

**RESOLUTION NO. 2014-03**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ADOPTING ISSUANCE AND POST-ISSUANCE COMPLIANCE PROCEDURES RELATING TO TAX-EXEMPT BONDS, TAX CREDIT BONDS AND OTHER TAX-EXEMPT FINANCINGS FOR THE TOWN OF FOUNTAIN HILLS, ARIZONA.

**WHEREAS**, the Town of Fountain Hills, Arizona (the "Town") has issued tax-exempt bonds and other tax-exempt financings and may issue additional types of bonds in the future (collectively the "Bonds"); and

**WHEREAS**, federal tax law encourages the Town to develop issuance and post-issuance compliance procedures related to the Bonds; and

**WHEREAS**, the Town desires to adopt written issuance and post-issuance compliance procedures related to the Bonds;

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

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

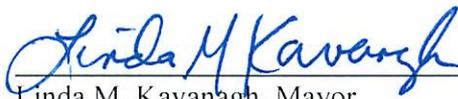
SECTION 2. The Town hereby adopts the Issuance and Post-Issuance Compliance Procedures Relating to Tax-Exempt Bonds, Tax Credit Bonds and Other Tax-Exempt Financings for the Town of Fountain Hills, Arizona, attached hereto as Exhibit A and incorporated herein by reference.

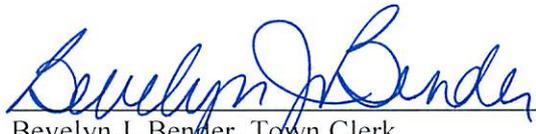
SECTION 3. The Mayor, the Town Manager, the Town Finance Director, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, March 20, 2014.

**FOR THE TOWN OF FOUNTAIN HILLS:**

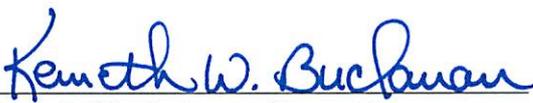
**ATTESTED TO:**

  
Linda M. Kavanagh, Mayor

  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
Kenneth W. Buchanan, Town Manager

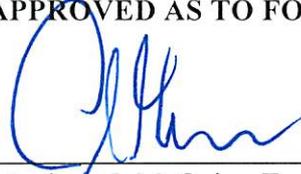
  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2014-03

[Issuance and Post-Issuance Compliance Procedures Relating to Tax-Exempt Bonds, Tax Credit Bonds and Other Tax-Exempt Financings for the Town of Fountain Hills, Arizona]

See following pages.

**ISSUANCE AND POST-ISSUANCE COMPLIANCE PROCEDURES  
RELATING TO TAX-EXEMPT BONDS, TAX CREDIT BONDS  
AND OTHER TAX-EXEMPT FINANCINGS  
FOR THE TOWN OF FOUNTAIN HILLS, ARIZONA**

**Date of Implementation: March 20, 2014**

**I. INTRODUCTION**

Many conditions, restrictions and requirements must be complied with to permit and preserve the tax-exempt, tax credit or direct federal subsidy treatment of general obligation bonds, revenue bonds, lease-purchase agreements, and other tax-exempt financings by the Town of Fountain Hills, Arizona (the “Town”). Prior to issuance, the Town and its bond counsel will review the facts and the reasonable expectations to determine if the issue will comply with these conditions, restrictions and requirements at the time of issuance. There are certain actions the Town must perform after issuance to preserve the favorable tax treatment and certain actions of the Town after issuance can adversely affect the tax treatment. In addition, the Town must maintain proper records to demonstrate compliance. Because tax benefits may be critical to the investors’ decision to purchase the bonds or other obligations, the Town will covenant with the bond purchasers to comply with all of the conditions, restrictions and requirements throughout the life of the bonds.

To ensure compliance, the Town identifies a single person, the Finance Director, with overall compliance responsibility. The Finance Director will be the responsible person and is referred to in these procedures as the “Bond Compliance Official.” Anyone with any questions about the bonds, the proceeds of the bonds, the facilities financed with the bonds or compliance with the conditions, restrictions and requirements should discuss them with the Bond Compliance Official who shall, as necessary, discuss them with bond counsel. The Bond Compliance Official shall meet with bond counsel to discuss these requirements and from time to time any changes in these requirements. In the event the Town fails to comply with these procedures, the Bond Compliance Official shall meet with bond counsel as soon as practicable after the discovery of the failure to comply in order to discuss the steps required to correct the noncompliance.

The Bond Compliance Official shall ensure that his or her successor:

- i. Has a copy of these issuance and post-issuance compliance procedures;
- ii. Understands the Bond Compliance Official's responsibilities under these issuance and post-issuance compliance procedures; and
- iii. Understands the Town's existing continuing disclosure undertaking obligations (see Section 7, EMMA Reminder, below). If the Bond Compliance Official does not have each of the Town's currently operative continuing disclosure undertakings, he or she should contact bond counsel.

1. **INVESTMENT OF PROCEEDS UNTIL EXPENDED.**

Detailed records of investments and earnings will be made and kept by the Town with respect to all bond and investment proceeds. (See Section 5, Record Retention, below.)

Generally, proceeds of bonds cannot be invested at a yield higher than the bond yield unless during certain specific temporary periods. Therefore, prior to closing, the Bond Compliance Official will determine with bond counsel which funds do or do not qualify for a temporary period. Qualifying information will be set out in a tax certificate. No proceeds will be invested at a yield higher than the bond yield unless they qualify. If the actual facts regarding the use of proceeds changes from what was reasonably expected at closing, the Bond Compliance Official will discuss those changes with bond counsel to see if the temporary periods are changed.

Bond proceeds include the amount received from the sale of the bonds, amounts held in a payment or reserve fund for the bonds and investment earnings on those amounts.

The proceeds will not be invested in any investment where a yield cannot be determined.

Any investment in a guaranteed investment contract or similar investment agreement will be made only in compliance with the bidding requirements as reviewed by bond counsel.

Bond proceeds from each issue will be invested so that they can be tracked separately from any other funds or other bond issues of the Town. The Town will work with the registrar, trustee or other applicable person or entity to be sure that invested earnings are properly allocated between bond proceeds and other funds.

**2. USE OF PROCEEDS.**

Detailed records will be made and kept by the Town with regard to the use of bond proceeds and shall be kept for each separate bond sale or other tax-exempt financing. For each expenditure, the amount, date of and purpose must be recorded. If the project is also funded with non-bond proceeds, the records will reflect an allocation of expenditures between bond proceeds and other funds. No proceeds will be used to reimburse an expenditure made prior to the issue date of the bonds unless the reimbursement requirement, including the prior declaration of intent to reimburse, has been fully complied with and evidence of such compliance is maintained. The Town Council by taking action or the Finance Director is authorized to complete the declaration of intent to reimburse.

The Town is expected to exercise diligence to expend the proceeds, to enter into within six months of the issue date a binding contract to expend at least 10% of the proceeds and to have expended at least 85% of the proceeds and investment income on the proceeds within three years. After the day before the third anniversary of the bonds' closing, any remaining proceeds in the construction account must be yield restricted.

The Bond Compliance Official shall periodically review the progress of the projects and the expenditure of proceeds to ensure timely expenditure.

**3. USE OF BOND FINANCED FACILITIES.**

Detailed records of the use of proceeds will identify those facilities that are financed in whole or in part with bond proceeds and must reflect the allocation of bond proceeds and other funds used. Any sale or lease to, or other agreement for use by, a private party in a trade or business can adversely affect the tax status of the bonds. The Town will not sell or lease any bond financed property or enter into any agreement with non-governmental entities (including non-profit entities) for use or management of any bond financed property without a thorough review by the Bond Compliance Official and bond counsel. Although not a comprehensive list, the Bond Compliance Official will review the following types of transactions with bond counsel prior to entering into any agreement with non-governmental entities or persons: (a) the sale or lease of any bond financed property, including to non-profit entities and 501(c)(3) entities (i.e. Boys & Girls Clubs), (b) any management contracts with a food service

provider or book store, (c) any research agreements, and (d) public-private partnerships. The Bond Compliance Official shall periodically review the use of all bond financed facilities to ensure compliance with the private use restrictions. In the event the Town takes action that causes the bonds to meet the private business tests or private loan financing test, the Bond Compliance Official shall meet with bond counsel as soon practicable after the issue is discovered to discuss the steps required to correct the noncompliance, including, if necessary, redeeming or defeasing all of the bonds that meet the private business tests or private loan financing test.

4. **ARBITRAGE REBATE.**

Any time that bond proceeds are permitted to be invested at a yield higher than the bond yield, the amount earned over the bond yield is arbitrage. With certain exceptions, the Town is obligated to pay over (rebate) to the United States any arbitrage earned. The Town will keep complete and accurate records of all investments of bond proceeds and all information supporting any applicable exceptions to the rebate requirement and will retain or ensure that either the registrar or trustee has retained a professional rebate consultant to review the records and prepare a report so that the Town or the registrar or trustee can make any necessary rebate payments. Unless exempt, the Town must, at a minimum, make payments at every fifth anniversary of the issue and upon final payment of a series of bonds. The Bond Compliance Official will review any exemption prior to each fifth anniversary and upon final payment to determine if any facts have changed which might eliminate the exemption.

5. **RECORD RETENTION.**

All records concerning the bond issue, including

- a) the transcript of the original proceedings,
- b) investment of proceeds,
- c) use and allocation of proceeds, including the declaration of intent to reimburse,
- d) non-governmental use of bond financed property,
- e) payment of principal and interest on the bonds,
- f) the interest rate or rates on the bonds from time to time, if variable,
- g) compliance with reimbursement and tax return filing requirements,

- h) refunding of all or part of the bonds, including proof of payment of principal and interest on refunding and refunded bonds, either at maturity or prior redemption,
- i) payment of arbitrage rebate or information supporting any exemption to rebate, and
- j) evidence of compliance with special requirements for Tax Credit Bonds, if applicable,

shall be kept for the life of the bonds plus three years and, if the bonds are refunded, for the life of all of the refunding bonds plus three years or for the time specified for the retention of such records under Arizona law, whichever is longer.

**6. SPECIAL REQUIREMENTS FOR TAX CREDIT BONDS.**

If the Town issues any Qualified Forestry Conservation Bonds, New Clean Renewable Energy Bonds or Qualified Energy Conservation Bonds (the “Tax Credit Bonds”), additional procedures will be adopted.

**7. EMMA REMINDER.**

As an issuer of bonds, the Town is also required to provide ongoing disclosures in the form of annual financing information and certain listed events, currently filed on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (“EMMA”) system.