

## RESOLUTION NO. 2014-44

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ORDERING THE SALE OF NOT TO EXCEED \$8,200,000 PRINCIPAL AMOUNT OF TOWN OF FOUNTAIN HILLS, ARIZONA GENERAL OBLIGATION BONDS, SERIES 2014.

**WHEREAS**, the Town of Fountain Hills, Arizona (the "*Town*") plans to issue not to exceed \$8,200,000 of its General Obligation Bonds, Series 2014 (the "*Bonds*"); and

**WHEREAS**, the Bonds will be sold through an on-line bidding process pursuant to Arizona Revised Statutes ("*ARIZ. REV. STAT.*") Section 35-457;

**WHEREAS**, the Town advertised an invitation for bids (DS2015-102) regarding the Saguaro Boulevard reconstruction (the "*Project*");

**WHEREAS**, the Town will revise the par amount of the Bonds set forth in the Notice (as defined herein) after the Town receives bids for the Project;

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA**, as follows:

**Section 1.** The Bonds are hereby ordered to be sold through an on-line bidding process pursuant to ARIZ. REV. STAT. Title 35, Chapter 3, Article 3, as amended, and in accordance with the Notice Inviting Bids for the Purchase of Bonds (the "*Notice*") in substantially the form attached hereto as Exhibit A. The Bonds are payable as to both principal and interest from an *ad valorem* tax levied against all of the taxable property in the Town without limit as to rate or amount.

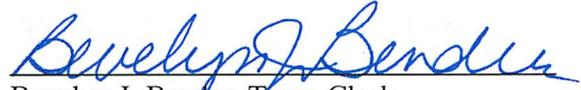
**Section 2.** The Town's Finance Director or his designee is hereby authorized to finalize the terms of the Notice and to reject all bids or accept the lowest cost bid received for the purchase of the Bonds. Such acceptance shall be subject to confirmation by the Mayor and Town Council. No defect or error in such Notice shall affect or invalidate the sale of the Bonds. The Town's Finance Director is hereby authorized to cause a preliminary official statement to be prepared in compliance with Section 240.15c2-12, General Rules and Regulations, Securities and Exchange Act of 1934 (the "*Rule*"), and is authorized to deem such preliminary official statement "final" for purposes of the Rule.

**Section 3.** All bids for the Bonds will be received through Thomson Financial's PARITY® System "on-line bidding process" as permitted in ARIZ. REV. STAT. Section 35-457. The official bid form shall be created for the electronic bidding. The Town will assume no responsibility for the proper functioning of the PARITY® System, for any error contained in any bid submitted electronically, or failure of any bid to be transmitted, received or opened at the official time for receipt of bids.

**PASSED AND ADOPTED BY** the Mayor and Council of the Town of Fountain Hills on November 6, 2014.

**FOR THE TOWN OF FOUNTAIN HILLS:**      **ATTESTED TO:**

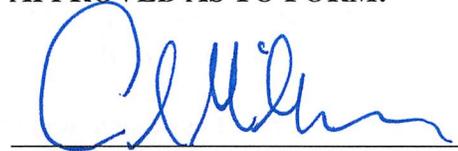
  
\_\_\_\_\_  
Linda M. Kavanagh, Mayor

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

  
\_\_\_\_\_  
Kenneth W. Buchanan, Town Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

**CERTIFICATE**

I, Bevelyn J. Bender, the duly appointed and acting Town Clerk of the Town of Fountain Hills, Arizona, do hereby certify that the above and foregoing Resolution No. 2014-44 was duly passed by the Mayor and Council of the Town of Fountain Hills, Arizona, at a regular meeting held on November 6, 2014, and the vote was 7 aye's and 0 nay's and that the Mayor and 6 Council Members were present thereat.

DATED: November 6, 2014.

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**EXHIBIT A**

**\$8,200,000\***  
**TOWN OF FOUNTAIN HILLS, ARIZONA**  
**GENERAL OBLIGATION BONDS,**  
**SERIES 2014**

**NOTICE INVITING BIDS FOR THE PURCHASE OF BONDS**  
(Electronic Bidding Only)

**NOTICE IS HEREBY GIVEN** that unconditional bids will be received to and including the hour of 10:00 a.m., Mountain Standard Time (“*M.S.T.*”), on December 4, 2014, by the Town of Fountain Hills, Arizona (the “*Town*”), for the purchase of all, but not less than all, of \$8,200,000\* aggregate principal amount of the Town’s General Obligation Bonds, Series 2014 (the “*Bonds*”). A bid may be submitted only through the facilities of PARITY® (“*PARITY*”). Submission of bids is further discussed below. Through PARITY, the Town’s Finance Director or Wedbush Securities Inc., the Town’s financial advisor (the “*Financial Advisor*”), will electronically receive the bids at such time. The Mayor and Council will meet at the hour of 6:30 p.m. on December 4, 2014, for the purpose of considering bids received and, if an acceptable bid is received, awarding the contract for the purchase of the Bonds to the winning bidder.

The Town reserves the right to continue the date for receipt of bids. If the date for receipt of bids is continued, prior to 10:00 a.m. M.S.T. on December 4, 2014, or prior to 10:00 a.m., M.S.T., on the day prior to the date to which receipt of bids has been continued, the Town will give notice of the continuance through PARITY at [www.ipreo.com](http://www.ipreo.com).

The Bonds will be dated as of the date of initial delivery, and will bear interest from their date to the maturity of each of the Bonds at a rate or rates per annum of not to exceed eight percent (8%). Interest on the Bonds is payable semiannually on January 1 and July 1 during the term of the Bonds commencing January 1, 2016. The Bonds will mature on July 1 in the years and in the principal amounts as follows:

<b>Maturity Date (July 1)</b>	<b>Principal Amount*</b>
2016	\$1,475,000
2017	1,620,000
2018	1,650,000
2019	1,700,000
2020	1,755,000

**TIME FOR RECEIPT OF BIDS:** Bids will be received to and including the hour of 10:00 a.m., M.S.T., unless the sale is postponed. The time maintained by PARITY shall constitute the official time.

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\* Subject to change. The Town reserves the right to adjust the maturity schedule prior to the sale date to reflect the actual construction bid awarded.

**ELECTRONIC BIDDING PROCEDURES:** All bids must be submitted only through the facilities of PARITY in accordance with this Notice Inviting Bids for the Purchase of Bonds (the “Notice”). The normal fee for the use of PARITY may be obtained from PARITY and such fee will be the responsibility of the bidder. All bids must be submitted on the official bid form that resides on the PARITY system (the “*Official Bid Form*”), without alteration or interlineation. Subscription to the Ipreo LLC’s BiDCOMP Competitive Bidding System is required in order to submit a bid. The Town will neither confirm any subscription nor be responsible for the failure of any prospective bidder to subscribe. The Town is using PARITY as a communication media, and not as the Town’s agent, to conduct electronic bidding for the Bonds.

All bids made through the facilities of PARITY shall be deemed irrevocable offers to purchase the Bonds on the terms provided in this Notice and shall be binding upon the entity making the bid, as if made by a signed, sealed bid delivered to the Town. The Town and the Financial Advisor assume no responsibility or liability for bids submitted through PARITY. Neither the Town nor the Financial Advisor shall be responsible for any malfunction or mistake made by, or as result of the use of the electronic bidding facilities provided and maintained by, PARITY. The use of PARITY is at the sole risk of the prospective bidders.

If any provisions of this Notice shall conflict with information provided by PARITY, as the approved provider of electronic bidding services, this Notice shall control. Further information about PARITY, including any fee charged, may be obtained from BiDCOMP/PARITY, c/o Ipreo, 1359 Broadway, 2<sup>nd</sup> Floor, New York, New York 10018, Attn: Customer Support (212.849.5021).

Bidders are requested to state in their bids the net interest cost to the Town, as described under “AWARD AND DELIVERY” herein. All electronic bids shall be deemed to incorporate the provisions of this Notice and the Official Bid Form.

**PURPOSE:** The Bonds are being issued to provide funds to design, improve, construct, reconstruct and rehabilitate Saguaro Boulevard; and to pay the costs of issuance of the Bonds.

**BOOK-ENTRY-ONLY SYSTEM:** The Bonds will be initially issued to, and registered in the name of, Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as the securities depository of the Bonds for a book-entry-only system (the “*Book-Entry-Only System*”). Under the Book-Entry-Only System, beneficial ownership interests in the Bonds will be available in book-entry form only through direct or indirect DTC participants.

Ownership interests in the Bonds may be purchased in denominations of \$5,000 of principal amount due on a specific maturity date or integral multiples thereof.

Transfers of beneficial ownership interest in the Bonds will be accomplished by book entries made by DTC and the DTC Participants or Indirect DTC Participants who act on behalf of the beneficial owners (the “*Beneficial Owners*”). For every transfer and exchange of a beneficial interest in the Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Town and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository), physical certificates representing the Bonds will be executed and delivered. In addition, the Town may determine to discontinue the Book-Entry-Only System of transfers through DTC (or a successor securities depository). In such event, physical certificates representing the Bonds will be registered in the names of the Beneficial Owners and executed and delivered. Upon registration of Bonds in the Beneficial Owner’s name, the

Beneficial Owners will become the owners of the Bonds (the “*Owners of the Bonds*”) for all purposes, including the receipt of principal and interest payments and notices with respect to the Bonds.

For a more detailed description of the Book-Entry-Only System, see the information in the official statement relating to the Bonds entitled “Book-Entry-Only System.”

**OPTIONAL REDEMPTION:** The Bonds are not subject to call for redemption prior to maturity.

**REGISTRATION AND TRANSFER:** Zions First National Bank will serve as bond registrar and paying agent with respect to the Bonds (the “*Registrar*”). If the Book-Entry-Only System is discontinued, the Registrar will administer registration and transfer of the Bonds and the Bonds will be transferable only upon the bond register to be maintained by the successor Registrar upon surrender to the Registrar. The Registrar may be changed without notice to any owner or beneficial owner of the Bonds.

**PAYMENT OF BONDS:** So long as the Bonds are held under the Book-Entry-Only System, all payments of principal and interest shall be paid to DTC. If the Book-Entry-Only System is discontinued, interest on the Bonds shall be payable by check mailed on or prior to the interest payment date to the Owners of the Bonds at the addresses of such owners as they appear on the books of the Registrar on the record date (as described hereafter). Principal of, and premium, if any, on the Bonds shall be paid when due upon surrender of such Bonds at the designated corporate trust office of the Registrar (unless the Owner of the Bonds is eligible for payment by wire transfer). If the Book-Entry-Only System is discontinued, principal of the Bonds will be payable, when due, only upon presentation and surrender of the Bond at the designated corporate trust office of the Paying Agent (as defined hereafter). Upon written request of a registered owner of at least \$1,000,000 in principal amount of Bonds not less than twenty (20) days prior to an interest payment date, all payments of interest and, if adequate provision for surrender is made, principal shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Owner. Notwithstanding any other provision, payment of principal of and interest on any Bond that is held by a securities depository or Bonds subject to a Book-Entry-Only System may be paid by the Paying Agent by wire transfer in “same day funds”.

**RECORD DATE:** The record date for determination of ownership for payment of interest shall be the fifteenth calendar day prior to an interest payment date. The Registrar shall pay interest to the Owners of record on the record date notwithstanding that transfers of ownership may occur on any Bond between the record date and the next interest payment date.

**SECURITY:** Principal of and interest on the Bonds are secured by a continuing, direct ad valorem tax levied against all of the taxable property located within the boundaries of the Town without limit as to rate or amount.

**INTEREST RATES:** Bids for the purchase of the Bonds must state the rate or rates of interest to be paid and no bid at a price less than the par value of the Bonds, together with all accrued interest thereon at the date of delivery of the Bonds, will be considered. All Bonds of the same maturity must bear the same rate of interest. The highest rate bid shall not exceed the lowest rate bid by more than one and one half percent (1.5%) per annum. Bids must be expressed in multiples of one-eighth (1/8) or one-tenth (1/10) of one percent. Interest will be calculated on the basis of a year comprised of 360 days consisting of twelve (12) months of thirty (30) days each.

Any interest rate bid which would result in an interest payment amount having fractional cents will be deemed a waiver of the right to payment of such fractional cents. No fractional cents will be paid or accumulated for payment on any Bond.

**STATE LAW PREMIUM LIMIT ON BONDS:** The Bonds may not be reoffered to produce a Net Premium (as hereinafter defined) associated with the Bonds in excess of five percent (5%) of the par value of the Bonds. **REOFFERING THE BONDS AT A NET PREMIUM IN EXCESS OF \$410,000<sup>†</sup> WILL CAUSE THE BONDS TO BE INVALID.** The term “Net Premium” means the difference between the par amount of the Bonds and the issue price of the Bonds determined pursuant to United States Treasury Regulations. The issue price of the Bonds is the aggregate of the issue price of each maturity of the Bonds. The issue price of each maturity of the Bonds is that initial offering price to the public (excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers) at which a substantial amount of Bonds of that maturity (at least ten percent (10%) of such maturity) are reasonably expected to be sold as of the sale date (December 4, 2014). If the offering prices certified by the winning bidder (as described below) cause the Net Premium to exceed five percent (5%) of the principal amount of the Bonds, the award will be cancelled and the Bonds will not be delivered to the winning bidder. The issue price of the Bonds may not exceed their fair market value as of the sale date.

**INFORMATION TO BE PROVIDED BY WINNING BIDDER:** The winning bidder will be required to furnish to the Town, at or before the closing, a certificate in a form acceptable to Gust Rosenfeld, P.L.C. (“*Bond Counsel*”), Phoenix, Arizona, stating that it did offer all of the Bonds to the public in a bona fide public offering and it reasonably expected that a substantial amount of the Bonds of that maturity (i.e. at least ten percent (10%) of each maturity of the Bonds) would be sold by it, as of the sale date, at the initial offering prices set forth in the certificate, together with such additional representations as Bond Counsel may require to verify that it is reasonable to rely on the winning bidder’s certification about the reasonably expected initial public offering price, including that the issue price of the Bonds set forth in the certificate did not exceed their fair market value as of the sale date. The “public” does not include bond houses, brokers or similar persons or organizations acting in the capacity of underwriters and wholesalers. The initial offering prices to be certified shall be furnished to the Town within 24 hours after the award of the Bonds.

**FORM OF BID AND GOOD FAITH DEPOSIT:** The prescribed form of bid for the Bonds will be available on the PARITY system and all bids must be submitted on that form. The winning bidder shall deliver a good faith deposit in the amount of \$164,000 (the “*Deposit*”), in the form of either of the following: (i) a certified or cashier’s check payable to the Town or (ii) a wire transfer to the Town, delivered to the Town within 24 hours of notification of the award. Such bidder shall be solely responsible for the timely delivery of their Deposit whether by check or wire transfer. Neither the Town nor the Financial Advisor has any liability for delays in the transmission of the Deposit.

The Deposit made by certified or cashier’s check should be made payable to the Town and delivered to Town of Fountain Hills, Attn: Finance Director, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona 85268.

The Deposit sent via **wire transfer** should be sent to the Town according to the following instructions:

[\_\_\_\_\_, ABA Number \_\_\_\_\_; Account number \_\_\_\_\_; For Further Credit to: \_\_\_\_\_, Reference: Name of Bidder – General Obligation Bonds, Series 2014.]

Contemporaneously with such wire transfer, the bidder shall send an e-mail to the Town’s Finance Director (e-mail address: [crudolph@fh.az.gov](mailto:crudolph@fh.az.gov)) and to the Financial Advisor (e-mail addresses: [jim.stricklin@wedbush.com](mailto:jim.stricklin@wedbush.com) and [bicej@wedbush.com](mailto:bicej@wedbush.com)), including the following information; (i) indication

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<sup>†</sup> Subject to change; the State law premium limit on bonds will be adjusted in conjunction with any change to the principal amount of the Bonds.

that a wire transfer has been made, (ii) the amount of the wire transfer, (iii) the issue to which it applies, and (iv) federal reference number, if available.

The Deposit received from the winning bidder, the amount of which will be deducted at settlement, will be deposited by the Town and no interest will accrue to the winning bidder. In the event the winning bidder fails to comply with the accepted bid, said amount will be retained by the Town as liquidated damages.

**CUSIP NUMBERS:** CUSIP numbers will be placed on the Bonds, but neither failure to place such numbers on any Bond nor any error with respect thereto shall constitute cause for a failure or refusal by the winning bidder thereof to accept delivery of and pay for the Bonds in accordance with the terms of the sale. No CUSIP number will be deemed to be part of any Bond or of the contract evidenced thereby. All expenses of printing CUSIP numbers on the Bonds will be paid by the Town, but the CUSIP Service Bureau charge for the assignment of CUSIP numbers will be paid by the winning bidder of the Bonds.

**RIGHT OF REJECTION:** The Town reserves the right in its discretion to reject any and all bids received and to waive any irregularity or informality in the bids, except that the time for receiving bids shall be of the essence.

**COST OF BOND FORMS:** The Town shall bear the cost of printing of the Bonds and will furnish fully executed Bonds, registered in the name of the winning bidder or nominees, to the winning bidder upon payment therefor.

**AWARD AND DELIVERY:** Unless all bids are rejected, the Bonds will be awarded to the bidder who complies with the provisions of this Notice and whose bid results in the lowest net interest cost to the Town. The net interest cost will be determined by computing the aggregate amount of interest payable on the Bonds from their date to their respective maturity dates and by deducting therefrom any premium. Delivery of the Bonds will be made to the winning bidder upon payment in federal or immediately available funds at the offices of Bond Counsel, or, at the winning bidder's request and expense, at any other place mutually agreeable to both the Town and the winning bidder.

**CANCELLATION:** Bidders are to take notice that, pursuant to Arizona law, if, within three (3) years from the award of the contract to purchase the Bonds, any person who was significantly involved in initiating, negotiating, securing, drafting or creating the contract for the purchase of the Bonds on behalf of the Town becomes an employee or agent of the winning bidder in any capacity or a consultant to the winning bidder with respect to the contract for the purchase of the Bonds, the Town may cancel the contract without penalty or further obligation by the Town. In addition to such cancellation, the Town may recoup any fees or commissions paid or due to any person who was significantly involved in initiating, negotiating, securing, drafting or creating the contract for the purchase of the Bonds on behalf of the Town.

**LEGAL OPINION:** The Bonds are sold with the understanding that the Town will furnish the winning bidder with the approving opinion of Gust Rosenfeld, P.L.C., serving as Bond Counsel. An undated copy of such opinion can be found in the preliminary official statement (the "*Preliminary Official Statement*"). Said attorneys have been retained by the Town as Bond Counsel and in such capacity are to render their opinion only upon the legality of the Bonds under Arizona law and on the exemption of the interest income on such Bonds from federal and State of Arizona income taxes (see "Tax-Exempt Status" below). Fees of Bond Counsel for services rendered in connection with such approving opinion are expected to be paid from Bond proceeds. Except to the extent necessary to issue its approving opinion as to validity of the Bonds, Bond Counsel has not been requested to examine or review and has not examined or reviewed any financial documents, statements or materials that have been or may be furnished in connection with the authorization, issuance or marketing of the Bonds and accordingly will not express any

opinion with respect to the accuracy or completeness of any such financial documents, statements or materials. In submitting a bid for the Bonds, the bidder agrees to the representation of the Town by Bond Counsel.

**TAX-EXEMPT STATUS:** In the opinion of Bond Counsel under existing laws, regulations, rulings and judicial decisions, and assuming continuing compliance with certain restrictions, conditions and requirements by the Town, interest income on the Bonds is excluded from gross income for purposes of calculating federal income taxes. In the opinion of Bond Counsel, interest income on the Bonds is exempt from Arizona income taxes.

Should changes in the law cause Bond Counsel's opinion to change prior to delivery of the Bonds to the winning bidder, the winning bidder will not be obligated to pick up and pay for the Bonds, and the winning bidder's Deposit will be returned.

**QUALIFIED TAX-EXEMPT OBLIGATIONS:** The Bonds will be "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

**PRELIMINARY OFFICIAL STATEMENT DEEMED FINAL, DELIVERY OF FINAL OFFICIAL STATEMENT:** The Town, acting through its Finance Director, will deem the Preliminary Official Statement provided in connection with the sale of the Bonds to be final as of its date, as required by Section 240.15c2-12, General Rules and Regulations, Securities Exchange Commission Act of 1934 (the "Rule"), except for the omission of offering prices, selling compensation, delivery dates, terms to be specified in the winning bidder's bid, ratings, other terms depending on such matters and the identity of the winning bidder, all as may be necessary for the Town to complete a final official statement.

Within twenty-four (24) hours after the award of the Bonds, the winning bidder must provide the Town with all necessary offering price information, selling compensation information, all other terms of the sale which depend on such matters and any underwriter information, all as may be necessary for the Town to complete the final official statement.

Within seven (7) business days after the award of the Bonds, the Town will provide the winning bidder with the final official statement in an electronic format as prescribed by the MSRB at no cost. The final official statement will be in substantially the same form as the Preliminary Official Statement with such additions, deletions or revisions as the Town deems necessary.

The Town will deliver at closing an executed certificate stating that as of the date of delivery the information contained in the final official statement, including any supplement, relating to the Town and the Bonds is true and correct in all material respects and that such final official statement does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

**CONTINUING DISCLOSURE:** In connection with the issuance of the Bonds, the Town will deliver a continuing disclosure certificate for purposes of the Rule as hereinafter described and as described in the final official statement. For purposes of the Rule, the Town is the only "obligated person" with respect to the Bonds. The Town will agree, as described in the final official statement, to provide or cause to be provided (i) certain annual financial information and operating data (the "Annual Information") for the preceding fiscal year, (ii) the Town's audited financial statements, (iii) timely notice, not in excess of ten business days after the occurrence of certain listed events with respect to the Bonds, and (iv) timely notice of any failure by the Town to provide its Annual Information within the time specified in that certificate. See the more complete description of the certificate in the final official statement.

The Annual Information which was due on February 1, 2010 through and including 2014 with respect to past undertakings entered into by the Town were not timely filed in compliance with the Rule. However, the Town timely filed its audited financial statements in each of those years. The Town filed this Annual Information on August 1, 2014.

The Annual Information which was due on February 1, 2010 through and including 2014 with respect to past undertakings entered into by the Town of Fountain Hills Municipal Property Corporation, in which the Town is the “obligated person” with respect to those bonds, were not timely filed in compliance with the Rule. However, the Town timely filed its audited financial statements in each of those years. The Town filed this Annual Information on August 1, 2014.

The Town has established procedures to ensure timely and proper filing of its Annual Information.

**NO LITIGATION AND NON-ARBITRAGE:** The Town will deliver a certificate to the effect, except as otherwise described in the Preliminary Official Statement or the final official statement, that no litigation is pending affecting the issuance and sale of the Bonds. The Town will also deliver an arbitrage certificate covering its reasonable expectations concerning the Bonds.

**ADDITIONAL INFORMATION:** Copies of this Notice and the Preliminary Official Statement relating to the Bonds will be furnished to any bidder upon request made to the Finance Director of Fountain Hills, Arizona; 16705 E. Avenue of the Fountains, Fountain Hills, Arizona 85268, telephone 480-816-5162 or to Wedbush Securities Inc., 3200 E. Camelback Road, Suite 290, Phoenix, Arizona 85018, telephone 602-952-6852, Financial Advisor to the Town with respect to the Bonds.

**TOWN OF FOUNTAIN HILLS, ARIZONA**