

**RESOLUTION NO. 2011-41**

**A RESOLUTION AUTHORIZING AND PROVIDING FOR THE TOWN MANAGER OR DESIGNEE TO TRANSFER TOWN FUNDS TO AN IRREVOCABLE TRUST FUND TO BE USED TO DEFEASE AND REDEEM THE OUTSTANDING TOWN OF FOUNTAIN HILLS, ARIZONA MUNICIPAL PROPERTY CORPORATION MUNICIPAL FACILITIES REVENUE BONDS, SERIES 2004; AUTHORIZING THE EXECUTION OF A DEPOSITORY TRUST AGREEMENT FOR THE SAFEKEEPING AND HANDLING OF SECURITIES AND MONEYS TO BE USED TO PAY THE BONDS BEING DEFEASED; AND RATIFYING THE ACTIONS OF ALL OFFICERS AND AGENTS OF THE TOWN AND OTHERS WITH RESPECT TO THE TRANSFER, PREPAYMENT, DEFEASANCE AND REDEMPTION.**

**WHEREAS**, the Town of Fountain Hills Municipal Property Corporation (the "Corporation") has issued its Municipal Facilities Revenue Bonds, Series 2004 in the original principal amount of \$3,645,000 (the "Series 2004 Bonds"); and

**WHEREAS**, the Series 2004 Bonds were executed and delivered under the Trust Indenture dated as of July 1, 2000, (the "Indenture") between the Corporation and BNY Western Trust Company, as trustee, as supplemented by the First Supplement to Trust Indenture dated as of July 1, 2001, by and between National Bank of Arizona, as trustee and the Corporation, and the Second Supplement to Trust Indenture, dated as of December 1, 2004, (the "Second Supplement" and, together with the Trust Indenture and the First Supplement, the "Indenture") by and between Zions First National Bank as trustee (the "Trustee") and the Corporation; and

**WHEREAS**, such Series 2004 Bonds are secured by rental payments made by the Town pursuant to the terms of the Lease-Purchase Agreement dated as of July 1, 2000, (the "Lease-Purchase Agreement"), as amended by the First Amendment to Lease-Purchase Agreement, dated as of July 1, 2001, (the "First Amendment"), and the Second Amendment to Lease-Purchase Agreement, dated as of December 1, 2004, (the "Second Amendment" and, together with the Lease-Purchase Agreement, and the First Amendment, the "Town Lease") which lease payments are secured by a lien on the Town's Excise Taxes (as defined in the Town Lease); and

**WHEREAS**, the Mayor and Council of the Town of Fountain Hills, Arizona (the "Town") find that the Town will reduce its financial liability if the Town funds are transferred to a depository trust pursuant to the terms of the Depository Trust Agreement (as defined in Section 4 hereof), which is sufficient to pay at maturity or defease and redeem in advance of maturity or mandatory redemption date, the outstanding Series 2004 Bonds maturing or subject to mandatory redemption on July 15, 2015 (the "Bonds Being Defeased");

**WHEREAS**, the firm of Wedbush Securities will serve as the Corporation's financial advisor (the "Financial Advisor") with respect to the Bonds Being Defeased; and

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

**Section 1. Authorization.** The Mayor and Council hereby authorize and direct the Town Manager of the Town or designee to transfer Town funds in an aggregate amount not to exceed \$3,000,00.00 to an irrevocable trust fund held by the Trustee, an amount which is sufficient, together with any earnings thereon, to pay, in part or in full, the Bonds Being Defeased and the costs and expenses of the transaction. Any amounts remaining after payment of all amounts due shall be paid back to the Town.

**Section 2. Redemption of Series 2004 Bonds.** Pursuant to Article IV of the Trust Indenture, the Town is hereby authorized and directed to cause the redemption of the outstanding Bonds Being Defeased and shall give written notice to thereof to the Trustee and direct the Trustee to take all actions necessary to cause such redemption.

**Section 3. Application of Moneys.** The proceeds of the transfer of funds, after payment of the costs and expenses of the transaction, shall be applied by the Trustee to create one or more irrevocable trusts for the benefit of the owners of the Bonds Being Defeased. Amounts credited to the trust, other than any beginning cash balance, shall be invested immediately by the Trustee in direct, non-callable obligations issued by or unconditionally guaranteed by the United States of America (hereafter "Government Obligations") the maturing principal of and interest on which, together with any beginning cash balance, will be sufficient to pay the principal of and interest on the Bonds Being Defeased as the same become due or are called for redemption. The Town Manger of the Town or designee is hereby authorized to cause the selection and purchase of the Government Obligations.

**Section 4. Depository Trust Agreement.** The Mayor, any member of the Council or the Town Manager or designee is hereby authorized and directed to execute a depository trust agreement (the "Depository Trust Agreement") with the Trustee or a bank authorized to do trust business in the State of Arizona or any successors or assigns, with respect to the safekeeping and handling of the moneys and securities to be held in trust for the payment of the Bonds Being Defeased. The Depository Trust Agreement shall be in substantially the form on file with the Town, with such additions, deletions and modifications as shall be approved by the officer executing and delivering the same on behalf of the Town and such execution and delivery shall constitute conclusive evidence of the approval of such official of any departures from the form on file with the Town.

If for any reason the Depository Trust Agreement is cancelled or declared void or illegal or is incapable of being performed due to any impediment of any nature whatsoever, or the Trustee is unable to perform its duties, the Town shall appoint or engage a successor trustee or escrow agent to act in the place of the Trustee, if such successor be ready, willing and able to assume the role of trustee under such Depository Trust Agreement or an agreement similar in form and substance. During any period when no trustee is in place, the Town Manager or designee shall act as the trustee.

**Section 6. Resolution a Contract.** This resolution shall constitute a contract between the Town and the Trustee for and the owners of the Bonds Being Defeased and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the owners of the Bonds Being Defeased then outstanding.

**Section 7. Federal Tax Law Covenants.** As authorized by Arizona Revised Statutes, Title 35, Chapter 3, Article 7, and in consideration of retaining the exclusion of interest income on the Bonds Being Defeased from gross income for federal income tax purposes, the Town covenants with the owners from time to time of the Bonds Being Defeased to neither take nor fail to take any action which action or failure to act is within its power and authority and would result in interest income on the Bonds Being Defeased becoming subject to inclusion as gross income for federal income tax purposes under either laws existing on the date of issuance of the Bonds Being Defeased or such laws as they may be modified or amended.

The Town agrees that it will comply with such requirement(s) and will take any such action(s) as in the opinion of Gust Rosenfeld P.L.C., bond counsel to the Town ("Bond Counsel") are necessary to prevent interest income on the Bonds Being Defeased becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by Bond Counsel; to pay to the United States of America any required amounts representing rebates of investment income relating to the Bonds Being Defeased; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys relating to the Bonds Being Defeased; and limiting the use of the proceeds of the transfer of funds.

**Section 8. Severability.** If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this resolution. The Mayor and Council hereby declare that this resolution would have been enacted and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the transfer of funds and defeasance and redemption of the Bonds Being Defeased pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this resolution may be held illegal, invalid or unenforceable.

**Section 9. Ratification of Actions.** All actions of the officials and agents of the Town, and the Trustee, which are in conformity with the purposes and intent of this resolution and in furtherance of the transfer, prepayment, defeasance and redemption of the Bonds Being Defeased as contemplated by this resolution, shall be and are hereby ratified, confirmed and approved. The proper officials and agents of the Town, and the Trustee are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents as may be necessary to carry out the terms and intent of this resolution.

PASSED AND ADOPTED by the Council of the Town of Fountain Hills, Arizona,  
on October 20, 2011.

TOWN OF FOUNTAIN HILLS

  
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Jay T. Schlum, Mayor

ATTEST:

  
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Bevelyn J. Bender, Town Clerk

APPROVED AS TO FORM:

  
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Bond Counsel

CERTIFICATION

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. 2011-41 was duly passed by the Town Council of the Town of Fountain Hills, Arizona, at a regular meeting held on October 20, 2011, and the vote was 7 aye's and 0 nay's and that the Mayor and 6 Council Members were present thereat.

DATED: October 20, 2011

  
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Town Clerk