipt by the County Treasurer of satisfactory evidence that any outstanding note has been mutilated, destroyed, lost or stolen, and of security or indemnity complying with applicable law and satisfactory to the County Treasurer, the County Treasurer may execute or authorize the imprinting of the County Treasurer's facsimile signature thereon and thereupon, and if applicable, a note registrar or paying agent shall authenticate and the County shall deliver a new note of like tenor as the note mutilated, destroyed, lost or stolen. Such new note shall be issued and delivered in exchange and substitution for, and upon surrender and cancellation of,

the mutilated note or in lieu of and in substitution for the note so destroyed, lost or stolen in compliance with applicable law. For the replacement of authenticated notes, the note registrar and paying agent shall, for each new note authenticated and delivered as provided above, require the payment of expenses, including counsel fees, which may be incurred by the note registrar and paying agent and the County in the premises. Any note issued under the provisions of this section in lieu of any note alleged to be destroyed, lost or stolen shall be on an equal basis with the note in substitution for which such note was issued.

#### Issuance of Refunding Notes

The County shall refund all or part of the notes authorized hereunder and/or notes previously issued by the County to continue the Fund for prior tax years if and as authorized by order of the County Treasurer through the issuance of refunding notes (the "Refunding Notes") in an amount to be determined by order of the County Treasurer. Proceeds of the Refunding Notes may be used to redeem such notes and to pay issuance expenses of the Refunding Notes as authorized and described in Section 16 hereof. The County Treasurer shall have all the authority with respect to the Refunding Notes as is granted to the County Treasurer with respect to the notes by the other Sections hereof, including the authority to select a note registrar and paying agent, to apply to the Michigan Department of Treasury for approval to issue the Refunding Notes, if necessary, to cause the preparation of an official statement and to do all other things necessary to sell, execute and deliver the Refunding Notes. The Refunding Notes shall contain the provisions, shall be payable as to principal and interest and shall be secured as set forth herein and as further ordered by the County Treasurer. The Refunding Notes may be sold as a separate issue or may be combined in a single issue with other obligations of the County

issued pursuant to the provisions of Act 206 as shall be determined by the County Treasurer. The County Treasurer is authorized to prescribe the form of Refunding Note and the form of notice of sale, if any, for the sale of Refunding Notes.

Form of Notes

The notes shall be in the form approved by the County Treasurer, which approval shall be evidenced by the County Treasurer's execution thereof.

After discussion, the vote was:

YEAS:

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NAYS:

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ABSENT:

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A sufficient majority having voted therefore, the Resolution to Borrow Against Anticipated Delinquent 2005 Real Property Taxes was adopted.

STATE OF MICHIGAN        )  
  )ss  
COUNTY OF WASHTENAW    )

I, the undersigned, the duly qualified and acting Clerk of the County of Washtenaw, State of Michigan, do hereby certify that the foregoing is a true and complete copy of proceedings taken at a regular meeting of the Board of Commissioners of said County, held on the \_\_\_\_ day of \_\_\_\_\_, 2006, insofar as the same relate to the Resolution to Borrow Against Anticipated Delinquent 2005 Real Property Taxes, the original of which is on file in my office. Public notice of said meeting was given pursuant to and in compliance with Act No. 267, Public Acts of Michigan, 1976, as amended.

\_\_\_\_\_

\_\_\_\_\_ Clerk, County of Washtenaw