

RESOLUTION 2015-28

RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND THE TOWN CLERK TO ATTEST AN AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND THE TOWN OF FOUNTAIN HILLS MUNICIPAL PROPERTY CORPORATION PROVIDING FOR THE REFINANCING OF CERTAIN PUBLIC IMPROVEMENTS BY PROVIDING FOR THE REFUNDING OF PREVIOUSLY ISSUED AND OUTSTANDING BONDS; APPROVING THE ISSUANCE BY THE TOWN OF FOUNTAIN HILLS MUNICIPAL PROPERTY CORPORATION BONDS; ACKNOWLEDGING THE PRIORITY OF THE PLEDGE OF EXCISE TAXES; APPROVING THE FORM OF THE AGREEMENT AND TRUST INDENTURE, AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION, INCLUDING THE REDEMPTION IN ADVANCE OF MATURITY OF CERTAIN OUTSTANDING BONDS.

WHEREAS, the Town of Fountain Hills, Arizona Municipal Property Corporation, an Arizona nonprofit corporation (the "MPC") was formed to assist the Town of Fountain Hills, Arizona (the "Town") in financing, refinancing, acquiring, constructing, furnishing and equipping certain public real and personal property without profit to the MPC; and

WHEREAS, the MPC has previously issued its Municipal Facilities Revenue Refunding Bonds, Series 2005 (the "Prior Bonds"); and

WHEREAS, the Prior Bonds were executed and delivered by the MPC pursuant to a Trust Indenture, by and between the MPC and BNY Western Trust Company, dated as of July 1, 2000 (the "2000 Trust Indenture"), as supplemented by the First Supplement to Trust Indenture, by and between the MPC and National Bank of Arizona, dated as of July 1, 2001 (the "First Supplement to Trust Indenture"), the Second Supplement to Trust Indenture, by and between the MPC and Zions First National Bank, dated as of December 1, 2004 (the "Second Supplement to Trust Indenture"), and the Series 2004 Refunding Supplement to Trust Indenture, by and between the MPC and Zions First National Bank, dated as of June 1, 2005 (the "Refunding Supplement to Trust Indenture" and, together with the 2000 Trust Indenture, the First Supplement to Trust Indenture and the Second Supplement to Trust Indenture, the "Prior Trust Indenture"); and

WHEREAS, the Prior Bonds were secured by a proportionate interest in the Rental Payments (as defined in the Prior Lease-Purchase Agreement) and prepayments made by the Town pursuant to a Series 2005 Refunding Amendment to Lease-Purchase Agreement dated as of June 1, 2005 (the "Refunding Amendment to Lease-Purchase Agreement"), which amended the Lease-Purchase Agreement dated as of July 1, 2000, as previously amended by the First Amendment to Lease-Purchase Agreement dated of July 1, 2001 and the Second Amendment to Lease-Purchase Agreement dated as of June 1, 2005 (collectively, the "Prior Lease-Purchase Agreement"); and

WHEREAS, the Prior Bonds were authorized for the purpose of refunding certain maturities of the Town's outstanding municipal facilities revenue bonds; and

WHEREAS, in order to reduce the debt service on the Prior Bonds, the Town and MPC have decided to provide for the refunding and, as applicable, redemption of all the Prior Bonds on or prior to their maturity dates (the "Bonds Being Refunded"); and

WHEREAS, at its April 29, 2015 Board of Directors meeting, the MPC proposed to authorize the issuance of its Municipal Facilities Revenue Refunding Bonds, Series 2015 (the "Bonds") in an amount not to exceed \$2,000,000, and together with any payments by the Town to the trustee for the Prior Bonds owed under the Prior Lease-Purchase Agreement, which will be sufficient to redeem and refund the Bonds Being Refunded, in consideration of the Town's agreement to pay to the MPC amounts required to enable the MPC to pay debt service on the Bonds when due; and

WHEREAS, it is in the best interests of the Town that the MPC refund the Bonds Being Refunded; and

WHEREAS, in furtherance of the intent and purpose of this Resolution there have been prepared proposed forms of the following documents on file with the Town Clerk for this meeting:

(a) An Agreement to be dated on or about June 1, 2015 by and between the Town and the MPC (the "Agreement");

(b) A Trust Indenture to be dated on or about June 1, 2015 (the "Trust Indenture") by and between the MPC and the trustee to be selected by the Town's Finance Director (the "Trustee"), providing for the issuance of and payment for the MPC's Municipal Facilities Revenue Refunding Bonds, Series 2015, with such other designation as may be necessary to distinguish different series of the Bonds, in an aggregate original principal amount not to exceed \$2,000,000; and

(c) A Direct Purchase Agreement by and among the MPC, the Town and the Purchaser, to be completed with the final terms of the Bonds (the "Direct Purchase Agreement"); and

(d) The Agreement, the Trust Indenture and the Direct Purchase Agreement are collectively referred to herein as the "Bond Documents";

WHEREAS, the sale of the Bonds can be coordinated with the sale of any other MPC bonds that may be authorized.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AS FOLLOWS:

1. **MPC's Proposal Accepted.** The Town hereby requests the MPC to redeem and refund the Bonds Being Refunded described in this Resolution, and the Town hereby approves and accepts the MPC's proposal to redeem and refund the Bonds Being Refunded pursuant to the Agreement.

2. **Approval and Terms of the Agreement.** The terms and provisions contained in the Agreement, including the redemption and refunding of the Bonds Being Refunded by the Town in consideration of the payments to be made by the Town pursuant thereto, are hereby approved; and the Mayor and the Clerk of the Town are hereby authorized to execute and attest, respectively, the Agreement and deliver the same to the MPC.

3. **Pledge of Excise Taxes.** Pursuant to the Agreement and the Trust Indenture, the Town shall pledge its unrestricted fines and forfeitures, license and permit fees, transaction privilege taxes, other transaction privilege, excise and business taxes, franchise fees and taxes, lease and rental payments and recreation and community program fees which the Town now or in the future imposes and collects, and all State shared sales taxes and all State shared income taxes collected and allocated or apportioned, now or hereafter, to the Town by the State of Arizona or any political subdivision thereof, or by any other governmental unit or agency and which are not required by State of Arizona law, rule or regulation to be expended for other purposes, such as motor vehicle fuel tax, (the "Excise Taxes") to the amounts to come due under the Agreement and the Trust Indenture. The Town's obligation to make the payments under the Agreement or the Trust Indenture 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 Indenture 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 of Excise Taxes is on a parity with the existing pledges of Excise Taxes as described in the Trust Indenture (the "Existing Parity Bonds").

4. **Continuation of Excise Taxes; Rate Covenant.** Pursuant to the Agreement, the Town will covenant and agree that the Excise Taxes which it presently imposes will be retained and maintained so that the amount of Excise Taxes, all within and for the preceding fiscal year, shall be equal to at least two and one-half (2.5) times the total of principal and interest payable with respect to the Bonds and Existing Parity Bonds and any additional parity obligations issued in accordance with the Trust Indenture, to the extent outstanding in any current fiscal year. The Town further covenants and agrees that if such receipts for any such preceding fiscal year are not equal to two and one-half (2.5) times such principal and interest requirements of any current fiscal year, or if at any time it appears that the current receipts will not be sufficient to meet such payment requirements, it will, subject to any limitations imposed by law, use its best efforts to either impose additional Excise Taxes, or to increase the rates of such taxes currently imposed, so that (i) the current fiscal year's receipts will be sufficient to meet all such current requirements and (ii) it can be reasonably calculated that the current fiscal year's receipts will be sufficient to meet the succeeding fiscal year's principal and interest requirements.

5. **Town Council Dedication, Commitment or Assignment of Excise Taxes Subordinate to Pledge.** Notwithstanding any financial policy, budget implementation policy or budget adopted by the Town Council or any other Town Council action, the Mayor and Council hereby acknowledge that the dedication, commitment or assignment of Excise Taxes to a certain fund or funds by the Mayor and Council is subject to and in all respects subordinate to any pledge of Excise Taxes (such as the pledge set forth in Section 3 of this Resolution) now in existence of hereafter made.

6. **Approval of Bonds.** The Mayor and Council hereby approve and consent to the issuance and sale by the MPC of the Bonds in a principal amount not to exceed \$2,000,000, bearing interest at rates not to exceed 1.65% per annum, to fulfill its obligations in accordance with the Agreement. The Mayor and Council hereby approve and consent to the issuance and sale by the MPC of the Bonds in accordance with the terms of this Resolution and the documents approved herein and as the MPC and Town's Finance Director determine to be in the best interest of the MPC and the Town.

7. **Approval of the Bond Documents.** The forms, terms and provisions of the Bond Documents (as they pertain to the Town) in substantially the form of such Bond Documents presented at this meeting are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by Mayor, the execution of each such document being conclusive evidence of such approval, and the Mayor and the Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Bond Documents and to take all action to carry out and comply with the terms of such Bond Documents. If the Bonds are sold in more than one series, the Town is authorized to revise the Bond Documents as necessary to reflect the sale of more than one series, including changing the series designation of the Bonds.

8. **Execution of Documents.** The Mayor of the Town, the Town Clerk and the Town's Finance Director are each hereby authorized and directed to execute and attest, as applicable, any and all documents and to take any and all actions that may be necessary or desirable in consummating the transactions contemplated in this Resolution and the Bond Documents (as they pertain to the Town). Any document specifically approved in this Resolution shall be in substantially the form presented to the Council, with such additions, deletions and modifications as shall be approved by those persons approving, executing and delivery the same on behalf of the Town.

9. **Qualified Tax-Exempt Obligations.** The Town hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The Town Manager or Town's Finance Director shall certify in 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 shall be issued for or by the Town (including those issued for or by the MPC) in the current calendar year shall not exceed \$10,000,000.

10. **Resolution Irrepealable.** After any of the Bonds are delivered by the Trustee to the purchaser thereof upon receipt of payment therefor, this Resolution shall be and remain irrepealable until the Bonds and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

11. **Ratification of Actions.** All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the issuance and sale of the Bonds as contemplated by this Resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the Town are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the Town as may be necessary to carry out the terms and intent of this Resolution.

12. **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.

13. **Waiver**. 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.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the Town of Fountain Hills, Arizona on May 7, 2015.

TOWN OF FOUNTAIN HILLS, ARIZONA, a
municipal corporation

By 
Linda M. Kavanagh
Mayor

ATTEST:

By 
Bevelyn J. Bender
Town Clerk

APPROVED AS TO FORM:

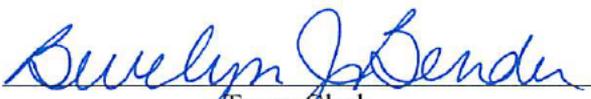
GUST ROSENFELD P.L.C.

By 
Timothy A. Stratton
Bond Counsel

CERTIFICATION

I, Bevelyn J. Bender, the duly appointed and acting Clerk of the Town of Fountain Hills, Arizona, do hereby certify that the above and foregoing Resolution 2015-28 was duly passed by the Town Council of the Town of Fountain Hills, Arizona, at a regular meeting held on May 7, 2015, and the vote was 7 aye's and 0 nay's and that the Mayor and 6 Council Members were present thereat.

DATED: May 7, 2015.


Town Clerk