

AGREEMENT

Between

U.S. BANK NATIONAL ASSOCIATION
as Payee

and

CITY OF MESA, ARIZONA
as Payor

Dated as of _____, 2018

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EXHIBIT A - DESCRIPTION OF PROJECT

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AGREEMENT

THIS AGREEMENT (the "Agreement"), dated as of _____, 2018, by and between the City of Mesa, Arizona, a municipal corporation and a political subdivision under the laws of the State of Arizona ("City"), and U.S. Bank National Association, a national banking association authorized to do trust business in the State of Arizona ("Trustee"), in its capacity as trustee under the Trust Agreement dated as of _____, 2018, by and between Trustee and City (the "Trust Agreement");

W I T N E S S E T H:

1. **Definitions.** All terms not otherwise defined herein are as defined in the Trust Agreement.

2. **Term and Payments.**

(a) For the purpose of financing the acquisition, construction and installation of a new higher education building for the initial use of Arizona State University (the "Project"), as described on Exhibit A which is attached hereto and incorporated herein, the City has authorized the execution and delivery of the City's Excise Tax Revenue Obligations, Series 2018 (the "Series 2018 Obligations"), to be sold, executed, and delivered pursuant to the Trust Agreement.

(b) The City agrees to acquire, construct, install and equip the Project or cause the same to be acquired, constructed, installed and equipped, all in accordance with the plans and specifications thereto prepared for the City, and to pay all costs and expenses attendant thereto, including architectural and engineering costs and construction management fees, if any. To provide the funds necessary therefor, the Trustee, pursuant to the Trust Agreement, will execute and deliver the Series 2018 Obligations.

(c) The City agrees to make the payments described herein to the Trustee on the Payment Dates set forth, and in the amounts set forth in the payment schedule attached hereto as Exhibit B and incorporated herein (the "Payments"). The City's obligation to make such Payments shall be limited to payments from Excise Taxes (as defined in Section 8 below) pledged to the payment thereof by the City.

(d) The obligations of the City to make Payments from the sources described herein and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach of the Trustee of any obligation to the City or otherwise, or out of indebtedness or liability at any time owing to the City by the Trustee. Until such time as all of the Payments shall have been fully paid or provided for, the City (i) will not suspend or discontinue any Payments provided for in this Section 2, (ii) will perform and observe all other agreements contained in this Agreement, and (iii) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure of

the City or any other person to complete the acquisition, construction and installation of the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of any or all of the Project, commercial frustration of purpose, abandonment of the Project by the City, any change in the tax or other laws of the United States of America or of the State of Arizona ("State") or any political subdivision of either or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement. Nothing contained in this Section shall be construed to release Trustee from the performance of any of the agreements on its part herein or in the Trust Agreement, and in the event the Trustee shall fail to perform any such agreements on its part, the City may institute such action against the Trustee as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the first sentence of this paragraph (d). This Agreement shall not terminate so long as any payments are due and owing under the Series 2018 Obligations.

It is understood and agreed that the Trustee shall in no event be deemed an owner of the Project or appear on any records (including, without limitation, real property records) as an owner of the Project.

3. Pledge of Excise Taxes, Limited Obligations.

(a) The City hereby pledges its Excise Taxes for the Payments to be made hereunder and all other amounts payable pursuant hereto. The City intends that this pledge shall be a first lien pledge upon such amounts of said Excise Taxes as will be sufficient to make the Payments when due. The City agrees and covenants to make said Payments from such Excise Taxes, except to the extent it chooses, at its sole option, to make the Payments from other funds pursuant to Section 5. Said pledge of, and said lien on, the Excise Taxes is hereby irrevocably made and created for the prompt and punctual payment of the Payments according to the terms hereof and any amounts owing according to the terms of the Trust Agreement, and to create and maintain the funds as hereinafter specified in this Agreement or as may be specified in the Trust Agreement. All of the Payments are coequal as to the pledge of and lien on the Excise Taxes pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from Excise Taxes or security therefor. The rights of the Owners of the Series 2018 Obligations to payment from Excise Taxes are on a parity with the rights to payment from such Excise Taxes of the holders of:

- (i) Excise Tax Revenue Obligations, Series 2013, issued by the City of Mesa;
- (ii) [Transportation Project Advancement Notes, Series 2018, issued by the City of Mesa;] and
- (iii) any other Parity Obligations.

(b) The City shall remit to the Trustee from Excise Taxes all amounts due under this Agreement in the amounts and at the times and for the purposes as required herein. The City's obligation to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, is limited to payment from Excise Taxes and shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of, the City, the State, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any ad valorem taxes.

4. Surplus and Deficiency of Excise Taxes. Subject to the rights with respect to the Excise Taxes of the owners of the Parity Obligations, all Excise Taxes in excess of amounts, if any, required to be deposited with or held by the Trustee for payments due under this Agreement or the Trust Agreement or any Parity Obligation shall constitute surplus revenues and may be used by the City for any lawful purpose for the benefit of the City, including the payment of junior lien obligations to which such Excise Taxes may from time to time be pledged. If at any time the monies in the funds and accounts held for payment of amounts due under this Agreement or the Trust Agreement are not sufficient to make the deposits and transfers required, any such deficiency shall be made up from the first monies thereafter received and available for such transfers under the terms of this Agreement and, with respect to payment from Excise Taxes, pro rata, as applicable, with amounts due with respect to Parity Obligations with respect to the Excise Taxes, and the transfer of any such sum or sums to said fund or accounts as may be necessary to make up any such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

The City shall impose all necessary Excise Taxes, collect and receive the proceeds of sufficient Excise Taxes, and pay such proceeds to the Trustee in such amounts and at such times as will be fully sufficient, in conjunction with any other legally available monies (but not proceeds of ad valorem taxes, except in compliance with Section 5) which the City may from time to time lawfully choose, at its sole option, to pay to the Trustee, to assure the punctual performance of all duties requiring the payment or expenditure of money by the City under the terms of this Agreement. Such payments shall be made on the dates specified herein during the term of this Agreement and shall be sufficient to meet all requirements for the Series 2018 Obligations.

5. Use of Other Funds at the Option of the City. The City may, at the City's sole option, make such Payments from its other funds as permitted by law and as the City shall determine from time to time, but the Trustee acknowledges that it has no claim hereunder to such other funds. No part of the Payments payable pursuant to this Agreement shall be payable out of any ad valorem taxes imposed by the City or from bonds or other obligations, the payment of which the City's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by the City according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State.

6. Parity Obligations. So long as any of the Series 2018 Obligations or Parity Obligations remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, the City will not further encumber the Excise Taxes pledged hereunder on a

basis equal to the pledge hereunder unless the Excise Taxes received by the City in the next preceding Fiscal Year shall have amounted to at least two (2) times the highest combined Debt Service requirements for any Outstanding Series 2018 Obligations and any Parity Obligations, including those so proposed to be secured by a pledge of the same Excise Taxes. Subject to the foregoing, and to other terms and conditions set forth herein, the City shall have the right to incur Parity Obligations payable from and secured by the Excise Taxes, on a parity with the Series 2018 Obligations and the Existing Parity Obligations. Such obligations may include any notes, bonds, obligations, long-term obligation or deferred payment for property including, without limitation, installment purchase agreements, payment agreements or lease purchase agreements.

7. City to Maintain Excise Taxes Coverage of Two Times Debt Service.

The City covenants and agrees that the Excise Taxes which it presently imposes will continue to be imposed in each Fiscal Year so that the amount of Excise Taxes, all within and for such Fiscal Year of the City, shall be equal to at least two (2) times the total of all Debt Service requirements for all Outstanding Series 2018 Obligations and other Outstanding Parity Obligations payable during such Fiscal Year. The City further covenants and agrees that if such receipts for any such Fiscal Year shall not equal two (2) times such Debt Service for the current Fiscal Year, City will promptly impose new taxes of the type included within the definition of "Excise Taxes" or other City taxes or fees, or increase the rates for the Excise Taxes currently imposed in order that (i) the current receipts will be sufficient to meet such all such requirements under the Trust Agreement and (ii) the current year's receipts will be reasonably calculated to attain the level as required above for the succeeding Fiscal Year's Debt Service requirements of the Series 2018 Obligations and Parity Obligations. The City acknowledges that pursuant to its Charter, any increase in its transaction privilege (sales) tax rate will require a vote of the City's electors.

8. Definition of Excise Taxes. "Excise Taxes" shall mean the unrestricted excise, transaction, franchise, privilege and business taxes, state shared sales and income taxes, state shared vehicle license taxes, fees for licenses and permits, fines, forfeitures and state revenue sharing that are validly imposed by the City or contributed, allocated or paid to the City and not earmarked by the contributor or the City for a contrary or inconsistent purpose. Excise Taxes shall not include excise taxes collected and paid to the City under (a) the 0.25% transaction privilege (sales) and use tax approved by the voters of the City on May 19, 1998, the use of which is restricted to health, safety and other quality of life uses, (b) the 0.30% transaction privilege (sales) and use tax approved by the voters of the City on May 16, 2006, the use of which is restricted to street projects in the City, or (c) any other similar tax restricted as to its use. Revenues received by the City from vehicle license taxes charged by the State of Arizona will not be deemed Excise Taxes for purposes of this Agreement and the Trust Agreement.

9. Representations, Warranties and Covenants.

(a) The City represents, warrants and covenants that it has the power to enter into this Agreement, that this Agreement is a lawful, valid and binding obligation of the City, enforceable against the City in accordance with its terms, and has been duly authorized, executed and delivered by the City; that all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; that all Payments hereunder will be paid when due out of funds which are legally available for such purposes.

(b) The City represents, warrants and covenants that it has disclosed in writing to the Trustee all facts that do or will materially adversely affect the operations or financial condition of the City and that any financial statements, notices or other written statements provided by the City to the Trustee pursuant hereto will not contain any untrue statement of a material fact nor omit any material fact necessary to make such statements or information not misleading.

(c) Except with respect to its power and authority to enter into this Agreement and to perform its covenants hereunder, the Trustee has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the Project financed by this Agreement. All such risks shall be borne by the City without in any way excusing the City from its obligations under this Agreement and the Trustee shall not be liable to the City for any damages on account of such risks. Except with respect to any acts by the Trustee which are not undertaken either (i) at the City's request, or (ii) with the City's prior approval, the City agrees to waive all claims against the Trustee relating to the Project financed by this Agreement.

10. Prepayment Permitted; Providing for Payment.

(a) The City may prepay the Payments as set forth in the Trust Agreement.

(b) The City may provide for the payment of any Payment in any one or more of the following ways:

- (i) by paying such Payment as provided herein as and when the same becomes due and payable at its scheduled due date pursuant to Section 2 herein or on a date on which it can be prepaid;
- (ii) by depositing with a Depository Trustee (as defined below), in trust for such purposes, money which, together with the amounts then on deposit with Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid; or
- (iii) by depositing with a Depository Trustee, in trust for such purpose, any noncallable Government Obligations, in such amount as shall be certified to Seller and City, by a national firm of certified public accountants acceptable to both Seller and City, as being fully sufficient, together with the interest to accrue thereon and monies then on deposit with Seller and available for such Payment, to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid.

A Depository Trustee shall be any bank or trust company, including the Trustee, with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to

supervision or examination by federal or State authority who holds money and securities in trust for the purposes set forth in subparagraphs (ii) or (iii) of this Section 10 (a "Depository Trustee").

11. Event of Default; Remedies Upon Event of Default; No Acceleration.

The occurrence of one or more of the following events shall constitute an "Event of Default," whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(a) (i) Upon (A) the nonpayment of the whole or any part of any Payment at the time when the same is to be paid as provided herein or in the Trust Agreement, (B) the violation by City of any other covenant or provision of this Agreement or the Trust Agreement, (C) the occurrence of an event of default with respect to any Outstanding Parity Obligations other than the Series 2018 Obligations, or (D) the insolvency or bankruptcy of City as the same may be defined under any law of the United States of America or the State, or any voluntary or involuntary action of City or others to take advantage of, or to impose, as the case may be, any law for the relief of debtors or creditors, including a petition for reorganization, and

(ii) if such default has not been cured (A) in the case of nonpayment of any Payment hereunder or under the Trust Agreement on the due date, or the nonpayment of installment payments on their due dates with respect to any other Parity Obligations; (B) in the case of the breach of any other covenant or provision of the Trust Agreement or this Agreement not cured within sixty (60) days after notice in writing from the Trustee specifying such default; and (C) in the case of any other default under any other Parity Obligation after any notice and passage of time provided for under the proceedings under which such Parity Obligations were issued, then,

(iii) upon receiving indemnity satisfactory to it and direction from the Owners holding a majority in aggregate principal amount of the Series 2018 Obligations, Trustee may (A) take whatever action at law or in equity may appear necessary or desirable to collect the Payments and any other amounts payable by the City under the Trust Agreement or this Agreement, then due, or to enforce performance and observance of any pledge, obligation, agreement, or covenant of the City under the Trust Agreement or this Agreement, and (B) pursue any other remedy at law or in equity, including the remedy of specific performance.

(b) Trustee, upon the bringing of a suit to collect the Payments in default, may as a matter of right, without notice and without giving bond to the City or anyone claiming under the City, (i) have a receiver appointed of all the Excise Taxes which are so pledged for the payment of amounts due hereunder, with such powers as the court making such appointment shall confer, and the City does hereby irrevocably consent to such appointment, and (ii) seek and obtain injunctive relief.

(c) The City's obligations under this Agreement, including, without limitation, its obligation to pay the Payments, shall survive any action brought as provided in this

Section 11, and the City shall continue to pay the Payments and perform all other obligations provided in this Agreement; provided, however, that the City shall be credited with any amount received by Trustee pursuant to actions brought under this Section 11.

(d) The Trustee shall have no remedy against the Project and no remedy or right of offset against any Series 2018 Obligation proceeds in the 2018 Acquisition Fund.

12. Assignment and Sublease. The City may assign, transfer, pledge or hypothecate or otherwise dispose of the Project and this Agreement, or any interest therein; provided, that the City remains obligated to make the Payments hereunder. The Trustee shall be entitled to sell, pledge or assign all of its right, title and interest in, to and under this Agreement, to an entity succeeding it as Trustee under the Trust Agreement.

13. Miscellaneous.

(a) No covenant or obligation herein to be performed by the City may be waived except by the written consent of the Trustee and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Seller from invoking such remedy at any later time prior to the City's cure of the condition giving rise to such remedy.

(b) This Agreement shall be construed and governed in accordance with the laws of the State in effect from time to time.

(c) This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, supplemented, altered or changed in any respect except by a written document signed by both Trustee and City. This Agreement may not be amended except as provided in the Trust Agreement.

(d) Any term or provision of this Agreement found to be prohibited by law or unenforceable or which would cause this Agreement to be invalid, prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, causing the remainder of this Agreement to be invalid, prohibited by law or unenforceable.

(e) The Trustee hereunder shall have the right at any time or times, by notice to the City, to designate or appoint any person or entity to act as agent or trustee for the Trustee for any purposes hereunder.

(f) The City agrees to pay interest at the rates specified in Exhibit B.

(g) Use of the neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(h) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(i) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives, as the case may be. Any person or entity acquiring any interest in or to Seller's right, title or interest herein shall be and have the rights of a third party beneficiary hereunder.

(j) Any payments due on a day which is not a Business Day may be made on the next Business Day and will be deemed to have been made on the date due.

14. Notices; Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for which the same is intended or certified, as follows:

If to Seller: U.S. Bank National Association
Corporate Trust Services, LM-AZ-X16P
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003

If to City: City of Mesa, Arizona
PO Box 1466
Mesa, Arizona 85211
Attn: Chief Financial Officer

with a copy to: Gust Rosenfeld P.L.C.
1 E. Washington Street, Suite 1600
Phoenix, Arizona 85004-2327
Attn: Zachary D. Sakas

15. Tax Covenants for the Series 2018 Obligations. In consideration of the acceptance and execution of this Agreement by the Trustee and the purchase of the Series 2018 Obligations by the Owners thereof, from time to time, and in consideration of retaining the exclusion of interest income from gross income on this Agreement and the Series 2018 Obligations for federal income tax purposes, the City covenants with the Trustee and the Series 2018 Obligation Owners from time to time 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 this Agreement or the Series 2018 Obligations to become subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of this Agreement or such laws as they may be modified or amended or tax laws later adopted.

The City agrees that it will comply with such requirement(s) and will take any such action(s) as are necessary to prevent interest income on this Agreement or the Series 2018 Obligations from 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 special counsel; paying to the United States of America any required amounts representing rebates of arbitrage profits relating to this Agreement; 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 monies relating to this Agreement; and limiting the use of the proceeds of this Agreement and property financed thereby.

In consideration for the issuance of the Series 2018 Obligations the interest on which is tax-exempt, City agrees to be the ultimate obligor for the payment of arbitrage rebate should the amounts held in the Rebate Fund be insufficient to make all payments required by Section 148(f)(3) of the Internal Revenue Code of 1986, as amended, or any succeeding sections. The City shall cause to be prepared each completed Form 8038-T as may be required pursuant to the Trust Agreement and direct Trustee to file it and remit such payment all as may be necessary to comply with Section 148(f)(3), as amended, or any succeeding sections as may be applicable.

16. Notice as to Conflict of Interest. A.R.S. Section 38-511 provides that the City may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In addition, the City may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City from any other party to the contract arising as a result of the contract.

17. Trustee. The Trustee is acting hereunder in its capacity as Trustee under the Trust Agreement and is entitled to all the rights, protections, immunities and indemnities hereunder as afforded to the Trustee under the Trust Agreement.

18. E-Verify Requirements. To the extent applicable under A.R.S. Section 41-4401, the Trustee and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. Section 23-214(A). The Trustee's or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of the Trustee's services by the City. The City retains the legal right to randomly inspect the papers and records of the Trustee or its subcontractor employees who work on this Agreement to ensure that the Trustee and its subcontractors are complying with the above-mentioned warranty.

The Trustee and its subcontractors warrant to keep their papers and records open for random inspection during normal business hours by the City. The Trustee and its subcontractors shall cooperate with the City's random inspections including granting the City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

19. No Boycott of Israel. Pursuant to A.R.S. Section 35-393 *et seq.*, the Trustee hereby certifies it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel. The term "boycott" has the meaning set forth in A.R.S. Section 35-393.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of _____, 2018.

**U.S. BANK NATIONAL ASSOCIATION, as
Trustee**

By _____
Its _____

State of Arizona
County of Maricopa

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of U.S. Bank National Association, a national banking association, on behalf of the Trustee.

My commission expires:

Notary Public

City:

**THE CITY OF MESA, ARIZONA, a
municipal corporation and political subdivi-
sion under the laws of the State of Arizona**

By _____
Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

Gust Rosenfeld P.L.C., as Special Counsel

State of Arizona
County of Maricopa

The foregoing instrument was acknowledged before me this ____ day of
_____, 2018, by _____, on behalf of City.

My commission expires:

Notary Public

EXHIBIT A

DESCRIPTION OF PROJECT

The acquisition, construction, and installation of a new higher education building for the initial use of Arizona State University. [Additional details to come]

EXHIBIT B

INSTALLMENT PAYMENT SCHEDULE

[illegible]

[Placeholder for taxable rate calculation of a portion of the interest component, as applicable.]