

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND PROVIDING FOR THE DEPUTY CITY MANAGER AND CHIEF FINANCIAL OFFICER OR DESIGNEE TO TRANSFER CITY MONEYS TO AN IRREVOCABLE ESCROW TRUST FUND TO BE USED TO DEFEASE ALL OR A PORTION OF THE OUTSTANDING CITY OF MESA, ARIZONA, EXCISE TAX REVENUE OBLIGATIONS, SERIES 2013; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW TRUST AGREEMENT FOR THE SAFEKEEPING AND HANDLING OF SECURITIES AND MONEYS TO BE USED TO PAY THE OBLIGATIONS 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 OF MONEYS AND DEFEASANCE, PREPAYMENT AND REDEMPTION OF THE OBLIGATIONS BEING DEFEASED.**

**WHEREAS**, the City of Mesa, Arizona (the “City”) previously authorized the execution and delivery of its Excise Tax Revenue Obligations, Series 2013 (the “*Obligations*”); and

**WHEREAS**, the City now desires to defease all or a portion of the outstanding Obligations and to authorize the City’s Deputy City Manager and Chief Financial Officer to transfer moneys to accomplish such defeasance; and

**WHEREAS**, the City Council finds that the City will reduce its financial liability if certain City moneys in an amount not to exceed \$55,000,000 are transferred to the Escrow Trustee (as defined herein) pursuant to the terms of the Escrow Trust Agreement (as defined herein), and that such amount transferred shall be invested or otherwise utilized to defease and pay prior to maturity all or a portion of the outstanding Obligations (the “*Obligations Being Defeased*”); and

**WHEREAS**, the firm of Hilltop Securities Inc. will serve as the City’s financial advisor with respect to the determination of the Obligations 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 adoption 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 defeasance of the Obligations Being Defeased authorized herein;

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

**Section 1. Authorization.** The City Council hereby authorizes and directs the Deputy City Manager and Chief Financial Officer of the City or his designee to transfer certain City moneys in an aggregate amount not to exceed \$55,000,000 to an irrevocable trust held by the Escrow Trustee and invested in securities directly 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 the Obligations Being Defeased prior to maturity. The costs and expenses of the defeasance transaction will be paid by the City from the transfer described in the preceding sentence. After payment of all amounts due, any remaining moneys shall be returned to the City.

**Section 2. Redemption of Obligations.** The City Council hereby authorizes and directs the redemption of the Obligations Being Defeased, and the Deputy City Manager and Chief Financial Officer or his designee is hereby authorized and directed to give written notice thereof to the Escrow Trustee and to U.S. Bank National Association (the “Trustee”), as trustee of the Obligations in accordance with the Trust Agreement dated as of April 1, 2013, by and between the City and the Trustee.

**Section 3. Application of Moneys.** The transferred moneys, after payment of the costs and expenses of the defeasance transaction, shall be applied by the Escrow Trustee to create an irrevocable trust for the benefit of the owners of the Obligations Being Defeased in accordance with the Escrow Trust Agreement.

**Section 4. Escrow Trust Agreement.** Any member of the City Council or the Deputy City Manager and Chief Financial Officer is hereby authorized to execute, and, if applicable, the City Clerk is hereby authorized and directed to attest, an escrow trust agreement (the “Escrow Trust Agreement”), by and between the City, the Trustee and UMB Bank, N.A. (the “Escrow Trustee”), with respect to the safekeeping and handling of the moneys and securities to be held in trust for the payment of the Obligations Being Defeased. The Escrow 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 of the City executing and delivering the same on behalf of the City. Execution by any such officer of the City shall constitute conclusive evidence of such approval.

**Section 5. Escrow Trustee Action.** The Escrow Trustee is hereby authorized and directed by the City to take any and all actions appropriate and necessary in connection with the defeasance of the Obligations Being Defeased.

**Section 6. Resolution a Contract.** This resolution shall constitute a contract between the City and the owners of the Obligations 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 Obligations Being Defeased then outstanding.

**Section 7. Tax 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

Obligations Being Defeased from gross income for federal income tax purposes, the City covenants for the benefit of the owners from time to time of the Obligations Being Defeased that it will not take any action or omit to take any action with respect to the Obligations Being Defeased if such action or omission (i) would cause the interest on the Obligations Being Defeased to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), or (ii) would cause interest on the Obligations Being Defeased to lose its exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Code. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full of the Obligations Being Defeased until the date on which all obligations of the City in fulfilling the above covenant under the Code have been met.

The City will comply with such requirements and will take any such actions as in the opinion of Sherman & Howard L.L.C., special counsel to the City (“*Special Counsel*”), are necessary to prevent interest income on the Obligations Being Defeased 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 yield reduction payments or rebates of arbitrage profits relating to the Obligations 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 Obligations Being Defeased; and limiting the use of the moneys transferred by the City to the Escrow Trustee.

The City Council hereby authorizes the Deputy City Manager and Chief Financial Officer, or his designee, to represent and act for the City in all matters pertaining to the City’s tax-exempt bonds and obligations, including the Obligations Being Defeased, as may be necessary to comply, on a continuing basis, with the Internal Revenue Service, Securities Exchange Commission and other governmental entities’ requests, reporting requirements and post-issuance compliance policies and matters.

**Section 8. Severability.** If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal, invalid 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 adopted with each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the transfer of City moneys to the Escrow Trustee and the defeasance and redemption prior to maturity of the Obligations 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. Waiver of Inconsistency.** All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

**Section 10.**    **Budget Transfer Authorization.** Pursuant to this resolution any budget transfers necessary related to the transfer of City moneys to the Escrow Trustee for purposes of defeasing the Obligations Being Defeased are hereby authorized and approved.

**Section 11.**    **Ratification of Actions.** All actions of the officials and agents of the City which are in conformity with the purposes and intent of this resolution and in furtherance of the transfer, defeasance and redemption in advance of maturity of the Obligations Being Defeased as contemplated by this resolution, shall be and are hereby ratified, confirmed and approved, whether heretofore or hereafter taken. The proper officials and agents of the City are hereby authorized and directed to do all such acts and things and to execute and delivery 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, Arizona, this 19th day of August, 2019.

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Mayor

**ATTEST:**

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City Clerk

**APPROVED AS TO FORM:**

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Sherman & Howard L.L.C., Special 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 August 19, 2019, and that a quorum was present thereat and that the vote thereon was \_\_\_\_ ayes and \_\_\_\_ nays; \_\_\_\_ did not vote or were absent.

DATED: August 19, 2019.

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City Clerk