

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, AUTHORIZING AND PROVIDING FOR THE CHIEF FINANCIAL OFFICER OR DESIGNEE TO TRANSFER CITY UTILITY SYSTEMS IMPACT FEES AND OTHER AVAILABLE UTILITY SYSTEMS MONIES TO AN IRREVOCABLE TRUST FUND TO BE USED TO DEFEASE A PORTION OF THE OUTSTANDING CITY OF MESA, ARIZONA UTILITY SYSTEMS REVENUE BONDS, SERIES 2006, UTILITY SYSTEMS REVENUE BONDS, SERIES 2008 AND UTILITY SYSTEMS REVENUE REFUNDING BONDS, SERIES 2014; 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; APPROVING IN SUBSTANCE THE FORM OF CERTAIN DOCUMENTS AND AUTHORIZING COMPLETION, EXECUTION AND DELIVERY THEREOF; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY FOR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND RATIFYING THE ACTIONS OF ALL OFFICERS AND AGENTS OF THE CITY AND OTHERS WITH RESPECT TO THE TRANSFER, PREPAYMENT, DEFEASANCE AND REDEMPTION.

WHEREAS, the City of Mesa, Arizona (the "City") previously issued its Utility Systems Revenue Bonds, Series 2006, in the original aggregate principal amount of \$105,400,000 (the "2006 Bonds"); and

WHEREAS, the City previously issued its Utility Systems Revenue Bonds, Series 2008, in the original aggregate principal amount of \$52,875,000 (the "2008 Bonds"); and

WHEREAS, the City previously issued its Utility Systems Revenue Refunding Bonds, Series 2014, in the original aggregate principal amount of \$102,945,000 (the "2014 Bonds" and together with the 2006 Bonds and the 2008 Bonds, the "Bonds"); and

WHEREAS, the City desires to defease a portion of the outstanding Bonds and to authorize the City's Chief Financial Officer to transfer funds and prepay a portion of the Bonds to accomplish such defeasance; and

WHEREAS, the City Council of the City finds that the City will reduce its financial liability if City utility systems impact fees and other available utility systems monies in an amount not to exceed \$18,000,000 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 defease and pay at maturity or mandatory redemption date, a portion of the outstanding 2006 Bonds maturing on July 1, 2023 and July 1, 2024, a portion of the outstanding 2008 Bonds maturing on July 1, 2023 through and including July 1, 2029, and a portion of the outstanding 2014 Bonds maturing or subject to mandatory redemption on July 1, 2019 through and including July 1, 2022 and July 1, 2025 through and including July 1, 2030, and any additional portion of Bonds as determined by the Chief Financial Officer with the advice of the City's financial advisor (collectively, the "Bonds Being Defeased"); and

WHEREAS, all acts, conditions and things required by the constitution and laws of the State of Arizona to happen, exist and be performed precedent to and in the enactment of this

Resolution have happened, exist and have been performed as so required in order to make this Resolution a valid and binding instrument for the security of the proposed defeasance;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA, AS FOLLOWS:

Section 1. Authorization. The City Council hereby authorizes and directs the Chief Financial Officer of the City or designee to transfer City utility systems impact fees and other available utility systems monies in an aggregate amount not to exceed \$18,000,000 to an irrevocable trust fund held by the Depository Trustee (as defined herein) and invested in securities issued by or guaranteed with the full faith and credit of the United States of America which constitutes an amount which is sufficient, together with any earnings thereon, to pay, in part or in full, the Bonds Being Defeased. The costs and expenses of the transaction will be paid by the City from the transfer of other available utility systems monies described in the preceding sentence. Any amounts remaining after payment of all amounts due shall be returned to the City.

Section 2. Redemption of Bonds. The City hereby approves and authorizes the redemption of the Bonds Being Defeased, and the Chief Financial Officer or designee is hereby authorized and directed to give written notice thereof to the Depository Trustee and direct the Depository Trustee to take all actions necessary to cause such redemption.

Section 3. Application of Moneys. The transferred funds, after payment of the costs and expenses of the transaction, shall be applied by the Depository Trustee to create one or more irrevocable trusts for the benefit of the owners of the Bonds Being Defeased in accordance with the Depository Trust Agreement.

Section 4. Depository Trust Agreement. Any member of the City Council or the Chief Financial Officer or designee is hereby authorized and directed to execute, and, if applicable, the City Clerk is hereby authorized and directed to attest, a depository trust agreement (the "Depository Trust Agreement") with the Depository Trustee, 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 now on file with the City Clerk, with such additions, deletions and modifications as shall be approved by the officer executing and delivering the same on behalf of the City and, if applicable, attested by the City Clerk. Such execution, attestation and delivery shall constitute conclusive evidence of the approval of such official of any departures from the form on file with the City.

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 Depository Trustee is unable to perform its duties, the City shall appoint or engage a successor depository trustee or escrow agent to act in the place of the Depository Trustee, if such successor be ready, willing and able to assume the role of depository trustee under such Depository Trust Agreement or an agreement similar in form and substance. During any period when no depository trustee is in place, the Chief Financial Officer or designee shall act as the depository trustee.

Section 5. Selection of Depository Trustee; Depository Trustee Action. The City Manager and the Chief Financial Officer are each hereby authorized to receive proposals from

banks authorized to engage in trust business in the State of Arizona to act as the Depository Trustee. Based on the proposals received, the City Manager or the Chief Financial Officer shall select the depository trustee (the "Depository Trustee"). The City hereby requests and requires the Depository Trustee so selected to take any and all actions appropriate and necessary in connection with the execution and delivery of the applicable documents and the defeasance of the Bonds Being Defeased.

Section 6. Resolution a Contract. This Resolution shall constitute a contract between the City and the Depository Trustee for and on behalf of 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 and then outstanding.

To the extent applicable by provision of law, and to the extent this Resolution constitutes a contract, Resolution is subject to cancellation pursuant to A.R.S. § 38-511, as amended, the provisions of which are incorporated herein as if herein fully set forth.

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 City 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 City 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 City ("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 such 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 funds transferred by the City to the Depository Trustee.

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 City Council hereby declares that this Resolution would have been enacted and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof, and the transfer of funds and defeasance and redemption of the Bonds Being Defeased pursuant hereto would have been authorized, 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 City, and the Depository 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 City, and the Depository 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, including, without limitation, employing a verification agent and an open market securities bidding agent.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 16th day of April, 2018.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

GUST ROSENFELD P.L.C.

Bond Counsel

CERTIFICATION

I, Dee Ann Mickelsen, the duly appointed City Clerk of the City of Mesa, Arizona, do hereby certify that the above and foregoing Resolution No. _____ was duly passed by the City Council of the City of Mesa, Arizona, at a regular meeting held on April 16, 2018, and that a quorum was present thereat and that the vote thereon was ____ aye's and ____ nay's; ____ did not vote or were absent.

DATED: _____, 2018.

City Clerk